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Page 1 of * 23

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2021 - * 42
Amendment No. (req. for Amendments *)

Filing by NYSE Arca, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☑ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☑ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to modify the NYSE Arca Options Fee Schedule

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Le-Anh Last Name * Bui

Title * Counsel, NYSE Group Inc.

E-mail * Le-Anh.Bui@ice.com

Telephone * (212) 656-2225 Fax (212) 656-8101

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 05/12/2021

By Clare Saperstein
(Name *)

(Title *)
Associate General Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Clare Saperstein,

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information * Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b-4 thereunder,[2] NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") proposes to modify the NYSE Arca Options Fee Schedule ("Fee Schedule") regarding the charges applicable to Manual executions by NYSE Arca Market Makers and Lead Market Makers. The Exchange proposes to implement the fee change effective May 12, 2021.[3]

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

(b) The Exchange does not believe that the proposed rule change would have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange's governing documents. Therefore, the Exchange's internal procedures with respect to the proposed rule change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Le-Anh Bui
Counsel
NYSE Group, Inc.
(212) 656-2225

Peter Armstrong
Manager, Options
NYSE Group, Inc.
(415) 318-1924

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 The Exchange originally filed to amend the Fee Schedule on May 3, 2021 (SR-NYSEArca-2021-34) and withdrew such filing on May 12, 2021.

The purpose of this filing is to modify the Fee Schedule regarding the charges for Manual executions by NYSE Arca Market Makers ("Market Makers") and Lead Market Makers ("LMMs"). Currently, Market Makers are charged $0.25 per contract for Manual executions, and LMMs are charged $0.18 per contract for Manual executions.[4]

The Exchange proposes to modify the charges for Manual executions to $0.35 per contract for Market Makers and $0.30 for LMMs. This proposed change is intended to more closely align the Exchange's fees for Manual transactions by Market Makers and LMMs with those charged by other markets.[5] The Exchange believes that the fees, as modified, would not discourage Market Makers and LMMs from continuing to conduct Manual executions on the Exchange.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[8]

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4 See Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, TRANSACTION FEE FOR MANUAL EXECUTIONS - PER CONTRACT.

5 See, e.g., Nasdaq PHLX LLC Pricing Schedule, available at: https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207 (providing $0.35 per contract rate for manual transactions by market makers); Cboe Exchange, Inc. Fee Schedule, available at: https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf (providing $0.35 per contract rate for manual transactions by market makers).

6 15 U.S.C. 78f(b).

7 15 U.S.C. 78f(b)(4) and (5).

8 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496,

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[9] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in March 2021, the Exchange had less than 11% market share of executed volume of multiply-listed equity and ETF options trades.[10]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees and rebates can have a direct effect on the ability of an exchange to compete for order flow.

The proposed rule change is designed to bring the Exchange's fees for Market Maker and LMM Manual executions closer into alignment with those charged on other markets with Trading Floors. The Exchange believes it is reasonable to increase certain fees, similar to fees offered by competing options exchanges for similar transactions, and notes that LMMs will continue to be charged lower fees than those offered by competing options exchanges for similar transactions.[11]

The Exchange also believes the proposed changes, even though they are increased fees, would not discourage Market Makers and LMMs from conducting Manual executions on the Exchange, thereby continuing to attract volume and liquidity to the Exchange generally and to the benefit all market participants (including those that do not participate in Manual executions) through increased opportunities to trade.

The Exchange believes that, although Market Makers and LMMs would be subject to fees greater than those charged to other market participants, the proposed fees are reasonable, on balance, in light of the Exchange's recent

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37499 (June 29, 2005) (S7-10-04) ("Reg NMS Adopting Release").

9 The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.

10 Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see id., the Exchange's market share in multiply-listed equity and ETF options decreased slightly from 11.10% for the month of March 2020 to 10.16% for the month of March 2021.

11 See supra note 5.

reduction of the cap on Strategy Execution fees.[12] The Exchange also believes that it is reasonable to continue to offer LMMs lower fees than Market Makers for Manual transactions given that LMMs are subject to heightened obligations and additional monthly Rights fees.

Finally, to the extent the proposed fees do not discourage Market Makers and LMMs from continuing to conduct Manual executions on the Exchange, the Exchange believes the proposed changes would continue to improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to maintain its market share relative to its competitors.

