

#### F. Symbol Categorization File

The commenter supports FINRA's proposal to publish and maintain a file of which symbols are included in each OTC Equity Security category without charge, but recommends making this file available prior to the first day of each quarter for use in the upcoming quarter.<sup>75</sup> The commenter states that requiring daily updates to the list would significantly increase the reporting burden without material impact on aggregating data for the quarter.<sup>76</sup> Consistent with the commenter's request, FINRA confirms that it will make the symbol categorization file available prior to the first day of each calendar quarter for use during the entirety of the following quarter.<sup>77</sup> The Commission believes that publishing and maintaining a symbol categorization file, which will be available prior to the first day of each quarter, is appropriate and would ease members' reporting burden.

#### G. Categorization of Held and Not Held Orders

The commenter supports FINRA's proposal to limit the OTC Equity Security disclosures to non-directed held orders, but requests guidance on the proposed requirement to report the percentage of not held and held orders as a percentage of all orders.<sup>78</sup> FINRA responds that it believes that all orders are either held or not held because a firm either has price and time discretion to execute the order, or it does not.<sup>79</sup> The Commission agrees with FINRA, and has discussed the difference between held and not held orders and their separate reporting requirements under Rule 606 of Regulation NMS.<sup>80</sup>

<sup>75</sup> FIF Letter at 7.

<sup>76</sup> See *id.*

<sup>77</sup> FINRA Letter at 2.

<sup>78</sup> See FIF Letter at 8.

<sup>79</sup> See FINRA Letter at 6, also stating that consistent with SEC guidance regarding the categorization of held and not held orders for purposes of SEC Rule 606(a), orders should be categorized as held or not held for purposes of the OTC Equity Security disclosures based on whether the customer reasonably expects the firm to attempt to execute its order immediately or instead reasonably expects the firm to use its price and time discretion to execute the order. FINRA Letter at 6 n.19, citing SEC Division of Trading and Markets, Responses to Frequently Asked Questions Concerning Rule 606 of Regulation NMS, Questions 15.01 through 15.04. The Commission notes that these FAQs represent the views of the staff of the Division of Trading and Markets. They are not a rule, regulation, or statement of Commission. The Commission has neither approved nor disapproved their content. These FAQs, like all staff statements, have no legal force or effect: they do not alter or amend applicable law, and they create no new or additional obligations for any person.

<sup>80</sup> See SEC Rule 606 Adopting Release, *supra* note 12, at 58340–41 and 58372.

Overall, the proposed requirements relating to the disclosure of order routing information for OTC Equity Securities are reasonably designed to assist customers in evaluating the quality of the order routing services of their broker-dealers and how well their broker-dealers manage potential conflicts of interest with execution venues. Customers would be better able to assess indirect and previously unobservable costs of trading OTC Equity Securities, including, among other things, payment for order flow and transaction fees paid less rebates, which should allow customers to assess the performance of its broker-dealer(s) and be better informed in making choices among firms. The similarities in reporting requirements between proposed FINRA Rule 6470(a) and SEC Rule 606(a) should reduce the burden of reporting for broker-dealers that already produce SEC Rule 606(a) reports, and the proposed differences in reporting requirements for OTC Equity Securities under proposed FINRA Rule 6470(a) and SEC Rule 606(a) reports for NMS securities are reasonable and appropriate due to differences in the nature of OTC Equity Securities and the markets in which they trade.<sup>81</sup>

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6)<sup>82</sup> of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>83</sup> that the proposed rule change (SR–FINRA–2022–031) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>84</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>81</sup> See Notice, *supra* note 5, at 74674 (describing the differences in reporting requirements for OTC Equity Securities under proposed FINRA Rule 6470(a) and SEC Rule 606(a) reports for NMS securities).

<sup>82</sup> 15 U.S.C. 78o-3(b)(6).

<sup>83</sup> 15 U.S.C. 78s(b)(2).

