

For the Commission, pursuant to delegated authority.<sup>76</sup>

**Sherry R. Hayward,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99440; File No. SR-NYSEARCA-2024-10]

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

January 29, 2024.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on January 25, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (“Fee Schedule”) regarding the Floor Broker Fixed Cost Prepayment Incentive Program (the “FB Prepay Program”). The Exchange proposes to implement the fee change effective January 25, 2024.<sup>4</sup> The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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 modify the FB Prepay Program. The Exchange proposes to implement the rule change on January 25, 2024.

The FB Prepay Program is a prepayment incentive program that allows Floor Brokers to prepay certain of their annual Eligible Fixed Costs in exchange for volume rebates. Participating Floor Brokers receive their monthly rebate amount on a monthly basis.<sup>5</sup> All Floor Brokers that participate in the FB Prepay Program are eligible for a rebate on manual billable volume of (\$0.08) per billable side, payable on a monthly basis. In addition, FB Prepay Program participants that achieve more than 500,000 billable sides in a month are eligible for an additional rebate of (\$0.02) per billable side. The additional (\$0.02) is retroactive to the first billable side. Manual billable volume includes transactions for which at least one side is subject to manual transaction fees and excludes QCCs. Any volume calculated to achieve the Limit of Fees on Options Strategy Executions (“Strategy Cap”), regardless of whether this cap is achieved, is likewise excluded from the Manual Billable Rebate Program because fees on such volume are already capped and therefore such volume does not increase billable manual volume. The Exchange notes that it places a \$2,000,000 per firm, monthly maximum limit on the rebates earned through the Manual Billable Rebate Program when combined with “Submitting Broker QCC Credits.”<sup>6</sup>

<sup>5</sup> See Fee Schedule, Floor Broker Fixed Cost Prepayment Incentive Program (the “FB Prepay Program”). The Exchange notes that the FB Prepay Program is currently structured similarly to the Floor Broker prepayment program offered by its affiliated exchange, NYSE American LLC (“NYSE American”).

<sup>6</sup> See Fee Schedule, FB Prepay Program, endnote 17 (providing in relevant part that “Submitting Broker QCC credits and Floor Broker rebates earned through the Manual Billable Rebate Program shall not combine to exceed \$2,500,000 per month per firm”). A “Submitting Broker QCC credit” is available to any broker submitting a QCC transaction to the Exchange (a “Submitting Broker”), whether the broker is a Floor Broker on the Trading Floor or a broker that enters orders

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.<sup>7</sup> The Exchange does not issue any refunds in the event that a Floor Broker organization’s prepaid Eligible Fixed Costs exceeds actual costs.

The Exchange proposes to modify the FB Prepay Program as follows. First, the Exchange proposes to increase the maximum allowable combined Submitting Broker QCC credits and Floor Broker rebates earned through the Manual Billable Rebate Program (the “Maximum Combined Rebate/Credit”) to \$2,500,000 per month per firm, an increase from the current maximum of \$2,000,000. The proposed increase is designed to encourage Floor Broker firms to continue to direct transactions to the Exchange, despite increasing industry volumes making it less difficult to attain the maximum rebate.

Next, the Exchange proposes to modify the FB Prepay Program to remove reference to a specific year (*i.e.*, November 2022) and to instead reference “November of the current year” as the date that the Exchange 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 November 2022. The Exchange believes that this proposed change would prevent the Exchange from relying on a stale date and would add flexibility to the program (insofar as it would not need to be revised each year).

Finally, the Exchange proposes to allow a Floor Broker to join the Program after the first of the year To do so,

electronically through an interface with the Exchange. The Exchange provides a (\$0.22) per contract credits to Submitting Brokers for Non-Customer vs. Non-Customer QCC transactions and a (\$0.16) per contract credit to Submitting Brokers for Customer vs. Non-Customer QCC transactions. See Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, QUALIFIED CONTINGENT CROSS (“QCC”) TRANSACTION FEES AND CREDITS.

<sup>7</sup> See Fee Schedule, FB Prepay Program (providing, in relevant part, that the notification “email to enroll in the Program must originate from an officer of the Floor Broker organization and, *except as provided for below*, represents a binding commitment through the end of the following calendar year.”). The Exchange proposes to modify Section III.E. [sic] of the Fee Schedule to remove the now obsolete phrase “except as provided for below,” as there is no exception to the notification requirement, which modification will add clarity, transparency, and internal consistency to the Fee Schedule. See proposed Fee Schedule, FB Prepay Program.

