

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95471; No. SR-NYSEARCA-2022-50]

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

August 11, 2022.

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 August 5, 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 modify the NYSE Arca Options Fee Schedule (“Fee Schedule”) regarding credits for Floor Broker Qualified Contingent Cross (“QCC”) transactions. The Exchange proposes to implement the fee change effective August 5, 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 amend the Fee Schedule to modify the credits offered to Floor Brokers for QCC transactions.⁵ The Exchange proposes to implement the rule change on August 5, 2022.

Currently, Floor Brokers earn a credit for executed QCC orders of (\$0.07) per contract for the first 300,000 contracts or (\$0.10) per contract in excess of 300,000.⁶ QCC executions in which a Customer is on both sides of the QCC trade are not eligible for a Floor Broker credit, and the maximum Floor Broker credit is \$375,000 per month per Floor Broker firm.⁷ A Floor Broker that meets a certain minimum level of average daily volume (“ADV”) may also earn an additional (\$0.02) per contract credit (the “Enhanced Credit”) on the first 300,000 eligible QCC contracts. Specifically, a Floor Broker is currently entitled to the Enhanced Credit if the Floor Broker executes the greater of (1) at least 150% of the Floor Broker’s First Quarter 2019 billable contract sides ADV; or (2) at least 30,000 billable contract sides ADV.⁸

The Exchange now proposes to increase the amount of the credits available to Floor Brokers for executed QCC orders. Specifically, the Exchange proposes that Floor Brokers may earn a credit of (\$0.22) on Non-Customer vs. Non-Customer QCC transactions and a credit of (\$0.11) on Customer vs. Non-Customer QCC transactions.⁹ The Exchange also proposes to eliminate the Enhanced Credit, as the proposed increased credits of (\$0.11) and (\$0.22) would exceed the credit amount that Floor Brokers previously could have earned with the Enhanced Credit.¹⁰

⁵ 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).

⁶ See Fee Schedule, Qualified Contingent Cross (“QCC”) Transaction Fees and Credits, available at: https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

⁷ See *id.* at Endnote 13.

⁸ See *id.*

⁹ The Exchange also proposes to delete text in Endnote 13 providing that the Floor Broker credit is paid on volume within a given tier and is not retroactive to the first contract traded. This language relates to the current structure of the Floor Broker credits, which is based on the number of contracts executed, and would not be applicable to the proposed credits.

¹⁰ To effect this change, the Exchange proposes to delete the text from Endnote 13 setting forth the

Although the Exchange cannot predict with certainty whether the proposed change would encourage Floor Brokers to increase their QCC volume, the proposed change is intended to continue to incentivize additional QCC executions by Floor Brokers by increasing the credits available on such orders, and all Floor Brokers are eligible to qualify for the proposed credits.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹² 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.”¹³

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.¹⁴ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in June 2022, the Exchange had less than 13% market share of

qualifying criteria for the Enhanced Credit as well as accompanying text in Endnote 13 describing the calculation of the Enhanced Credit.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

¹³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

¹⁴ 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>.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange originally filed to amend the Fee Schedule on August 1, 2022 (SR-NYSEARCA-2022-48) and withdrew such filing on August 5, 2022.

executed volume of multiply-listed equity and ETF options trades.¹⁵

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 exchange to compete for order flow.

To respond to this competitive marketplace, the Exchange has established incentives to assist Floor Brokers in attracting more business to the Exchange—including credits on QCC transactions—as such participants serve an important function in facilitating the execution of orders on the Exchange (including via open outcry), thereby promoting price discovery on the public markets.

The Exchange believes that the proposed modification of the credits offered to Floor Brokers on QCC transactions is reasonable because it is designed to continue to incent Floor Brokers to increase the number of QCC transactions sent to the Exchange and would offer Floor Brokers incentives on QCC transactions similar to those provided by other options exchanges.¹⁶ The Exchange further believes that it is reasonable to offer a (\$0.22) credit for QCC transactions involving a Non-Customer vs. Non-Customer and a (\$0.11) credit on QCC transactions involving a Customer vs. Non-Customer because Non-Customer vs. Non-Customer QCC transactions are billable on both sides of the transaction, whereas Customer vs. Non-Customer QCC transactions are billable on one side. 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 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.

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 Floor Brokers may direct their order flow to any of the 16 options exchanges, including those offering rebates on QCC orders.¹⁷ Thus, Floor Brokers have a choice of where they direct their order flow, including their QCC transactions. The proposed rule change is designed to continue to incent Floor Brokers to direct liquidity to the Exchange and, in particular, QCC orders, thereby promoting market depth, price discovery and improvement, and enhanced order execution opportunities for market participants, particularly to the extent Floor Brokers are incentivized to aggregate their trading activity at the Exchange.

The Exchange cannot predict with certainty whether the proposed change would encourage Floor Brokers to increase their QCC order flow to the Exchange, but believes that the proposed increased credits would continue to incent Floor Brokers to do so.

