

tailored reporting requirements. This engagement will provide industry participants the opportunity to provide input into the reporting requirements.

10. Introducing and Clearing Firm Issues

A commenter stated that the proposed rule change does not address the role of the clearing broker or reflect that FINRA has considered the actual way in which introducing brokers clear trades.¹⁵⁰ Another commenter suggested that FINRA should continue to facilitate dialogue among introducing and clearing firms to facilitate the implementation of the proposed rule change.¹⁵¹

FINRA responded by stating that it has conducted extensive dialogue with introducing and clearing firms regarding the requirements of the current rule and the proposed rule change in the context of introducing and clearing arrangements, and several of the proposed rule change's clarifying changes to the original rulemaking were informed by such dialogue.¹⁵² Further, FINRA stated that it intends to continue to discuss the proposed rule change and its implementation with clearing and introducing firms, and to facilitate dialogue among them as the Covered Agency Transaction margin requirements are implemented.¹⁵³

FINRA's response regarding issues involving clearing and introducing firms appropriately addresses the commenters' concerns. Specifically, FINRA has engaged in extensive dialogue with introducing and clearing firms regarding the requirements of the original rulemaking and with respect to the proposed rule change. Further, FINRA has indicated it will continue to facilitate dialogue with introducing and clearing firms as the margin requirements for Covered Agency Transactions are implemented.

11. Status of Published Frequently Asked Questions ("FAQs")

A commenter requested confirmation as to whether the FAQs regarding Covered Agency Transactions, maintained on FINRA's website,¹⁵⁴ will apply in the event the proposed rule change is approved.¹⁵⁵ FINRA stated that if the Commission approves the proposed rule change, FINRA will

revisit the FAQs with Commission staff, members, and industry participants as appropriate.¹⁵⁶ The Commission agrees that FINRA's response to the status of the FAQs appropriately addresses the commenter's request for confirmation with respect to the application of the FAQs under the proposed rule change.

12. Implementation Period

In response to the proposed rule change, several commenters requested that FINRA provide an implementation period of at least 18 months after publication of a final rule text before compliance is required, stating that a constrained time period for implementation could present market access risk, and citing the need to build operations and technology and to negotiate necessary documentation.¹⁵⁷ FINRA responded to these concerns as part of Amendment No. 1 by stating while it believes that the subject matter is well understood by member firms and industry participants, FINRA would announce the effective date no later than 60 days following approval, if the Commission approves the proposed rule change, and would provide an effective date between nine and ten months following such approval.¹⁵⁸

In response to Amendment No. 1, a commenter reiterated its previous comments regarding the implementation date, again requesting that FINRA provide an implementation period of 18 months, or in the alternative an implementation timeframe of at least one year.¹⁵⁹ FINRA responded to the comment stating that in connection with Amendment No. 1, it provided a longer implementation timeframe than originally proposed as part of the proposed rule change. FINRA stated that Covered Agency Transactions have been under discussion for a considerable time, both prior to and since approval of the original rulemaking in 2016, and that this subject matter is well understood by members and industry participants. As a result FINRA believes that the public interest would not be served by continuing delay and that the timeframe set forth in Amendment No. 1 is appropriate.¹⁶⁰

FINRA's proposed implementation schedule is appropriate and consistent

¹⁵⁶ See Amendment No. 1 at 20.

¹⁵⁷ See SIFMA AMG letter at 1–3; SIFMA Letter at 2; BDA Letter at 5.

¹⁵⁸ See Amendment No. 1 at 20.

¹⁵⁹ See Letter from Chris Killian, Managing Director, Securitization, Corporate Credit, Libor, Securities Industry and Financial Markets Association, to Secretary, Commission (Sep. 10, 2021). The comment letter was submitted jointly by SIFMA and SIFMA AMG.

¹⁶⁰ See FINRA Letter at 7–8.

with the requirements of the Exchange Act. The Covered Agency Transaction margin requirements were approved in 2016 under the 2016 Approval Order. FINRA member firms and industry participants are aware of the requirements of the Covered Agency Transaction margin rule and have had time to work toward implementation. Consequently, the proposed implementation timeframe of nine to ten months from the approval date as described in Amendment No. 1 should provide sufficient time for FINRA firms to comply with the rule's requirements.

