

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 23		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No. * SR 2023 - * 41 Amendment No. (req. for Amendments *)	
Filing by NYSE Arca, Inc. Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input checked="" type="checkbox"/>		Amendment * <input type="checkbox"/>		Withdrawal <input type="checkbox"/>	
Section 19(b)(2) * <input type="checkbox"/>		Section 19(b)(3)(A) * <input checked="" type="checkbox"/>		Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>		Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	
		Rule			
		<input type="checkbox"/> 19b-4(f)(1)		<input type="checkbox"/> 19b-4(f)(4)	
		<input checked="" type="checkbox"/> 19b-4(f)(2)		<input type="checkbox"/> 19b-4(f)(5)	
		<input type="checkbox"/> 19b-4(f)(3)		<input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>			Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
Description Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div>Proposal to modify the NYSE Arca Options Fee Schedule</div>					
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 * Senior Counsel, NYSE Group Inc. E-mail * Le-Anh.Bui@ice.com Telephone * (202) 661-8953 Fax (212) 656-8101					
Signature Pursuant to the requirements of the Securities Exchange of 1934, NYSE Arca, Inc. has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized. Date 06/01/2023 (Title *) By Martha Redding Corporate Secretary (Name *) <div>NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.</div> <div>Martha Redding Digitally signed by Martha Redding Date: 2023.06.01 13:43:39 -04'00'</div>					

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SEC Sub 19b-4 NYSE Arca Submittin

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 *

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Ex. 1 SEC Sub 19b-4 NYSE Arca Sub

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 Advanced Notice by Clearing Agencies *

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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 2- Notices, Written Comments, Transcripts, Other Communications

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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.

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Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

Exhibit 4 - Marked Copies

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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

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Ex. 5 SEC Sub 19b-4 NYSE Arca Sub

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

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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 credits for Qualified Contingent Cross (“QCC”) transactions. The Exchange proposes to implement the fee change effective June 1, 2023.

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
Senior Counsel
NYSE Group, Inc.
(202) 661-8953

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

The purpose of this filing is to amend the Fee Schedule to modify a credit offered to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

qualifying Submitting Brokers for QCC transactions.³ The Exchange proposes to implement the rule change on June 1, 2023.

Currently, the Exchange offers Submitting Brokers a credit of (\$0.22) per contract for Non-Customer vs. Non-Customer QCC transactions or (\$0.16) per contract for Customer vs. Non-Customer QCC transactions.⁴ QCC executions in which a Customer is on both sides of the QCC trade are not eligible for a credit.⁵ In addition, Submitting Brokers who achieve 3 million QCC contracts in a month currently receive an additional (\$0.02) credit on Customer vs. Non-Customer QCC transactions, and an additional (\$0.06) credit on Non-Customer vs. Non-Customer QCC transactions.

The Exchange now proposes to increase the credit on Non-Customer vs. Non-Customer QCC transactions for those Submitting Brokers that achieve the 3 million monthly QCC contract requirement from (\$0.06) to (\$0.08).⁶ The proposed (\$0.08) credit will continue to be applicable back to the first QCC contract executed by a Submitting Broker in a month and will not be cumulative across tiers.⁷ Although the Exchange cannot predict with certainty whether the proposed change would encourage Submitting Brokers to increase their QCC volume, the proposed change is intended to continue to incentivize additional QCC executions by Submitting Brokers by increasing the credits available on certain such orders.

³ A QCC Order is defined as an originating order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade coupled with a contra-side order or orders totaling an equal number of contracts. See Rule 6.62P-O(g)(1)(A).

⁴ See Fee Schedule, QUALIFIED CONTINGENT CROSS (“QCC”) TRANSACTION FEES AND CREDITS.

⁵ See id.

⁶ The Exchange notes that the proposed change does not impact the applicability of Endnote 17, which provides that Submitting Broker QCC credits and Floor Broker rebates earned through the Manual Billable Rebate Program may not combine to exceed \$2,000,000 per month per firm. See Fee Schedule, Endnote 17.