The Proposed Rule Change is an Equitable Allocation of Fees and Rebates

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the type of business transacted on the Exchange, and Market Makers and LMMs can opt to participate in Manual executions or not. The Exchange also believes that increasing fees for Manual executions by Market Makers and LMMs, but not for other market participants, represents an equitable allocation of fees in light of the recent reduction of certain Exchange fees.[13] The Exchange also believes that continuing to offer LMMs lower fees than Market Makers is an equitable allocation of fees given that LMMs are subject to heightened obligations and additional fees set forth in the Exchange's Fee Schedule.

Moreover, even though the proposed changes increase the fees applicable to Manual executions by Market Makers and LMMs, the Exchange does not believe they will discourage such executions on the Exchange or the aggregation of such executions at the Exchange as a primary execution venue. To the extent that the proposed changes continue to attract Manual executions to the Exchange, this order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would continue to improve market quality for all market participants on the Exchange and, as a consequence, continue to attract more order flow to the Exchange, thereby improving market-wide quality and price discovery.

The Proposed Rule Change is Not Unfairly Discriminatory

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12 See Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the NYSE Arca Options Fee Schedule Regarding the Limits on Fees for Options Strategy Executions, Securities Exchange Act Release No. 90949 (January 19, 2021), 86 FR 7152 (January 26, 2021) (SR-NYSEArca-2021-06).

13 See id.

The Exchange believes that the proposal is not unfairly discriminatory because the proposed modifications would apply to all Market Makers and LMMs who participate in Manual executions on the Exchange on an equal and non-discriminatory basis.

The proposal is based on the amount and type of business transacted on the Exchange, and Market Makers and LMMs are not obligated to participate in Manual executions on the Exchange. Rather, the proposal is designed to continue to encourage the use of the Exchange as a primary trading venue (if they have not done so previously) by maintaining the Trading Floor for Manual executions.

The Exchange also believes that increasing fees for Manual executions by Market Makers and LMMs, but not for other market participants, is not unfairly discriminatory in light of the recent reduction of certain other Exchange fees.[14] The Exchange also believes that it is not unfairly discriminatory to continue to offer LMMs lower fees than Market Makers given that LMMs are subject to heightened obligations and additional fees set forth in the Exchange's Fee Schedule.

To the extent that the proposed change assists the Exchange in continuing to attract Manual executions to the Trading Floor, this order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would contribute to market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting volume and liquidity would continue to provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

4. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would be consistent with charges for similar business at other markets. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders,

[14] See id.

which promotes "more efficient pricing of individual stocks for all types of orders, large and small."[15]

Intramarket Competition. The proposed change is designed to continue to promote the use of the Exchange as a primary trading venue by maintaining the Trading Floor for Manual executions, which would enhance the quality of quoting and may increase the volumes of contracts traded on the Exchange. The Exchange believes that the proposed modifications to the rates applicable to Manual executions by Market Makers and LMMs will not discourage those market participants from continuing to conduct Manual executions on the Exchange (including because LMMs will continue to receive lower fees than those offered by competing options exchanges for similar transactions), and to the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the continued market liquidity. Enhanced market quality and increased transaction volume that results from the increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. The Exchange also believes that increasing fees for Manual transactions by Market Makers and LMMs relative to other market participants does not impose an undue burden on competition in light of recent changes lowering certain Exchange fees.[16]

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its mechanisms and fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[17] Therefore, no exchange currently possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in March 2021, the Exchange had less than 11% market share of executed volume of multiply-listed equity and ETF options trades.[18]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees to be more closely aligned

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15 See Reg NMS Adopting Release, supra note 8, at 37499.

16 See supra note 12.

17 See supra note 9.

18 Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see id., the Exchange's market share in multiply-listed equity and ETF options decreased slightly from 11.10% for the month of March 2020 to 10.16% for the month of March 2021.

with fees charged by other markets with Trading Floors for similar transactions.[19] The Exchange also believes that the proposed changes would continue to promote competition between the Exchange and other execution venues by encouraging orders to be sent to the Exchange for execution. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[20] and subparagraph (f)(2) of Rule 19b-4[21] because it establishes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved.[22]

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

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[19] See supra note 5.

[20] 15 U.S.C. 78s(b)(3)(A)(ii).

[21] 17 CFR 240.19b-4(f)(2).

[22] 15 U.S.C. 78s(b)(2)(B).

