it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.[12]

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)[13] 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.* Please include file number SR–NYSE–2023–40 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–NYSE–2023–40. 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–NYSE–2023–40 and should be submitted on or before December 6, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25107 Filed 11–14–23; 8:45 am]

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[12] 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98894; File No. SR–NYSEARCA–2023–76]

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

November 9, 2023.

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 October 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 certain Customer incentives. The Exchange proposes to implement the fee change effective November 1, 2023. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The purpose of this filing is to amend the Fee Schedule to modify a qualification basis applicable to the Customer Penny Posting Credit Tiers, Customer Posting Credits [sic] in Non-Penny Issues, and Customer Incentive Program. The Exchange proposes to implement the rule change on November 1, 2023.

The Fee Schedule provides for certain incentive programs through which an OTP Holder or OTP Firm (collectively, ''OTP Holder'') may earn credits on posted interest. The Customer Penny Posting Credit Tiers offers qualifying OTP Holders tiered credits on electronic executions of Customer posted interest in Penny issues, and the Customer Penny [sic] Posting Credit Tiers in Non-Penny Issues offers qualifying OTP Holders tiered credits on electronic executions of Customer posted interest in non-Penny issues.[4] OTP Holders may also qualify for the Customer Incentive Program, which offers an additional

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Fee Schedule, CUSTOMER PENNY POSTING CREDIT TIERS; CUSTOMER POSTING CREDIT TIERS IN NON-PENNY ISSUES.

credit on Customer posting credits in Penny or non-Penny issues.[5]

Currently, an OTP Holder that achieves 0.30% of TCADV from Customer posted interest in all issues, not including Professional Customer interest, plus executed ADV of 0.60% of U.S. equity market share posted and executed on the NYSE Arca Equities market will qualify for the credits offered in Tier 4 of the Customer Penny Posting Credit Tiers, Tier C of the Customer Posting Credit Tiers in Non-Penny Issues, and the Customer Incentive Program.

The Exchange now proposes to adjust this qualifying basis for each of the Customer Penny Posting Credit Tiers, Customer Posting Credits [sic] in Non-Penny Issues, and Customer Incentive Program to reduce the Customer posted interest TCADV requirement from 0.30% to 0.20% and the equity market ADV requirement from 0.60% to 0.50%. In other words, as proposed, an OTP Holder could qualify for Tier 4 of the Customer Penny Posting Credit Tiers, Tier C of the Customer Posting Credit Tiers in Non-Penny Issues, and the Customer Incentive Program by achieving at least 0.20% of TCADV from Customer posted interest in all issues, not including Professional Customer interest, plus executed ADV of 0.50% of U.S. equity market share posted and executed on the NYSE Arca Equities market.

The Exchange does not propose any changes to the amounts of the credits offered in the Customer Penny Posting Credit Tiers, Customer Posting Credits [sic] in Non-Penny Issues, or Customer Incentive Program. Accordingly, OTP Holders who achieve the proposed qualification described above would continue to be eligible for the ($0.47) on electronic executions of Customer posted interest in Penny issues through Tier 4 of the Customer Penny Posting Credit Tiers; the ($0.97) credit applied to electronic executions of Customer posted interest in non-Penny issues through the Customer Posting Credits [sic] in Non-Penny Issues; and/or the additional ($0.03) credit on Customer posting credits offered in the Customer Incentive Program.

The Exchange cannot predict with certainty whether any OTP Holders would seek to qualify for the Customer Penny Posting Credit Tiers, Customer Posting Credit Tiers in Non-Penny Issues, or Customer Incentive Program. However, the Exchange believes that the proposed change would continue to encourage OTP Holders to direct Customer posted interest to the Exchange by reducing the volume requirements for certain credits on Customer posted interest, thereby potentially making such credits more attainable for OTP Holders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[7] 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.'' [8]

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.[9] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in September 2023, the Exchange had less than 12% market share of executed volume of multiply-listed equity and ETF options trades.[10]

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.

The Exchange believes that the proposed changes to the Customer Penny Posting Credit Tiers, Customer Posting Credit Tiers in Non-Penny Issues, and Customer Incentive Program are reasonable because they are intended to continue to incent OTP Holders to send Customer posting interest to the Exchange in order to earn credits on such interest. The Exchange also believes the proposed change is reasonable because it decreases certain volume requirements for the Customer Penny Posting Credit Tiers, Customer Posting Credit Tiers in Non-Penny Issues, and Customer Incentive Program, which could make credits offered in those programs more attainable for OTP Holders.

To the extent the proposed rule change attracts greater volume and liquidity by encouraging OTP Holders to increase their options volume on the Exchange, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors.