IV. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Exchange Act¹⁶¹ that the proposed rule change (SR–FINRA–2021–010), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶²

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01471 Filed 1–25–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94015; No. SR–NYSEArca–2022–02]

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

January 20, 2022.

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 January 12, 2022, 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.

¹⁶¹ 15 U.S.C. 78s(b)(2).

¹⁶² 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

¹⁵⁰ See Brean Capital Letter at 13.

¹⁵¹ See SIFMA Letter at 3.

¹⁵² See Amendment No. 1 at 20.

¹⁵³ *Id.*

¹⁵⁴ After the original rulemaking was approved, FINRA made available a set of FAQs and guidance clarify certain of the requirements, available at: www.finra.org.

¹⁵⁵ See SIFMA Letter at 6–7.

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

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (the "Fee Schedule") regarding the Floor Broker Fixed Cost Prepayment Incentive Program. The Exchange proposes to implement the fee change effective January 12, 2022.⁴ 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.

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 Floor Broker Fixed Cost Prepayment Incentive Program (the "FB Prepay Program"), a prepayment incentive program that allows Floor Broker organizations (each, a "Floor Broker") to prepay certain of their annual Eligible Fixed Costs in exchange for volume rebates, as set forth in the Fee Schedule.⁵

Currently, the FB Prepay Program offers participating Floor Brokers an opportunity to qualify for rebates by achieving growth in billable manual volume by a certain percentage as measured against one of two benchmarks (the "Percentage Growth

Incentive"). Specifically, the Percentage Growth Incentive is designed to encourage Floor Brokers to increase their average daily volume ("ADV") in billable manual contract sides to qualify for a Tier; each Tier of the FB Prepay Program corresponds to an annual rebate equal to the greater of the "Total Percentage Reduction of pre-paid annual Eligible Fixed Costs" or the annualization of the monthly "Alternative Rebate."⁶ In either case, participating Floor Brokers receive their annual rebate amount in the following January.⁷ Floor Brokers that wish to participate in the FB Prepay Program for the following calendar year must notify the Exchange no later than the last business day of December in the current year.⁸

As further described below, the Exchange proposes to modify the qualifying benchmarks, growth percentage requirements, and rebate amounts for the FB Prepay Program, and further proposes to adjust the basis for the calculation of a participating Floor Broker's Eligible Fixed Costs for the following calendar year.

The Exchange proposes to implement the fee changes effective January 12, 2022.

Proposed Rule Change

The Exchange proposes to modify the benchmarks that Floor Brokers that participate in the FB Prepay Program must meet to qualify for the Percentage Growth Incentive. Currently, to qualify for the Percentage Growth Incentive, a Floor Broker must increase their ADV for the calendar year above the greater of (1) 20,000 contract sides in billable manual ADV, or (2) 105% of the Floor Broker's total billable manual ADV in contract sides during the second half of 2017.⁹ The Exchange proposes to modify each of the minimum thresholds to qualify for the Percentage Growth Incentive. Specifically, the Exchange proposes to (1) modify the first benchmark to increase the requisite minimum contract sides in billable manual ADV from 20,000 to 30,000, and

(2) modify the second benchmark from 105% of the Floor Broker's total billable manual ADV in contract sides during the second half of 2017 (*i.e.*, July through December 2017) to the Floor Broker's total billable manual ADV in contract sides during the second half of 2020 (*i.e.*, July through December 2020).¹⁰

The Exchange believes that 30,000 ADV is a reasonable minimum threshold above which a participating Floor Broker would need to increase volume to earn a rebate under the FB Prepay Program, particularly in light of the increased options volume executed by Floor Brokers in the past year. The Exchange notes that Floor Brokers that are new to the Exchange would also be eligible to qualify for the Percentage Growth Incentive based on this minimum threshold. For Floor Brokers that exceed 30,000 ADV in growth, the Exchange believes that it is reasonable to continue to use each Floor Broker's historical volume as a benchmark against which to measure growth and also believes that updating the benchmark to account for the Floor Broker's more recent activity on the Exchange is reasonable. The Exchange further believes that, in light of the market volatility in the first half of 2020 and the unusually high volumes observed in 2021, Floor Broker activity in the second half of 2020 would be an appropriate benchmark against which to measure volume for purposes of the FB Prepay Program. All Floor Brokers that aim to achieve the rebate would still be required to increase volume executed on the Exchange, and the total annual rebate available for achieving each Tier would continue to be the same regardless of whether the Floor Broker qualifies based on growth over 30,000 ADV contract sides or its second half of 2020 volume, as proposed.

