

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99708; File No. SR-NYSEARCA-2024-24)

March 11, 2024

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 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on February 29, 2024, 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 and II 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 certain fees and credits applicable to Lead Market Makers. The Exchange proposes to implement the fee change effective March 1, 2024. 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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, effective March 1, 2024, regarding the Lead Market Maker (“LMM”) Rights Fee and LMM posting credits for electronic transactions in Penny issues.

LMM Rights Fee

The LMM Rights Fee (“Rights Fee”) is charged on a per issue basis to the OTP Firm acting as LMM in the issue.⁴ The Rights Fee applies to each issue in an LMM’s allocation, where the monthly fee is based on the average national daily Customer contracts in such issue as follows:

Average National Daily Customer Contracts	Monthly Issue Fee
0 to 100	\$25
101 to 1,000	\$35
1,001 to 2,000	\$75
2,001 to 5,000	\$200
5,001 to 15,000	\$750
15,001 to 100,000	\$1,500
Over 100,000	\$3,000

Currently, the Exchange also offers opportunities for LMMs to earn discounts on Rights Fees for issues in the four highest activity tiers. The discounts are based on the amount of

⁴ See Fee Schedule, Lead Market Maker Rights and Endnote 2, [available here](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf), https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

monthly (i) total electronic volume and/or (ii) total posted volume executed in the Market Maker range relative to other Market Makers appointed in that issue. The discounts are cumulative, and an LMM is eligible to achieve the discount for both monthly volume categories.⁵

The Exchange also offers a 50% discount on Rights Fees to LMMs who achieve either (1) daily contract volume traded electronically of at least 0.32% total industry Customer equity and ETF option ADV (“TCADV), of which 0.08% TCADV is in its LMM appointment, or (2) daily contract volume traded manually of at least 0.75% of TCADV in all account types, which can include transaction volume from the OTP Holder’s or OTP Firm’s affiliates (per Endnote 8) or its Appointed OFP (per Endnote 15). Qualifying LMM volume is based on an average of the daily contract volume traded electronically by an LMM or traded manually by an LMM and affiliated/appointed entities each trading day in a calendar month.

The Exchange proposes to eliminate both of the discounts currently offered on Rights Fees. To effect this change, the Exchange proposes to delete the text following the asterisk below the table in the Fee Schedule setting forth Rights Fees (as well as the asterisks in the table itself) describing the discounts based on monthly volume, as well as text in Endnote 2 describing the discount based on daily volume.

Although the proposed change would eliminate discounts currently offered to LMMs on Rights Fees, the Exchange believes it would not discourage LMMs from seeking appointments or from continuing to direct order flow to the Exchange, particularly in conjunction with the proposed change described below to offer LMMs additional posting credits in Penny issues.

LMM Post Liquidity Credits

⁵ For example, if an LMM was first in Total Electronic Volume in an issue (qualifying for a 50% discount), and third in Total Posting Volume in the same issue (qualifying for a 30% discount), the LMM would receive an 80% discount on the Rights Fee for that issue.

Currently, LMMs receive a credit of \$0.32 per contract for posted liquidity in electronic executions in Penny Issues.⁶ LMMs also receive an additional \$0.04 per contract credit for executions in Penny issues in their LMM appointment, in addition to credits they qualify for through the Market Maker Penny and SPY Posting Credit Tiers.

The Exchange proposes to increase the Post Liquidity credit for LMMs in all Penny issues other than SPY to \$0.33 per contract. In addition, the Exchange proposes to increase the credit for executions in Penny issues in an LMM's appointment, other than SPY, to an additional \$0.05 above the tiered credits outlined in the Market Maker Penny and SPY Posting Credit Tiers. The Exchange further proposes to clarify the Fee Schedule to provide that the post liquidity credit for the LMM in SPY will continue to be \$0.32 per contract and that the LMM in SPY will continue to be eligible for an additional \$0.04 per contract credit over the tiered credits set forth in the Market Maker Penny and SPY Posting Credit Tiers for eligible executions in SPY.

Although the Exchange cannot predict with certainty whether the proposed change would incent LMMs to direct additional posted liquidity to the Exchange, the Exchange believes that the proposed change could encourage LMMs to increase their transactions executed on the Exchange to earn the increased posting credits in Penny issues other than SPY or to continue to achieve the existing credits available for executions in SPY. The Exchange notes that these credits are not volume-based and are available to all LMMs.

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

⁶ See Fee Schedule, TRANSACTION FEE FOR ELECTRONIC EXECUTIONS - PER CONTRACT.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

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 Exchange believes that the proposed change is reasonable because, although it would eliminate the volume-based discounts on the LMM Rights Fee, it would offer LMMs increased posting credits (which are not based on volume) on trades in Penny issues other than SPY. The Exchange further believes that the proposed change is equitable and not unfairly discriminatory because it would generally apply to all LMMs equally. The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to maintain the current posted liquidity credits for the LMM in SPY because Market Makers in SPY are already eligible for a higher credit through the Market Maker Penny and SPY Posting Credit Tiers, and the Exchange offers certain Market Maker incentives for SPY that are not applicable to other Penny issues.⁹ The Exchange also believes that offering increased credits to LMMs is equitable and not unfairly discriminatory to non-LMM market participants because of LMMs' heightened quoting obligations and because increased LMM posting liquidity in Penny issues would continue to make the Exchange a more competitive venue for, among other things, order execution. To the extent the proposed change encourages LMMs to continue or increase their liquidity posting business in Penny issues on the Exchange, it would encourage active quoting and improved market quality to the benefit of all market participants.

⁹ See Fee Schedule, MARKET MAKER PENNY AND SPY POSTING CREDIT TIERS Super Tier; Market Maker Incentives for SPY.

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 the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The proposed change is designed to continue to encourage LMMs to increase liquidity directed to the Exchange by increasing the credits available to LMMs on posted liquidity in Penny issues other than SPY. Although the proposed change would eliminate the volume-based Rights Fee discounts, it would offer increased posting credits to LMMs that are not based on volume achieved. The proposed change would apply to all similarly-situated market participants and would not impose a disparate burden on competition. The Exchange does not believe that maintaining the current posted liquidity credits for the LMM in SPY would impose a disparate burden on competition given the unique incentives available to Market Makers in SPY.¹⁰ The Exchange further believes that, to the extent the proposed change results in increased liquidity on the Exchange, it would improve market quality for the benefit of all market participants.

The Exchange also does not believe that the proposed change would impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act; as order execution venues are free to modify their own fees in response to competitors' fees, the Exchange believes that the degree to which the proposed change could impose any burden on competition is limited. The Exchange further believes that the proposed change could promote competition between the Exchange and other execution venues to the extent the proposed change encourages increased order flow to the Exchange, thereby making the Exchange a more attractive venue for, among other things, order execution. Finally, the Exchange notes that it

¹⁰ See id.

operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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)¹¹ of the Act and subparagraph (f)(2) of Rule 19b-4¹² 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)¹³ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 15 U.S.C. 78s(b)(2)(B).

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:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-24 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-2024-24. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office

of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2024-24 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,
Assistant Secretary.

¹⁴ 17 CFR 200.30-3(a)(12).