<sup>84</sup> 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98043; File No. SR–NYSEARCA–2023–51]

### 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 2, 2023.

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 July 31, 2023, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I 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 Limit of Fees on Options Strategy Executions (the “Strategy Cap”). The Exchange proposes to implement the fee change effective August 1, 2023. 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.

<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.

*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 add dividend strategies to the list of strategy executions eligible for the Strategy Cap. The Exchange proposes to implement the rule change on August 1, 2023.

Currently, the Strategy Cap provides for a \$1,000 cap on transaction fees for strategy executions involving (a) reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, and (e) jelly rolls.<sup>4</sup> The Strategy Cap applies to each strategy execution executed in standard option contracts on the same trading day. In addition, the cap is reduced to \$200 on transactions fees for qualifying strategies traded on the same trading day for those OTP Holders that trade at least 25,000 monthly billable contract sides in qualifying strategy executions.

The Exchange now proposes to modify the Strategy Cap to add dividend strategies as item (f) in the list of strategy executions eligible for the cap (and to make non-substantive conforming changes to include an item (f) in such list). The Exchange also proposes that dividend strategies would be included among the strategies that contribute to an OTP Holder's qualification for the lower cap of \$200. Finally, the Exchange proposes to modify Endnote 10 of the Fee Schedule to add subparagraph (f) defining a dividend strategy as transactions done to achieve a dividend arbitrage involving the purchase, sale, and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend.

The Exchange notes that other options exchanges currently offer similar caps on strategy trades that include dividend strategies.<sup>5</sup> Although the Exchange cannot predict with certainty whether the proposed change would encourage OTP Holders to increase their dividend strategy executions, the proposed change is intended to encourage additional dividend strategy executions on the Exchange by including them in the strategies eligible for the Strategy

<sup>4</sup> See Fee Schedule, LIMIT OF FEES ON OPTIONS STRATEGY EXECUTIONS and Endnote 10 (defining strategies eligible for the Strategy Cap).

<sup>5</sup> See, e.g., BOX Options Fee Schedule, Section V.D. (Strategy QOO Order Fee Cap and Rebate), available at: <https://boxexchange.com/assets/BOX-Fee-Schedule-as-of-July-3-2023.pdf>; Nasdaq PHLX LLC Options 7, Section 4, available at: <https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207>.

Cap (including the lower cap for qualifying OTP Holders).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>7</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>8</sup>

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.<sup>9</sup> Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in June 2023, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.<sup>10</sup>

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

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>8</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>9</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>10</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 remained the same at 12.23% for the month of June 2022 and 12.23% for the month of June 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 the proposed change is reasonable because it is designed to encourage OTP Holders to increase their dividend strategies executed on the Exchange by including dividend strategies among the strategy executions eligible for the Strategy Cap. The Exchange also believes the proposed change could incent OTP Holders to execute and aggregate dividend strategy orders as well as other types of strategy orders at NYSE Arca as a primary execution venue.

To the extent the proposed change attracts greater volume and liquidity, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as OTP Holders may direct their order flow to any of the 16 options exchanges, including those with similar caps on strategy executions, including dividend strategies.<sup>11</sup> Thus, OTP Holders have a choice of where they direct their order flow, including their strategy executions. The proposed rule change is designed to incent OTP Holders to direct liquidity, and specifically dividend strategies, to the Exchange, thereby promoting market depth and enhancing order execution opportunities for market participants.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposed change is based on the amount and type of business transacted on the Exchange, and OTP Holders can opt to avail themselves of the Strategy Cap or not. In addition, the modified Strategy Cap, as proposed, would continue to be available to all OTP Holders that direct strategy executions, including dividend strategies, to the Exchange. Moreover,

<sup>11</sup> See note 5, *supra*.

the proposal is designed to continue to encourage OTP Holders to aggregate strategy executions at the Exchange as a primary execution venue. To the extent that the proposed change attracts more dividend strategies 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 marked-wide quality and price discovery.