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

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange, and OTP Holders can opt to attempt to qualify for the various Customer posting credits or not. Moreover, the proposal is designed to continue to incent OTP Holders to aggregate all Customer posting interest at the Exchange as a primary execution venue. To the extent that the proposed change attracts more opportunities for execution of Customer posted interest on the Exchange, this increased order flow would continue to

[5] *See* Fee Schedule, CUSTOMER INCENTIVE PROGRAM.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[9] 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.*

[10] 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 10.84% for the month of September 2022 to 11.48% for the month of September 2023.

make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes the proposed changes are not unfairly discriminatory because they would apply to all similarly-situated market participants, and the credits offered in the Customer Penny Posting [sic] Tiers, Customer Posting Credit Tiers in Non-Penny Issues, and Customer Incentive Program would continue to be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The proposed change is based on the amount and type of business transacted on the Exchange, and OTP Holders are not obligated to try to qualify for the various credits, nor are they obligated to execute posted interest. To the extent that the proposed change attracts more interest to the Exchange, particularly Customer posting interest, 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, 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." [11]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange, particularly Customer posted interest. The Exchange believes that the proposed change would continue to incent OTP Holders to direct Customer posting interest to the Exchange in order to earn the credits available through the Customer Penny Posting Credit Tiers, Customer Posting Credit Tiers in Non-Penny Issues, and Customer Incentive Program. Greater liquidity benefits all market participants on the Exchange and increased liquidity-posting order flow would increase opportunities for execution of other trading interest. The proposed change would apply to all similarly-situated market participants and, accordingly, would not impose a disparate burden on competition among market participants on the Exchange.

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

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 to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

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) [14] of the Act and subparagraph (f)(2) of Rule 19b–4 [15] 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) [16] 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:

[11] *See* Reg NMS Adopting Release, *supra* note 8, at 37499.

[12] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[13] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.*, the Exchange's market share in equity-based options increased from 10.84% for the month of September 2022 to 11.48% for the month of September 2023.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 15 U.S.C. 78s(b)(2)(B).

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.* Please include file number SR–NYSEARCA–2023–76 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–2023–76. 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–2023–76 and should be submitted on or before December 6, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25204 Filed 11–14–23; 8:45 am]

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[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98899; File No. SR–NYSEARCA–2023–77]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31–E

November 9, 2023.

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 October 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 7.31–E to provide for the use of ALO Reserve Orders. 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 Exchange proposes to amend Rule 7.31–E to provide for the use of ALO Reserve Orders.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

ALO Orders

Rule 7.31–E(e)(2) defines an ALO Order as a Non-Routable Limit Order that, unless it receives price improvement, will not remove liquidity from the NYSE Arca Book. An ALO Order can be designated to be cancelled if it would be displayed at a price other than its limit price for any reason. An ALO Order can be designated as non-displayed.

As described in Rule 7.31–E(e)(2)(A), an Aggressing ALO Order to buy (sell) will trade if its limit price crosses the working price of any displayed or non-displayed orders to sell (buy) on the NYSE Arca Book priced equal to or below (above) the PBO (PBB) of an Away Market, in which case it will trade as the liquidity taker with such orders.

As noted above, Rule 7.31–E(e)(2) provides that an ALO Order may be designated to cancel if it would be displayed at a price other than its limit price. If an ALO Order is not so designated, any untraded quantity of such order to buy (sell) is processed as follows (Rules 7.31–E(e)(2)(B)(i) and (ii)):

- If the limit price of the ALO Order locks the display price of any order to sell (buy) ranked Priority 2—Display Orders on the NYSE Arca Book, it will have a working price and display price (if designated to display) one MPV below (above) the price of the displayed order on the NYSE Arca Book.
- If the limit price of the ALO Order locks or crosses the PBO (PBB) of an Away Market, it will have a working price equal to the PBO (PBB) of the Away Market and a display price (if designated to display) one MPV below (above) the PBO (PBB) of the Away Market.

Rule 7.31–E(e)(2)(C) provides that any untraded quantity of an ALO Order to buy (sell) will have a working price and display price (if designated to display) equal to its limit price if it locks non-displayed orders to sell (buy) on the NYSE Arca Book. Rule 7.31–E(e)(2)(D) provides that an ALO Order to buy (sell) will not be assigned a working price or display price above (below) the limit price of such order.

Once resting on the NYSE Arca Book, ALO Orders may be re-priced or trade, or both, as described in Rule 7.31–E(e)(2)(E):

- If order(s) to sell (buy) ranked Priority 2—Display Orders or the PBO (PBB) of an Away Market re-prices higher (lower), an ALO Order to buy (sell) will trade or be priced, or both, consistent with Rules 7.31–E(e)(2)(A), (e)(2)(B)(i) and (ii), and (e)(2)(C).