⁷ The Exchange currently offers an additional (\$0.01) credit on Customer vs. Non-Customer QCC transactions and an additional (\$0.03) credit on Non-Customer vs. Non-Customer QCC transactions to Submitting Brokers that achieve 1.5 million QCC contracts in a month. The Exchange does not propose any changes to these credits or qualifying requirements. As is currently the case, the additional QCC credits available to Submitting Brokers that achieve 1.5 million QCC contracts in a month and those available to Submitting Brokers that achieve 3 million QCC contracts in a month are not cumulative across qualifying tiers. For example, a Submitting Broker who transacts 3.1 million QCC contracts in a month would be eligible for an additional (\$0.08) credit on Non-Customer vs. Non-Customer QCC transactions, as proposed, but would not also earn the additional credits offered to Submitting Brokers that achieve 1.5 million QCC contracts in a month.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁹ 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.”¹⁰

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.¹¹ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in April 2023, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.¹²

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, modifications to exchange transaction fees can have a direct effect on the ability of an

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

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

¹¹ 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>.

¹² Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, see *id.*, the Exchange’s market share in equity-based options decreased from 12.94% for the month of April 2022 to 12.54% for the month of April 2023.

exchange to compete for order flow.

The Exchange believes that the proposed change is reasonable because it is designed to incent OTP Holders to increase the number of QCC transactions sent to the Exchange by offering an increased credit on QCC transactions for Submitting Brokers that meet a requisite volume threshold. In addition, the Exchange believes it is reasonable to offer a higher additional credit on Non-Customer vs. Non-Customer QCC transactions than on Customer vs. Non-Customer QCC transactions because Non-Customer vs. Non-Customer QCC transactions are billable on both sides, whereas Customer vs. Non-Customer QCC transactions are billable on one side only. To the extent that the proposed change attracts more volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange notes that all market participants stand to benefit from any increase in volume entered by Submitting Brokers, which could promote market depth, facilitate tighter spreads and enhance price discovery, to the extent the proposed change encourages OTP Holders to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants.

Finally, to the extent the proposed change continues to attract greater volume and liquidity, the Exchange believes the proposed change would 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 increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as OTP Holders may direct their order flow to any of the 16 options exchanges, including those offering rebates on QCC transactions.¹³ The proposed rule change is designed to continue to incent OTP Holders to direct liquidity and, in particular, QCC transactions to the Exchange. In addition, to the extent OTP Holders are incentivized to aggregate their trading activity at the Exchange, that increased liquidity could promote market depth, price discovery and improvement, and enhanced order execution opportunities for market participants.

¹³ See, e.g., EDGX Options Exchange Fee Schedule, QCC Initiator/Solicitation Rebate Tiers (applying (\$0.14) per contract rebate up to 999,999 contracts for QCC transactions when only one side of the transaction is a non-customer or (\$0.22) per contract rebate up to 999,999 contracts for QCC transactions with non-customers on both sides); BOX Options Fee Schedule at Section IV.D.1. (QCC Rebate) (providing for (\$0.14) per contract rebate up to 1,499,999 contracts for QCC transactions when only one side of the QCC transaction is a broker-dealer or market maker or (\$0.22) per contract rebate up to 1,499,999 contracts for QCC transactions when both parties are a broker-dealer or market maker); Nasdaq ISE, Options 7, Section 6.B. (QCC Rebate) (offering rebates on QCC transactions of (\$0.14) per contract when only one side of the QCC transaction is a non-customer or (\$0.22) per contract when both sides of the QCC transaction are non-customers).