#### The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes the proposed change is not unfairly discriminatory because the proposed modification of the Strategy Cap would apply to all similarly-situated market participants on an equal and non-discriminatory basis. The proposal is based on the amount and type of business transacted on the Exchange, and OTP Holders are not obligated to try to achieve the Strategy Cap, nor are they obligated to execute any dividend strategies. Rather, the proposal is designed to encourage OTP Holders to increase their dividend strategy executions and to utilize the Exchange as a primary trading venue for all strategy executions (if they have not done so previously). To the extent that the proposed change attracts more strategy executions (and, in particular, dividend strategy executions) 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 resulting increased volume and liquidity would provide more trading opportunities 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, to 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>12</sup>

#### Intramarket Competition

The Exchange does not believe the proposed change would impose any burden on intramarket competition that is not necessary or appropriate. The proposed change is designed to incent OTP Holders to direct their dividend strategy orders to the Exchange and could also encourage OTP Holders to continue to aggregate all strategy executions on the Exchange to qualify for the Strategy Cap. Greater liquidity benefits all market participants on the Exchange, and order flow from increased strategy executions could improve market quality for all market participants on the Exchange. In addition, the Strategy Cap, modified as proposed to include dividend strategies, would continue to be available to all similarly situated market participants and thus would not impose a disparate burden on competition.

*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.<sup>13</sup>

<sup>12</sup> See Reg NMS Adopting Release, *supra* note 8, at 37499.

<sup>13</sup> The OCC publishes options and futures volume in a variety of formats, including daily and monthly

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

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to incent OTP Holders to direct trading interest (in particular, dividend strategy executions) to the Exchange, to provide liquidity and to attract order flow. To the extent OTP Holders continue to be incentivized to aggregate strategy executions on the Exchange as a primary trading venue, all of the Exchange's market participants should benefit from the improved market quality and increased opportunities for order execution. The Exchange also believes that the proposed change could promote competition between the Exchange and other execution venues, as other competing options exchanges currently offer a similar fee cap for strategy orders, including dividend strategies.<sup>15</sup>

#### 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>16</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>17</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

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 was 12.23% for the month of June 2022 and 12.23% for the month of June 2023.

<sup>15</sup> See note 5, *supra*.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

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>18</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-2023-51 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-NYSEARCA-2023-51. 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-2023-51 and should be submitted on or before August 29, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-16882 Filed 8-7-23; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98040; File No. SR-ISE-2023-11]

### Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend the Short Term Option Series Program in Supplementary Material .03 of Options 4, Section 5

August 2, 2023.

On May 31, 2023, Nasdaq ISE, LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the Short Term Option Series Program in Supplementary Material .03 of Options 4, Section 5. The proposed rule change was published for comment in the **Federal Register** on June 20, 2023.<sup>3</sup>

Section 19(b)(2) of the Act<sup>4</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is August 4, 2023.

The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a

longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> designates September 18, 2023, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-ISE-2023-11).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98046; File No. SR-FINRA-2023-007]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Supplementary Material .18 (Remote Inspections Pilot Program) Under FINRA Rule 3110 (Supervision)

August 2, 2023.

#### I. Introduction

On April 14, 2023, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-FINRA-2023-007 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, to adopt a voluntary, three-year remote inspections pilot program to allow eligible broker-dealers to elect to fulfill their obligation under paragraph (c) (Internal Inspections) of FINRA Rule 3110 (Supervision) by conducting inspections of eligible branch offices and non-branch locations remotely without an on-site visit to such office or location, subject to specified safeguards and limitations (the "Pilot").<sup>3</sup> The proposed rule change was published for public comment in the **Federal Register**

<sup>19</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 97719 (June 13, 2023), 88 FR 39876.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> *Id.*

<sup>6</sup> 17 CFR 200.30-3(a)(31).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See *infra* note 4.

<sup>18</sup> 15 U.S.C. 78s(b)(2)(B).