The Exchange also proposes a series of modifications to the percentage growth requirements for the Percentage Growth Incentive, the percentage reductions of annual fixed costs, and the Alternative Rebate amounts. The Exchange believes the proposed modifications would continue to incentivize Floor Brokers to participate in the FB Prepay Program and would generally make the rebates offered pursuant to the FB Prepay Program more achievable for participating Floor Brokers. First, the Exchange proposes to decrease certain of the percentage growth requirements for the Percentage Growth Incentive Tiers. Specifically, the

⁴ The Exchange originally filed to amend the Fee Schedule on December 29, 2021 (SR-NYSEArca-2021-108) and withdrew such filing on January 12, 2022.

⁵ See Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the "FB Prepay Program"), available here: https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf. "Eligible Fixed Costs," as set forth in the Fee Schedule, include the OTP Trading Participant Rights fee for a Floor Broker, Floor Broker Order Capture Device—Market Data Fees, Floor Booth fees, the Options Floor Access Fee, and Wire Services fees.

⁶ See *id.* The Percentage Growth Incentive excludes Customer volume, Firm Facilitation and Broker Dealer facilitating a Customer trades, and QCCs. Any volume calculated to achieve the Firm and Broker Dealer Monthly Fee Cap and the Limit of Fees on Options Strategy Executions, will likewise be excluded from the Percentage Growth Incentive because fees on such volume are already capped and therefore do not increase billable manual volume. See *id.*

⁷ See Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the "FB Prepay Program").

⁸ See *id.*

⁹ See Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the "FB Prepay Program").

¹⁰ See proposed Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the "FB Prepay Program").

Exchange proposes to reduce the requirement for Tier 2 from 25% to 15% and for Tier 3 from 50% to 30%. Second, the Exchange proposes to modify the total percentage reduction of pre-paid annual Eligible Fixed Costs offered for certain Tiers. Specifically, the Exchange proposes to modify the percentage for Tier 1 from 25% to 10%

and for Tier 3 from 75% to 80%. Third, the Exchange proposes to increase the Alternative Rebate offered for Tiers 1 through 3, as set forth in the table below. Finally, the Exchange proposes to eliminate Tiers 4 and 5. The Exchange believes eliminating these Tiers is reasonable in light of the proposed changes described above,

including because Tier 3, as modified, would offer participating Floor Brokers an Alternative Rebate amount greater than the amount currently offered by either Tier 4 or 5.

The following table reflects the proposed changes (with deletions in brackets and new text italicized):

FB PREPAYMENT PROGRAM INCENTIVES

[Based on annual ADV in contract sides for the calendar year]

Tier	Percentage growth incentive	Total percentage reduction of pre-paid annual Eligible Fixed Costs	Alternative rebate
Tier 1	5%	[25%] 10%	[\$4,000] <i>\$8,000</i> /month.
Tier 2	[25%] 15%	50%	[\$6,000] <i>\$18,000</i> /month.
Tier 3	[50%] 30%	[75%] 80%	[\$8,000] <i>\$24,000</i> /month.
[Tier 4	100%	80%	\$14,000/month].
[Tier 5	150%	100%	\$18,000/month].