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

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposed change is based on the amount and type of business transacted on the Exchange, and Submitting Brokers can attempt to submit QCC transactions to earn the additional credit or not. In addition, the proposed credit is equally available to all qualifying Submitting Brokers. To the extent the proposed change continues to incent Submitting Brokers to direct increased liquidity to the Exchange, all market participants would benefit from enhanced opportunities for price improvement and order execution. Moreover, the proposed credit is designed to incent Submitting Brokers to encourage OTP Holders to aggregate their executions -- including QCC transactions -- at the Exchange as a primary execution venue. To the extent that the proposed change achieves its purpose in attracting more volume to the Exchange, this increased 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 improve 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 Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes the proposed change is not unfairly discriminatory because the proposed credit on QCC transactions would be available to all qualifying Submitting Brokers on an equal and non-discriminatory basis. The proposed change is based on the amount and type of business transacted on the Exchange, and Submitting Brokers are not obligated to execute QCC transactions. Rather, the proposal is designed to encourage Submitting Brokers to increase QCC volume sent to the Exchange and to utilize the Exchange as a primary trading venue for all transactions (if they have not done so previously). To the extent that the proposed change attracts more QCC transactions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve 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 increased volume and liquidity would 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 change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers 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."¹⁴

Intramarket Competition. The proposed change is designed to attract additional QCC transactions to the Exchange, which could increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all market participants on the Exchange, and increased QCC transactions could increase opportunities for execution of other trading interest. The proposed credit would be available to all similarly-situated Submitting Brokers that execute QCC trades and achieve the applicable volume threshold.

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 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 has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.¹⁵ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in April 2023, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.¹⁶

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to incent OTP Holders to direct trading interest (particularly QCC transactions) to the Exchange, to provide liquidity and to attract order flow. To the extent that Submitting Brokers are incentivized to utilize the Exchange as a primary trading venue for all transactions, all of the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

¹⁴ See Reg NMS Adopting Release, *supra* note 10, at 37499.

¹⁵ 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>.

¹⁶ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.*, the Exchange's market share in equity-based options decreased from 12.94% for the month of April 2022 to 12.54% for the month of April 2023.

The Exchange notes that it 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. The Exchange further believes that the proposed changes could promote competition between the Exchange and other execution venues, including those that currently offer credits on QCC transactions, by encouraging additional orders (and, in particular, QCC transactions) to be sent to the Exchange for execution.¹⁷

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 Act¹⁸ and subparagraph (f)(2) of Rule 19b-4¹⁹ 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.²⁰

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.

¹⁷ See note 13, *supra*.

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁹ 17 CFR 240.19b-4(f)(2).

²⁰ 15 U.S.C. 78s(b)(2)(B).

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

Not applicable.

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-2023-41)

[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 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 1, 2023, 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 modify the NYSE Arca Options Fee Schedule (“Fee Schedule”) regarding credits for Qualified Contingent Cross (“QCC”) transactions. The Exchange proposes to implement the fee change effective June 1, 2023. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 amend the Fee Schedule to modify a credit offered to qualifying Submitting Brokers for QCC transactions.⁴ The Exchange proposes to implement the rule change on June 1, 2023.

Currently, the Exchange offers Submitting Brokers a credit of (\$0.22) per contract for Non-Customer vs. Non-Customer QCC transactions or (\$0.16) per contract for Customer vs. Non-Customer QCC transactions.⁵ QCC executions in which a Customer is on both sides of the QCC trade are not eligible for a credit.⁶ In addition, Submitting Brokers who achieve 3 million QCC contracts in a month currently receive an additional (\$0.02) credit on Customer vs. Non-Customer QCC transactions, and an additional (\$0.06) credit on Non-Customer vs. Non-Customer QCC transactions.

The Exchange now proposes to increase the credit on Non-Customer vs. Non-Customer QCC transactions for those Submitting Brokers that achieve the 3 million monthly QCC contract

⁴ A QCC Order is defined as an originating order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade coupled with a contra-side order or orders totaling an equal number of contracts. See Rule 6.62P-O(g)(1)(A).

⁵ See Fee Schedule, QUALIFIED CONTINGENT CROSS ("QCC") TRANSACTION FEES AND CREDITS.