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of the Proposed Rule Change for Publication in the Federal Register

Exhibit 5 – Amendment to the Exchange's Fee Schedule

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSEARCA-2021-42)

[Date]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the NYSE Arca Options Fee Schedule

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on May 12, 2021, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule ("Fee Schedule") regarding the charges applicable to Manual executions by NYSE Arca Market Makers and Lead Market Makers. The Exchange proposes to implement the fee change effective May 12, 2021.[4] The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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1 15 U.S.C. 78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

4 The Exchange originally filed to amend the Fee Schedule on May 3, 2021 (SR-NYSEArca-2021-34) and withdrew such filing on May 12, 2021.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule regarding the charges for Manual executions by NYSE Arca Market Makers ("Market Makers") and Lead Market Makers ("LMMs"). Currently, Market Makers are charged $0.25 per contract for Manual executions, and LMMs are charged $0.18 per contract for Manual executions.[5]

The Exchange proposes to modify the charges for Manual executions to $0.35 per contract for Market Makers and $0.30 for LMMs. This proposed change is intended to more closely align the Exchange's fees for Manual transactions by Market Makers and LMMs with those charged by other markets.[6] The Exchange believes that the fees, as

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5 See Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, TRANSACTION FEE FOR MANUAL EXECUTIONS - PER CONTRACT.

6 See, e.g., Nasdaq PHLX LLC Pricing Schedule, available at: https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207 (providing $0.35 per contract rate for manual transactions by market makers); Cboe Exchange, Inc. Fee Schedule, available at: https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf (providing $0.35 per contract rate for manual transactions by market makers).

modified, would not discourage Market Makers and LMMs from continuing to conduct Manual executions on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[9]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed

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7 15 U.S.C. 78f(b).

8 15 U.S.C. 78f(b)(4) and (5).

9 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) ("Reg NMS Adopting Release").

equity and ETF options trades.[10] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in March 2021, the Exchange had less than 11% market share of executed volume of multiply-listed equity and ETF options trades.[11]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees and rebates can have a direct effect on the ability of an exchange to compete for order flow.

The proposed rule change is designed to bring the Exchange's fees for Market Maker and LMM Manual executions closer into alignment with those charged on other markets with Trading Floors. The Exchange believes it is reasonable to increase certain fees, similar to fees offered by competing options exchanges for similar transactions, and notes that LMMs will continue to be charged lower fees than those offered by competing options exchanges for similar transactions.[12]

The Exchange also believes the proposed changes, even though they are increased fees, would continue not discourage Market Makers and LMMs from conducting Manual

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10 The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.

11 Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see id., the Exchange's market share in multiply-listed equity and ETF options decreased slightly from 11.10% for the month of March 2020 to 10.16% for the month of March 2021.

12 See supra note 6.

executions on the Exchange, thereby continuing to attract more volume and liquidity to the Exchange generally and to the benefit all market participants (including those that do not participate in Manual executions) through increased opportunities to trade.

The Exchange believes that, although Market Makers and LMMs would be subject to fees greater than those charged to other market participants, the proposed fees are reasonable, on balance, in light of the Exchange's recent reduction of the cap on Strategy Execution fees.[13] The Exchange also believes that it is reasonable to continue to offer LMMs lower fees than Market Makers for Manual transactions given that LMMs are subject to heightened obligations and additional monthly Rights fees.

Finally, to the extent the proposed fees do not discourage Market Makers and LMMs from continuing to conduct Manual executions on the Exchange, the Exchange believes the proposed changes would continue to improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to maintain its market share relative to its competitors.

The Proposed Rule Change is an Equitable Allocation of Fees and Rebates

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the type of business transacted on the Exchange, and Market Makers and LMMs can opt to participate in Manual executions or not. The Exchange also believes that increasing fees for Manual executions by Market

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13 See Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the NYSE Arca Options Fee Schedule Regarding the Limits on Fees for Options Strategy Executions, Securities Exchange Act Release No. 90949 (January 19, 2021), 86 FR 7152 (January 26, 2021) (SR-NYSEArca-2021-06).

Makers and LMMs, but not for other market participants, represents an equitable allocation of fees in light of the recent reduction of certain Exchange fees.[14] The Exchange also believes that continuing to offer LMMs lower fees than Market Makers is an equitable allocation of fees given that LMMs are subject to heightened obligations and additional fees set forth in the Exchange's Fee Schedule.