<sup>76</sup> 17 CFR 200.30-3(a)(11) and (12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> The Exchange originally filed to amend the Fee Schedule on January 2, 2024 (NYSEArca-2023-90) [sic] and withdrew such filing on January 12, 2024 (SR-NYSEArca-2024-07) [sic], which latter filing the Exchange withdrew on January 25, 2024.

similar to the protocol required of existing Program participants, such as Floor Broker organizations would notify the Exchange in writing by emailing [optionsbilling@nyse.com](mailto:optionsbilling@nyse.com) and indicating their commitment to submit prepayment for the balance of the calendar year; the email notification would have to originate from an officer of the Floor Broker organization and would represent a binding commitment through the balance of the calendar year.<sup>8</sup> As further proposed, the Floor Broker organization would be enrolled in the Program beginning on the first day of the next full month and would be invoiced for that first full month for Eligible Fixed Costs and the balance of the year, based on annualizing for the remainder of the calendar year their Eligible Fixed Costs incurred in its first full month in the Program.<sup>9</sup> The Exchange notes that both the current and proposed methodology rely on recently incurred Eligible Fixed Costs to predict anticipated Eligible Fixed Costs. For current program Participants the Exchange relies on November costs; whereas, for later-joining Program participants, the Exchange would rely on costs incurred in the Floor Broker's first full month in the Program. The Exchange believes that this approach allows the Exchange the flexibility to offer the FB Prepay Program to Floor Brokers that did not enroll before the end of the prior calendar year, including/especially Floor Brokers new to the Exchange, without putting these Floor Brokers at a competitive disadvantage.

Although the Exchange cannot predict with certainty whether the proposed changes to the FB Prepay Program would encourage Floor Brokers to participate in the program or to increase their manual billable volume, the Exchange believes that the proposed changes would continue to incentivize Floor Brokers to participate in the FB Prepay Program by adding flexibility to the structure of the Program, including by allowing Floor Brokers to join the Program after the first of the year and increasing the Maximum Combined Rebate/Credit. All Floor Brokers are eligible to participate in the FB Prepay

<sup>8</sup> See proposed Fee Schedule, FB Prepay Program (providing, in relevant part, that “[t]o participate in the FB Prepay Program after the first of the year, Floor Broker organizations must notify the Exchange in writing by emailing [optionsbilling@nyse.com](mailto:optionsbilling@nyse.com), indicating a commitment to submit prepayment for the balance of the calendar year” and that the notification “email to enroll in the Program must originate from an officer of the Floor Broker organization and represents a binding commitment through the balance of the calendar year.”).

<sup>9</sup> See proposed Fee Schedule, FB Prepay Program.

Program and qualify for the proposed rebates.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>11</sup> 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.”<sup>12</sup>

There are currently 17 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.<sup>13</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2023, the Exchange had less than 12% market share of executed volume of multiply-listed equity and ETF options trades.<sup>14</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>12</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

<sup>13</sup> 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>.

<sup>14</sup> 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 12.31% for the month of November 2022 to 11.67% for the month of November 2023.

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 exchange to compete for order flow.

The Exchange believes that the proposed changes are reasonable because they are designed to continue to incentivize Floor Brokers to increase the number of manual transactions sent to the Exchange by offering them rebates on manual transactions with at least one billable side. The Exchange also believes that the proposed higher maximum monthly amount that a firm could earn from Submitting Broker QCC credits and Floor Broker rebates on manual billable volume (*i.e.*, the Maximum Combined Rebate/Credit) is reasonable because it is set at an amount that is designed to encourage Floor Brokers to direct QCC transactions and manual billable volume to the Exchange to receive the existing credits and proposed rebates.

With respect to the FB Prepay Program, the Exchange also believes that the proposed changes are reasonable because participation in the program is optional, and Floor Brokers can elect to participate in the program to be eligible for the rebates offered through the Manual Billable Rebate Program or not. The Exchange also believes that the proposed modification of the FB Prepay Program is reasonable because it is designed to continue to encourage Floor Brokers to participate in the FB Prepay Program, and to provide liquidity on the Exchange. Specifically, the Exchange believes that the proposed continuation of the FB Prepay Program to offer participating Floor Brokers rebates on manual billable volume is reasonable because it would maintain both the incentives offered to Floor Brokers and the qualification basis for such incentives; all Floor Brokers participating in the FB Prepay Program would be eligible for the same rebate on manual billable volume and would qualify for the same additional rebate on manual billable volume by meeting a set volume threshold (which the Exchange believes is reasonable and is attainable based on manual billable volume rebates earned by Floor Brokers).

To the extent that the continued aspects of the program continue to attract 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 Floor Brokers, which could promote market depth, facilitate tighter spreads, and enhance price discovery, to the extent the proposed change encourages Floor Brokers to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants. In addition, any increased liquidity on the Exchange would result in enhanced market quality for all participants.