Thus, as proposed, a participating Floor Broker would qualify for the Percentage Growth Incentive by executing ADV growth in manual billable contract sides that is 5%, 15%, or 30% over the greater of (1) 30,000 contract sides ADV, or (2) their ADV during the second half of 2020 (*i.e.*, July through December 2020). A Floor Broker that participates in the FB Prepay Program and achieves a Percentage Growth Incentive Tier, as modified, will continue to be eligible for an annual rebate that is the greater of the “Total Percentage Reduction of pre-paid annual Eligible Fixed Costs” or the “Alternative Rebate” based on the Tier achieved. A Floor Broker that is new to the Exchange (or one that did not execute at least 30,000 contract sides in billable manual ADV in the second half of 2020) would continue to have the ability to qualify for the Percentage Growth Incentive by executing at least 30,000 contract sides in manual billable ADV, increased by the specified percentages during the year. The total rebate available for achieving each Tier would be the same regardless of whether the Floor Broker qualifies based on 100% of its second half of 2020 volume or the minimum 30,000 ADV contract sides benchmark.

The Exchange also proposes to modify the date it will use for the calculation of a Floor Broker’s Eligible Fixed Costs for the following calendar year. The FB Prepay Program currently specifies that a Floor Broker that commits to the program will be invoiced in January for Eligible Fixed Costs, based on annualizing their Eligible Fixed Costs incurred in the previous November.¹¹

¹¹ The Fee Schedule also currently provides that the “Exchange will not issue any refunds in the

The Exchange proposes to modify the Fee Schedule to specify that the annualization of Eligible Fixed Costs would be based on costs incurred in November 2020. The Exchange believes that Floor Brokers’ costs as of November 2020 would more accurately reflect Eligible Fixed Costs for the coming calendar year based on anticipated fixed costs in 2022.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹³ 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.

event that a Floor Broker organization’s prepaid Eligible Fixed Costs exceeds such actual costs, except that the Exchange will refund certain of the prepaid Eligible Fixed Costs that were waived for Qualifying Firms as defined, and set forth in, NYSE Arca OPTIONS: FLOOR and EQUIPMENT and CO-LOCATION FEES.” See Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the “FB Prepay Program”). The Exchange proposes clarifying changes to (1) delete the word “such” from the description of actual Eligible Fixed Costs, and (2) delete the reference to the circumstances under which the Exchange would refund certain prepaid Eligible Fixed Costs, as the Fee Schedule no longer provides for a waiver to Qualifying Firms in connection with COVID–19 related considerations. See Securities Exchange Act Release No. 92614 (August 9, 2021), 86 FR 44765 (August 13, 2021) (SR–NYSEArca–2021–69) (removing language from the Fee Schedule associated with COVID–19 related fee waivers).

¹² 15 U.S.C. 78f(b).

¹³ 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.”¹⁴

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.¹⁵ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2021, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.¹⁶

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (“Reg NMS Adopting Release”).

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 ETF-based options, *see id.*, the Exchange’s market share in equity-based options

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 can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes the proposed modifications to the FB Prepay Program are reasonable because participation in the program is optional, and Floor Brokers can elect to participate and seek to qualify for the Percentage Growth Incentive as they see fit. The Exchange also believes that the proposed change is reasonably designed to encourage Floor Brokers to provide liquidity on the Exchange, to continue to incent Floor Brokers to participate in the FB Prepay Program, and to ensure that Floor Brokers that are new to the Exchange (or Floor Brokers that did not execute more than 30,000 ADV in contract sides) could also participate in the program, including by continuing to offer two alternative means to achieve the same rebate at each Tier. The Exchange believes that 30,000 ADV is a reasonable minimum threshold above which a participating Floor Broker would need to increase volume in order to realize the Percentage Growth Incentive (and is on a similar playing field with Floor Brokers that exceeded this volume requirement in 2020). For Floor Brokers that exceeded the 30,000 ADV in the second half of 2020, the Exchange believes it is reasonable to use each Floor Broker's historical volume as a benchmark against which to measure future growth to achieve the Percentage Growth Incentive and further believes that activity in the second half of 2020 would provide an appropriate updated benchmark in light of the market volatility in the first half of 2020 and the unusually high volumes observed in 2021.

In addition, the Exchange believes that the proposed changes to the Percentage Growth Incentive are reasonable because they are designed to continue to incent Floor Broker participation in the FB Prepay Program by making the rebates offered under the FB Prepay Program generally more achievable and by offering increased rebate amounts and are therefore designed to encourage increased executions by Floor Brokers on the

Exchange, which activity would benefit all market participants.