⁶ See id.

requirement from (\$0.06) to (\$0.08).⁷ The proposed (\$0.08) credit will continue to be applicable back to the first QCC contract executed by a Submitting Broker in a month and will not be cumulative across tiers.⁸ Although the Exchange cannot predict with certainty whether the proposed change would encourage Submitting Brokers to increase their QCC volume, the proposed change is intended to continue to incentivize additional QCC executions by Submitting Brokers by increasing the credits available on certain such orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁰ 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.

⁷ The Exchange notes that the proposed change does not impact the applicability of Endnote 17, which provides that Submitting Broker QCC credits and Floor Broker rebates earned through the Manual Billable Rebate Program may not combine to exceed \$2,000,000 per month per firm. See Fee Schedule, Endnote 17.

⁸ The Exchange currently offers an additional (\$0.01) credit on Customer vs. Non-Customer QCC transactions and an additional (\$0.03) credit on Non-Customer vs. Non-Customer QCC transactions to Submitting Brokers that achieve 1.5 million QCC contracts in a month. The Exchange does not propose any changes to these credits or qualifying requirements. As is currently the case, the additional QCC credits available to Submitting Brokers that achieve 1.5 million QCC contracts in a month and those available to Submitting Brokers that achieve 3 million QCC contracts in a month are not cumulative across qualifying tiers. For example, a Submitting Broker who transacts 3.1 million QCC contracts in a month would be eligible for an additional (\$0.08) credit on Non-Customer vs. Non-Customer QCC transactions, as proposed, but would not also earn the additional credits offered to Submitting Brokers that achieve 1.5 million QCC contracts in a month.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

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.”¹¹

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.¹² Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in April 2023, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.¹³

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

¹¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

¹² 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>.

¹³ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, see id., the Exchange’s market share in equity-based options decreased from 12.94% for the month of April 2022 to 12.54% for the month of April 2023.

reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, modifications to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed change is reasonable because it is designed to incent OTP Holders to increase the number of QCC transactions sent to the Exchange by offering an increased credit on QCC transactions for Submitting Brokers that meet a requisite volume threshold. In addition, the Exchange believes it is reasonable to offer a higher additional credit on Non-Customer vs. Non-Customer QCC transactions than on Customer vs. Non-Customer QCC transactions because Non-Customer vs. Non-Customer QCC transactions are billable on both sides, whereas Customer vs. Non-Customer QCC transactions are billable on one side only. To the extent that the proposed change attracts more volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange notes that all market participants stand to benefit from any increase in volume entered by Submitting Brokers, which could promote market depth, facilitate tighter spreads and enhance price discovery, to the extent the proposed change encourages OTP Holders to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants.

Finally, to the extent the proposed change continues to attract greater volume and liquidity, the Exchange believes the proposed change would 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 increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as OTP Holders may direct their order flow to any of the 16 options exchanges, including those offering rebates on QCC transactions.¹⁴ The proposed rule change is designed to continue to incent OTP Holders to direct liquidity and, in particular, QCC transactions to the Exchange. In addition, to the extent OTP Holders are incentivized to aggregate their trading activity at the Exchange, that increased liquidity could promote market depth, price discovery and improvement, and enhanced order execution opportunities for market participants.

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

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposed change is based on the amount and type of business transacted on the Exchange, and Submitting Brokers can attempt to submit QCC transactions to earn the additional credit or not. In addition, the proposed credit is equally available to all qualifying Submitting Brokers. To the extent the proposed change continues to incent Submitting Brokers to direct increased liquidity to the Exchange, all market participants would benefit from enhanced

¹⁴ See, e.g., EDGX Options Exchange Fee Schedule, QCC Initiator/Solicitation Rebate Tiers (applying (\$0.14) per contract rebate up to 999,999 contracts for QCC transactions when only one side of the transaction is a non-customer or (\$0.22) per contract rebate up to 999,999 contracts for QCC transactions with non-customers on both sides); BOX Options Fee Schedule at Section IV.D.1. (QCC Rebate) (providing for (\$0.14) per contract rebate up to 1,499,999 contracts for QCC transactions when only one side of the QCC transaction is a broker-dealer or market maker or (\$0.22) per contract rebate up to 1,499,999 contracts for QCC transactions when both parties are a broker-dealer or market maker); Nasdaq ISE, Options 7, Section 6.B. (QCC Rebate) (offering rebates on QCC transactions of (\$0.14) per contract when only one side of the QCC transaction is a non-customer or (\$0.22) per contract when both sides of the QCC transaction are non-customers).