The Exchange also believes that the proposed change to modify the Program to remove reference to a specific year is reasonable because it would prevent the Exchange from using a benchmark based on a stale date and would add flexibility to the Program (insofar as it would not need to be revised each year). In addition, the proposed change to allow Floor Brokers to join the Program after the first of the year—by prepaying an amount (to cover the balance of the year) based on their Eligible Fixed Costs incurred in their first month in the Program—is reasonable for several reasons. First, the proposed method used to determine the prepayment amount for any later-joining Floor Brokers is analogous to the Exchange's current method of determining the prepayment amount for Program participants (*i.e.*, prepayment amount is based on the Eligible Fixed Costs recently-incurred). Second, the Exchange believes that the proposed method of determining a (later-joining) Floor Broker's prepayment amount would provide the most accurate basis for anticipating that Floor Broker's future Eligible Fixed Costs. Moreover, the Exchange believes that this approach would allow the Exchange the flexibility to offer the FB Prepay Program to later-joining Floor Brokers, including/especially Floor Brokers new to the Exchange, without putting these Floor Brokers at a competitive disadvantage.

To the extent the continuation of the program would continue 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 Floor Brokers may direct their order flow to any of the 17 options exchanges, including an exchange offering Floor Broker rebates on manual transactions.<sup>15</sup> Thus, Floor Brokers have a choice of where they direct their order flow, including their manual transactions. The proposed rule changes are designed to continue to incent Floor Brokers to direct liquidity and, in particular, manual transactions to the Exchange. In addition, to the extent Floor Brokers are incented to continue 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.

Finally, the proposed changes to remove superfluous or obsolete text from the FB Prepay Program, are reasonable because they would add clarity, transparency, and internal consistency to the Fee Schedule to the benefit of all 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 because the proposal is based on the amount and type of business transacted on the Exchange. Floor Brokers are not obligated to participate in the FB Prepay Program, and those who do can choose to execute manual billable volume to earn rebates through the Manual Billable Rebate Program or not. In addition, the Manual Billable Rebate Program continues to be equally available to all Floor Brokers that participate in the FB Prepay Program and the proposed monthly limit on the amount that firms could earn from Floor Broker manual billable rebates and Submitting Broker QCC credits combined would apply to all firms equally (*i.e.*, the Maximum Combined Rebate/Credit).

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 role

performed by Floor Brokers in facilitating the execution of orders via open outcry, a function which the Exchange wishes to support for the benefit of all market participants.

The Exchange also believes that the proposed change to modify the Program to remove reference to a specific year is equitable because it would prevent the Exchange from using a benchmark based on a stale date. In addition, the proposed change to allow Floor Brokers to join the Program after the first of the year—by prepaying an amount (to cover the balance of the year) based on their Eligible Fixed Costs incurred in their first month in the Program—is equitable for several reasons. First, the proposed method used to determine the prepayment amount for any later-joining Floor Brokers is analogous to the Exchange's current method of determining the prepayment amount for Program participants (*i.e.*, prepayment amount is based on the Eligible Fixed Costs recently-incurred). Second, the Exchange believes that the proposed method of determining a (later-joining) Floor Broker's prepayment amount would provide the most accurate basis for anticipating that Floor Broker's future Eligible Fixed Costs. Moreover, the Exchange believes that this approach would allow the Exchange the flexibility to offer the FB Prepay Program to later-joining Floor Brokers, including/especially Floor Brokers new to the Exchange, without putting these Floor Brokers at a competitive disadvantage.

Moreover, the proposed changes are designed to continue to incent Floor Brokers to encourage OTP Holders to aggregate their executions 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 it is based on the amount and type of business transacted on the Exchange. Floor Brokers are not obligated to execute manual billable transactions or participate in the FB

<sup>15</sup> See *id.*

Prepay Program, and the proposed rebates offered through the Manual Billable Rebate Program are available to all Floor Brokers that participate in the FB Prepay Program on a non-discriminatory basis. The proposed changes are designed to add flexibility to the FB Prepay Program by offering all participating Floor Brokers the same increased Maximum Combined Rebate/Credit and to encourage Floor Brokers to utilize the Exchange as a primary trading venue for all transactions (if they have not done so previously) and increase manual billable volume sent to the Exchange.

The Exchange also believes that the proposed change to modify the Program to remove reference to a specific year is not unfairly discriminatory because it would apply equally to all Program participants and would prevent the Exchange from using a benchmark based on a stale date. In addition, the proposed change to allow Floor Brokers to join the Program after the first of the year—by prepaying an amount (to cover the balance of the year) based on their Eligible Fixed Costs incurred in their first month in the Program—is not unfairly discriminatory for several reasons. First, the proposed method used to determine the prepayment amount for any later-joining Floor Brokers is analogous to the Exchange's current method of determining the prepayment amount for Program participants (*i.e.*, prepayment amount is based on the Eligible Fixed Costs recently-incurred). Second, the Exchange believes that the proposed method of determining a (later-joining) Floor Broker's prepayment amount would provide the most accurate basis for anticipating that Floor Broker's future Eligible Fixed Costs. Moreover, the Exchange believes that this approach would allow the Exchange the flexibility to offer the FB Prepay Program to later-joining Floor Brokers, including/especially Floor Brokers new to the Exchange, without putting these Floor Brokers at a competitive disadvantage.