The Exchange also believes that the proposed change with respect to the date used for the calculation of Eligible Fixed Costs is reasonable because it expects Floor Broker organizations' November 2020 costs to provide a more accurate basis for annualizing Eligible Fixed Costs for the coming calendar year based on anticipated fixed costs in 2022.

Finally, to the extent the proposed change continues to attract greater volume and liquidity to the Exchange Floor, 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 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 proposal is based on the amount and type of business that Floor Brokers transact on the Exchange, and Floor Brokers are not obligated to participate in the FB Prepay Program or attempt to trade sufficient volume to qualify for one of the Percentage Growth Incentive Tiers. In addition, all participating Floor Brokers have the opportunity to qualify for the same rebate at each Tier through two alternatives means (*i.e.*, growth over the greater of at least 30,000 contract sides in billable ADV or the Floor Broker's total billable manual ADV in the second half of 2020). The Exchange also notes that the proposed changes are designed to encourage Floor Brokers that have previously enrolled in the FB Prepay Program to reenroll for the upcoming year, as well as to attract Floor Brokers that have not yet participated in the program.

Moreover, the Exchange believes that the proposed modifications to the FB Prepay Program are an equitable allocation of fees and credits because they would apply to participating Floor Brokers equally and are intended to encourage the important role performed by Floor Brokers in facilitating the execution of orders via open outcry and providing opportunities to obtain price improvement, a function which the Exchange wishes to support for the benefit of all market participants. The Exchange further believes that the proposed change with respect to the

calculation of Eligible Fixed Costs is equitable because it would continue to be based on each Floor Broker organization's annualized costs and because the November 2020 basis for annualizing costs would provide a more accurate reflection of Eligible Fixed Costs for the coming calendar year based on anticipated fixed costs in 2022.

To the extent that the proposed change continues to incent Floor Brokers to participate in the FB Prepay Program and achieve the volume required to qualify for the Percentage Growth Incentive, the increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Similarly, to the extent the proposed change encourages Floor Brokers to participate in a greater variety of transactions on the Exchange, the resulting increased order flow would likewise 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 Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes the proposed modifications to the FB Prepay Program are not unfairly discriminatory because they would apply to all similarly-situated Floor Brokers. The proposal is based on the amount and type of business transacted on the Exchange, and Floor Brokers are not obligated to participate in the FB Prepay Program or try to achieve any of the Percentage Growth Incentive Tiers.

The Exchange also believes that the proposed change is not unfairly discriminatory to non-Floor Brokers because it is intended to encourage Floor Brokers to continue facilitating the execution of orders via open outcry and providing opportunities to obtain price improvement, a function that benefits all market participants.

To the extent that the proposed change continues to attract participation in the FB Prepay Program and incent Floor Brokers to increase volume to qualify for the Percentage Growth Incentive, the 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.

In addition, to the extent that the proposed change attracts a variety of 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 Floor, 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 changes 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."¹⁷

Intramarket Competition. The Exchange believes the proposed change will continue to incent Floor Brokers to participate in the FB Prepay Program and encourage order flow to be directed to the Exchange Floor, which would enhance the quality of quoting and may increase the volumes of contracts traded on the Exchange. To the extent that the proposed change imposes an additional

competitive burden on non-Floor Brokers, the Exchange believes that any such burden would be appropriate because of Floor Brokers' important role in facilitating the execution of orders via open outcry and providing opportunities for price improvement, and the Exchange believes the proposed change is designed to encourage and support that function.

In addition, to the extent that the proposed change in fact encourages Floor Broker volume, all market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

Intermarket Competition. The Exchange believes that the proposed change would promote competition between the Exchange and other execution venues by encouraging additional orders to be sent to the Exchange Floor for execution. The proposed modifications to the FB Prepay Program are designed to continue to incent Floor Broker participation in the program, including by making the incentives more achievable and increasing the amounts of the rebates available. The Exchange thus believes that the proposed change would continue to encourage Floor Brokers to execute orders on the Floor of the Exchange, which would increase volume and liquidity, to the benefit of all market participants by providing more trading opportunities and tighter spreads.