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 transacted on the Exchange, and Floor Brokers can attempt to trade QCC orders to earn the increased credits or not. In addition, the proposed credits are available to all Floor Brokers equally. The Exchange further believes that the proposed change, which would provide a (\$0.22) credit for Non-Customer vs. Non-Customer QCC transactions and a (\$0.11) credit on Customer vs. Non-Customer QCC transactions, represents an equitable allocation of credits because Non-Customer vs. Non-Customer QCC transactions are billable on both sides of the transaction, whereas Customer vs. Non-Customer QCC transactions are billable on one side. The Exchange also believes that the proposed credits are an equitable allocation of fees and credits because they would encourage and support Floor Brokers' role in facilitating the execution of orders on the Exchange, and to the extent the proposed credits incent Floor 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 credits are designed to incent Floor Brokers to encourage OTP Holders to aggregate their executions—particularly QCC transactions—at the Exchange as a primary execution venue. To the extent that the proposed changes attract more QCC 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 it is not unfairly discriminatory to modify the credits offered to Floor Brokers on QCC orders because the proposed credits would be available to all similarly-situated Floor Brokers on an equal and non-discriminatory basis. The proposed credits are also not unfairly discriminatory to non-Floor Brokers because Floor Brokers serve an important function in facilitating the execution of orders on the Exchange (including via open outcry), which the Exchange wishes to encourage and support to promote price improvement opportunities for all market participants.

¹⁵ 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 increased from 9.07% for the month of June 2021 to 12.23% for the month of June 2022.

¹⁶ *See, e.g.*, EDGX Options Exchange Fee Schedule, QCC Initiator/Solicitation Rebate Tiers (applying (\$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 (\$0.22) per contract rebate up to 1,499,999 contracts for QCC transactions when both parties are a broker-dealer or market maker); *see also* Nasdaq ISE, Options 7, Section 6.A. (QCC and Solicitation Rebate) (offering rebates on QCC transactions of up to (\$0.11) on 1,000,000 or more contract sides in a month).

¹⁷ *See id.*

The proposal is based on the amount and type of business transacted on the Exchange, and Floor Brokers are not obligated to execute QCC orders. Rather, the proposal is designed 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 QCC volume sent to the Exchange. To the extent that the proposed change attracts more QCC orders 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."¹⁸

Intramarket Competition. The proposed increased credits are designed to attract additional order flow to the Exchange (particularly in Floor Brokers'

QCC transactions), which may increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all market participants on the Exchange, and increased QCC transactions would increase opportunities for execution of other trading interest. The proposed credits would be available to all similarly-situated Floor Brokers that execute QCC trades, and to the extent that there is an additional competitive burden on non-Floor Brokers, the Exchange believes that any such burden would be appropriate because Floor Brokers serve an important function in facilitating the execution of orders (including via open outcry) and price discovery for all market participants.

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.¹⁹ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in June 2022, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.²⁰

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to incent Floor Brokers to direct trading interest (particularly QCC transactions) to the Exchange, to provide liquidity and to attract order flow. To the extent that Floor 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.

¹⁹ 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>.

²⁰ 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 increased from 9.07% for the month of June 2021 to 12.23% for the month of June 2022.

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 change could promote competition between the Exchange and other execution venues, including those that currently offer rebates on QCC transactions, by encouraging additional orders (and, in particular, QCC orders) to be sent to the Exchange for execution.²¹

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)²² of the Act and subparagraph (f)(2) of Rule 19b-4²³ 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)²⁴ 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:

²¹ See note 16, *supra*.

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(2).

²⁴ 15 U.S.C. 78s(b)(2)(B).

¹⁸ See Reg NMS Adopting Release, *supra* note 13, at 37499.

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-2022-50 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-2022-50. 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/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-2022-50, and should be submitted on or before September 7, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

J. Matthew DeLesDernier,

Deputy Secretary.

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BILLING CODE 8011-01-P

²⁵ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-95474; File No. SR-NYSEAMER-2022-34]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 9261 and 9830

August 11, 2022.

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 July 29, 2022, NYSE American LLC ("NYSE American" 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 extending the expiration date of the temporary amendments to Rules 9261 and 9830 as set forth in SR-NYSEAMER-2020-69 from July 31, 2022 to October 31, 2022, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. ("FINRA"). The proposed rule change would not make any changes to the text of NYSE American Rules 9261 and 9830. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

1. Purpose

The Exchange proposes extending the expiration date of the temporary amendments as set forth in SR-NYSEAMER-2020-69⁴ to Rules 9261 (Evidence and Procedure in Hearing) and 9830 (Hearing) from July 31, 2022 to October 31, 2022, to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR-NYSEAMER-2020-69 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID-19 pandemic. The proposed rule change would not make any changes to the text of Exchange Rules 9261 and 9830.⁵

Background

In 2016, NYSE American (then known as NYSE MKT LLC) adopted disciplinary rules that are, with certain exceptions, substantially the same as the Rule 8000 Series and Rule 9000 Series of FINRA and its affiliate the New York Stock Exchange LLC ("NYSE"), and which set forth rules for conducting investigations and enforcement actions.⁶ The NYSE American disciplinary rules were implemented on April 15, 2016.⁷

In adopting disciplinary rules modeled on FINRA's rules, NYSE American adopted the hearing and evidentiary processes set forth in Rule 9261 and in Rule 9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 9800 Series. As adopted, the text of Rule 9261 and Rule 9830 are substantially the same as the FINRA rules with certain modifications.⁸

In response to the COVID-19 global health crisis and the corresponding need to restrict in-person activities, on

⁴ See Securities Exchange Act Release No. 90085 (October 2, 2020), 85 FR 63603 (October 8, 2020) (SR-NYSEAMER-2020-69) ("SR-NYSEAMER-2020-69").

⁵ The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond October 31, 2022 if the Exchange requires additional temporary relief from the rule requirements identified in SR-NYSEAMER-2020-69. The amended NYSE American rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

⁶ See Securities Exchange Act Release Nos. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR-NYSEMKT-2016-30) ("2016 Notice").

⁷ See NYSE MKT Information Memorandum 16-02 (March 14, 2016).

⁸ See 2016 Notice, 81 FR at 11327 & 11332.