To the extent that the proposed continuation of (and modifications to) the Program attracts more manual 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."<sup>16</sup>

*Intramarket Competition.* The continuation of the rebates on manual billable volume is designed to attract additional order flow to the Exchange (particularly in manual billable transactions), which could increase the volumes of contracts traded on the Exchange. The proposed modification of the FB Prepay Program is likewise intended to incent Floor Brokers specifically to direct manual billable transactions to the Exchange, as well as encourage Floor Brokers to participate in the Program. The continued rebates would be available to all similarly situated Floor Brokers that participate in the FB Prepay Program. Greater liquidity benefits all market participants on the Exchange, and increased manual transactions could increase opportunities for execution of other trading interest. The proposed Maximum Combined Rebate/Credit would likewise apply equally to all similarly situated Floor Brokers.

To the extent that the proposed continuation of the program imposes an

additional competitive burden on non-Floor Brokers, the Exchange believes that any such burden would be appropriate because all market participants stand to benefit from any increase in volume entered by Floor Brokers because an increase in trading volume could promote market depth, facilitate tighter spreads, and enhance price discovery. In addition, any increased liquidity on the Exchange would result in enhanced market quality for all participants.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily favor one of the 17 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.<sup>17</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2023, the Exchange had less than 12% market share of executed volume of multiply-listed equity and ETF options trades.<sup>18</sup>

The Exchange believes that the proposed changes reflect this competitive environment because they modify the Exchange's fees and rebates in a manner designed to continue to incent OTP Holders to direct trading interest (particularly manual transactions) to the Exchange, to provide liquidity and to attract order flow. To the extent that Floor Brokers are encouraged to participate in the FB Prepay Program and/or incented 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.

The Exchange further believes that the proposed change could promote

<sup>17</sup> 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>.

<sup>18</sup> 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 12.31% for the month of November 2022 to 11.67% for the month of November 2023.

<sup>16</sup> See Reg NMS Adopting Release, *supra* note 12, at 37499.

competition between the Exchange and other execution venues, including those that currently offer rebates on manual transactions by encouraging additional orders to be sent to the Exchange for execution.

Finally, the proposed changes to remove superfluous or obsolete text from the FB Prepay Program are not designed to address any competitive issue but are instead designed to add clarity, transparency, and internal consistency to the Fee Schedule.

*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)<sup>19</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>20</sup> 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)<sup>21</sup> 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSEARCA-2024-10 on the subject line.

*Paper Comments*

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

All submissions should refer to file number SR-NYSEARCA-2024-10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2024-10 and should be submitted on or before February 23, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 35118; 812-15403]**

**Investment Managers Series Trust and Liberty Street Advisors, Inc.**

January 29, 2024.

**AGENCY:** Securities and Exchange Commission ("Commission" or "SEC").

**ACTION:** Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements in rule 20a-1 under the Act, Item 19(a)(3) of Form N-1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and sections 6-07(2)(a), (b), and (c) of Regulation S-X ("Disclosure Requirements").

**SUMMARY OF APPLICATION:** The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with subadvisers without shareholder approval and would grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisers.

**APPLICANTS:** Investment Managers Series Trust and Liberty Street Advisors, Inc.

**FILING DATES:** The application was filed on November 2, 2022 and amended on April 25, 2023 and September 5, 2023.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at [Secretaries-Office@sec.gov](mailto:Secretaries-Office@sec.gov) and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on February 23, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

**ADDRESSES:** The Commission: [Secretaries-Office@sec.gov](mailto:Secretaries-Office@sec.gov). Applicants: Diane Drake, Esq., [diane.drake@mfac-ca.com](mailto:diane.drake@mfac-ca.com), Investment Managers Series Trust, 235 West Galena Street, Milwaukee, WI 53212, and Laurie Anne Dee, Esq., [laurie.dee@morganlewis.com](mailto:laurie.dee@morganlewis.com), Morgan, Lewis & Bockius LLP, 600 Anton Boulevard, Suite 1800, Costa Mesa, CA 92626-7653.

**FOR FURTHER INFORMATION CONTACT:** Christopher D. Carlson, Senior Counsel, or Daniele Marchesani, Assistant Chief

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(2).

<sup>21</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>22</sup> 17 CFR 200.30-3(a)(12).