Given the robust competition for volume among options markets, implementing programs to attract order flow, such as the proposed modifications to the FB Prepay Program, are consistent with the above-mentioned goals of the Act.

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.

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)¹⁸ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁹ 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)²⁰ 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:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2022-02 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-2022-02. 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 (<http://www.sec.gov/>

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(2).

²⁰ 15 U.S.C. 78s(b)(2)(B).

¹⁷ See Reg NMS Adopting Release, *supra* note 14, at 37499.

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-2022-02, and should be submitted on or before February 16, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94017; No. SR-NYSEArca-2022-03]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule To Cap Certain Port Fees

January 20, 2022.

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 January 14, 2022, 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 amend the NYSE Arca Options Fee Schedule (the "Fee Schedule") to cap certain port fees in connection with the Exchange's migration to a new trading platform. 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 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 cap certain port fees during the Exchange's migration of options trading to a new electronic trading platform.

Currently, the Exchange conducts options trading on an electronic platform known as "OX." OX refers to the Exchange's electronic order delivery, execution, and reporting system for designated option issues through which orders and quotes of Users are consolidated for execution and/or display.⁴

On or about February 7, 2022, the Exchange anticipates beginning the migration of its options trading to a new technology platform known as Pillar.⁵

⁴ See NYSE Arca Rule 6.1A-O(a)(13).

⁵ The Exchange has announced that, pending regulatory approval, it will begin migrating Exchange-listed options to Pillar on February 7, 2022, available here: <https://www.nyse.com/trader-update/history#110000387355>. See also Securities Exchange Act Release No. 92304 (June 30, 2021), 86 FR 36440 (July 9, 2021) (SR-NYSEArca-2021-47) (Notice of Filing of Proposed

The Exchange proposes to adopt a cap on the monthly fees assessed for the use of certain ports connecting to the Exchange, which will go into effect on the day the Exchange commences its migration to the Pillar platform and remain in effect until the end of the month in which the migration is completed (the "Migration Period").

Specifically, the Exchange proposes to cap the monthly fees charged to an OTP Holder or OTP Firm (collectively, "OTP Holders") for the use of Order/Quote Entry Ports, Quote Takedown Ports, and Drop Copy Ports (collectively, the "Port Fees") during the Migration Period (the "Migration Cap"). The Migration Cap will be based on the number of ports an OTP Holder is billed for in the month preceding the beginning of the Exchange's migration to the Pillar platform, except that if an OTP Holder reduces the number of ports used during the Migration Period (*i.e.*, incurs Port Fees below the Migration Cap), the OTP Holder would only be billed for the actual number of ports used.

Without this proposed rule change, the Fee Schedule provides that OTP Holders would be charged for the use of both legacy OX platform ports and new Pillar platform ports, which could significantly increase costs to OTP Holders during the Migration Period. Thus, the proposed Migration Cap is intended to encourage OTP Holders to maintain the same levels of interaction with Exchange during the Migration Period, as well as promptly migrate to the more efficient Pillar technology platform, without incurring additional Port Fees as a result of the transition.⁶

The Exchange proposes to implement this fee change on the day it commences its migration to the Pillar technology platform.

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

Rule Change for New Rules 6.1P-O, 6.37AP-O, 6.40P-O, 6.41P-O, 6.62P-O, 6.64P-O, 6.76P-O, and 6.76AP-O and Amendments to Rules 1.1, 6.1-O, 6.1A-O, 6.37-O, 6.65A-O and 6.96-O) and Amendment No. 2 to SR-NYSEArca-2021-47, available here: <https://www.sec.gov/comments/sr-nysearca-2021-47/srnysearca202147-20109876-264219.pdf>.

⁶ The Exchange notes that the NYSE Arca Equities exchange adopted a similar fee cap in connection with its migration to the Pillar technology platform in 2017 so that its member organizations would not incur additional charges during the transition period. See Securities Exchange Act Release No. 81573 (September 11, 2017), 82 FR 43430 (September 15, 2017) (SR-NYSEArca-2017-97) (providing for a temporary cap on monthly fees for use of ports during Pillar transition).

⁷ 15 U.S.C. 78f(b).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.