Moreover, even though the proposed changes increase the fees applicable to Manual executions by Market Makers and LMMs, the Exchange does not believe they will discourage such executions on the Exchange or the aggregation of such executions at the Exchange as a primary execution venue. To the extent that the proposed changes continue to attract Manual executions to the Exchange, this order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would continue to improve market quality for all market participants on the Exchange and, as a consequence, continue to attract more order flow to the Exchange, thereby improving market-wide quality and price discovery.

<u>The Proposed Rule Change is Not Unfairly Discriminatory</u>

The Exchange believes that the proposal is not unfairly discriminatory because the proposed modifications would apply to all Market Makers and LMMs who participate in Manual executions on the Exchange on an equal and non-discriminatory basis.

The proposal is based on the amount and type of business transacted on the Exchange, and Market Makers and LMMs are not obligated to participate in Manual executions on the Exchange. Rather, the proposal is designed to continue to encourage

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14 <u>See</u> <u>id.</u>

the use of the Exchange as a primary trading venue (if they have not done so previously) by maintaining the Trading Floor for Manual executions.

The Exchange also believes that increasing fees for Manual executions by Market Makers and LMMs, but not for other market participants, is not unfairly discriminatory in light of the recent reduction of certain other Exchange fees.[15] The Exchange also believes that it is not unfairly discriminatory to continue to offer LMMs lower fees than Market Makers given that LMMs are subject to heightened obligations and additional fees set forth in the Exchange's Fee Schedule.

To the extent that the proposed change assists the Exchange in continuing to attract Manual executions to the Trading Floor, this order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would contribute to market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting volume and liquidity would continue to provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that

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15 See id.

the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would be consistent with charges for similar business at other markets. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."[16]

Intramarket Competition. The proposed change is designed to continue to promote the use of the Exchange as a primary trading venue by maintaining the Trading Floor for Manual executions, which would enhance the quality of quoting and may increase the volumes of contracts traded on the Exchange. The Exchange believes that the proposed modifications to the rates applicable to Manual executions by Market Makers and LMMs will not discourage those market participants from continuing to conduct Manual executions on the Exchange (including because LMMs will continue to receive lower fees than those offered by competing options exchanges for similar transactions), and to the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the continued market liquidity. Enhanced market quality and increased transaction volume that results from the increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. The Exchange also believes that increasing fees for Manual transactions by Market Makers and LMMs relative to other market participants does not impose an undue burden

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[16] See Reg NMS Adopting Release, supra note 9, at 37499.

on competition in light of recent changes lowering certain Exchange fees.[17]

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its mechanisms and fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[18] Therefore, no exchange currently possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in March 2021, the Exchange had less than 11% market share of executed volume of multiply-listed equity and ETF options trades.[19]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees to be more closely aligned with fees charged by other markets with Trading Floors for similar transactions.[20] The Exchange also believes that the proposed changes would continue to promote competition between the Exchange and other execution venues by encouraging orders to be sent to the Exchange for execution.

To the extent that this purpose is achieved, all the Exchange's market participants

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[17] See supra note 13.

[18] See supra note 10.

[19] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see id., the Exchange's market share in multiply-listed equity and ETF options decreased slightly from 11.10% for the month of March 2020 to 10.16% for the month of March 2021.

[20] See supra note 6.

should benefit from the improved market quality and increased opportunities for price improvement.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[21] of the Act and subparagraph (f)(2) of Rule 19b-4[22] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b-4(f)(2).

[23] 15 U.S.C. 78s(b)(2)(B).

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2021-42 on the subject line.

Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2021-42. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2021-42 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman
Deputy Secretary

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[24] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Additions underscored
Deletions [bracketed]

NYSE Arca Options Fees and Charges

Effective Date: May 12, 2021

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NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS[14]

Unless Professional Customer executions are specifically delineated, such executions will be treated as "Customer" executions for fee/credit purposes. Firms, Broker Dealers, and Market Makers are collectively referred to herein as "Non-Customers."

A "Penny" issue or class refers to option classes that participate in the Penny Interval Program, as described in Rule 6.72A-O; whereas a "non-Penny" issue or class refers to option classes that do not participate in the Penny Interval Program, as described in Rule 6.72A-O.

TRANSACTION FEE FOR MANUAL EXECUTIONS - PER CONTRACT

	Manual Executions[5]
Order Type	
LMM	[$0.18]$0.30
NYSE Arca Market Maker	[$0.25]$0.35
Firm and Broker Dealer	$0.25
Professional Customer	$0.25
Customer	$0.00
Firm Facilitation and Broker Dealer facilitating a Customer or Professional Customer[7]	$0.00

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