opportunities for price improvement and order execution. Moreover, the proposed credit is designed to incent Submitting Brokers to encourage OTP Holders to aggregate their executions - including QCC transactions -- at the Exchange as a primary execution venue. To the extent that the proposed change achieves its purpose in attracting more volume to the Exchange, this increased 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 improve 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 Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes the proposed change is not unfairly discriminatory because the proposed credit on QCC transactions would be available to all qualifying Submitting Brokers on an equal and non-discriminatory basis. The proposed change is based on the amount and type of business transacted on the Exchange, and Submitting Brokers are not obligated to execute QCC transactions. Rather, the proposal is designed to encourage Submitting Brokers to increase QCC volume sent to the Exchange and to utilize the Exchange as a primary trading venue for all transactions (if they have not done so previously). To the extent that the proposed change attracts more QCC transactions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve 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 increased volume and liquidity would 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 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 change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers 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."¹⁵

Intramarket Competition. The proposed change is designed to attract additional QCC transactions to the Exchange, which could increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all market participants on the Exchange, and increased QCC transactions could increase opportunities for execution of other trading interest. The proposed credit would be available to all similarly-situated Submitting Brokers that execute QCC trades and achieve the applicable volume threshold.

¹⁵ See Reg NMS Adopting Release, supra note 11, at 37499.

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 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 has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.¹⁶ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in April 2023, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.¹⁷

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to incent OTP Holders to direct trading interest (particularly QCC transactions) to the Exchange, to provide liquidity and to attract order flow. To the extent that Submitting Brokers are incentivized to utilize the Exchange as a primary trading venue for all transactions, all of the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

¹⁶ 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>.

¹⁷ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.*, the Exchange's market share in equity-based options decreased from 12.94% for the month of April 2022 to 12.54% for the month of April 2023.

The Exchange notes that it 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. The Exchange further believes that the proposed changes could promote competition between the Exchange and other execution venues, including those that currently offer credits on QCC transactions, by encouraging additional orders (and, in particular, QCC transactions) to be sent to the Exchange for execution.¹⁸

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 has become effective upon filing pursuant to Section 19(b)(3)(A)¹⁹ of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the 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.

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:

¹⁸ See note 14, *supra*.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

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-2023-41 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-2023-41. 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-2023-41 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.²⁰

J. Matthew DeLesDernier,
Deputy Secretary.

²⁰ 17 CFR 200.30-3(a)(12).

Additions underscored

Deletions [bracketed]

NYSE Arca Options Fees and Charges

Effective Date: [May 1] June 1, 2023

NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS¹⁴

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.

QUALIFIED CONTINGENT CROSS (“QCC”) TRANSACTION FEES AND CREDITS	
Participant	Per Contract Fee or Credit
All Non-Customers in All Issues	\$0.20
All Customers in All Issues	\$0.00
Submitting Broker credit for Non-Customer vs. Non-Customer QCC Transaction ^{13, 17}	(\$0.22)
Submitting Broker credit for Customer vs. Non-Customer QCC Transaction ^{13, 17}	(\$0.16)

Additional Submitting Broker QCC Credits per contract	Customer vs. Non-Customer QCC Transaction	Non-Customer vs. Non-Customer QCC Transaction
Achieve 1.5 million QCC contracts per month	(\$0.01)	(\$0.03)
Achieve 3 million QCC contracts per month	(\$0.02)	[(\$0.06)] <u>(\$0.08)</u>

The Additional Submitting Broker QCC Credits are payable back to the first contract but are not cumulative across tiers.
