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 No. SR–PEARL–2022–18 and should be submitted on or before June 7, 2022. Rebuttal comments should be submitted by June 21, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[108] that File No. SR–PEARL–2022–18 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[109]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10514 Filed 5–16–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94895; No. SR–NYSEArca-2022–26]

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

May 11, 2022.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 29, 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 the Customer Penny Posting Tiers. The Exchange proposes to implement the fee change effective May 2, 2022. 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 Customer Penny Posting Credit Tiers.

Currently, the Fee Schedule provides that OTP Holders and OTP Firms (collectively, ''OTP Holders'') can qualify for tiered credits applied to electronic executions of Customer posted interest in Penny issues by meeting specified increasing volume levels in Customer Penny Posting Credit Tiers 1 through 6.[4] Currently, an OTP Holder that achieves 0.10% of TCADV from Customer posted interest in all issues will qualify for Customer Penny Posting Credit Tier 1 (''Tier 1'') and earn a credit of $0.27 per contract applied to electronic executions of Customer posted interest in Penny issues.

The Exchange now proposes to modify the qualification basis for Tier 1 and increase the credit offered to OTP Holders that achieve Tier 1. Specifically, the Exchange proposes that an OTP Holder would qualify for Tier 1 by executing at least 0.20% of TCADV from Customer posted interest, plus executed ADV of 0.30% of U.S. equity market share posted and executed on the NYSE Arca Equity Market,[5] and such qualifying OTP Holder would earn a $0.36 per contract credit applied to electronic executions of Customer posted interest in Penny issues.

The Exchange notes that the credit currently offered in Tier 1 has not sufficiently encouraged OTP Holders to increase their Customer posting interest. Thus, although the proposed modifications to the qualifying criteria for Tier 1 would increase the volume requirement and add a cross asset activity component, the Exchange believes that the proposed change would encourage OTP Holders to execute Customer posted interest on the Exchange and also incent OTP Holders to use the Exchange as a primary destination for both options and equity order flow in order to earn the significantly increased credit that would be available in Tier 1.

The Exchange proposes to implement the rule change on May 2, 2022.

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 16 registered options exchanges competing for order

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[108] 15 U.S.C. 78s(b)(3)(C).

[109] 17 CFR 200.30–3(a)(12), (57) and (58).

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

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

[3] 17 CFR 240.19b–4.

[4] *See* Fee Schedule, NYSE Arca Options: Trade–Related Charges for Standard Options, Customer Penny Posting Credit Tiers.

[5] For purposes of this filing, activity in the NYSE Arca Equity Market is referred to as ''cross asset activity.''

[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'').

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, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in March 2022, the Exchange had less than 14% market share of executed volume of multiply-listed equity & 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, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

While the Exchange cannot predict with certainty whether any OTP Holders would seek to qualify for Tier 1, as modified, the Exchange believes that the new qualifying criteria for Tier 1 are attainable and that the increased credit that OTP Holders would earn in Tier 1 would encourage OTP Holders to increase both Customer posted volume on the Exchange and their activity on the NYSE Arca Equity Market. The Exchange further believes that modifying the qualification basis for Tier 1 to include both a Customer posted interest volume requirement and a cross asset activity component would incent OTP Holders to direct more Customer options order flow and equity order flow to the Exchange, which would bring increased liquidity and order flow for the benefit of all market participants.

Finally, to the extent the proposed change continues to attract greater volume and liquidity to the Exchange, and, in particular, encourages OTP Holders to increase Customer volume and cross asset activity to qualify for the increased credit available in Tier 1, 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 an exchange with a similarly structured customer posting credit program.[11] Thus, OTP Holders have a choice of where they direct their order flow, including their Customer posting interest and equity posted interest. The proposed rule change is designed to incent OTP Holders to direct liquidity to the Exchange and, in particular, to increase their Customer posting interest and cross asset activity, thereby promoting market depth, price discovery and improvement, and enhanced order execution opportunities for 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. The proposal is based on the amount and type of business transacted on the Exchange, and OTP Holders can opt to try to qualify for the credit or not. The proposal is designed to incent OTP Holders to aggregate Customer posting interest at the Exchange as a primary execution venue and to attract more posting interest on the NYSE Arca Equity Market. To the extent that these purposes are achieved, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution on both options and equities. 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 rule change is not unfairly discriminatory because the credit offered in Tier 1, as modified, would be available 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 enhanced qualifications for Tier 1, nor are they obligated to execute Customer posted interest or cross asset activity. Rather, the proposal is designed to encourage OTP Holders to utilize the Exchange as a primary trading venue for Customer posted interest (if they have not done so previously) and to increase cross asset activity, and all OTP Holders that meet the qualifications for Tier 1 would be eligible for the corresponding credit on electronic executions of Customer posted interest in Penny issues. To the extent that the proposed change attracts more Customer interest, including posted interest, 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 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.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change

[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 ETF-based options, *see id.,* the Exchange's market share in equity-based options increased from 10.16% for the month of March 2021 to 13.57% for the month of March 2022.

[11] *See* Cboe BZX Options Exchange Fee Schedule, *available at: https://www.cboe.com/us/options/membership/fee_schedule/bzx/* (offering similarly structured credits on customer volume in Penny issues, based on qualifying volume).

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.'' [12]

Intramarket Competition. The proposed change is designed to attract additional order flow (particularly Customer posted interest and cross asset activity) to the Exchange. The Exchange believes that the proposed modification to Tier 1 would incent OTP Holders to direct their Customer order flow and cross asset activity to the Exchange. Greater liquidity benefits all market participants on the Exchange, and increased Customer order flow and posted equity order flow would increase opportunities for execution of other trading interest. The proposed modification to Tier 1 would be available to all similarly-situated market participants that execute Customer posted interest, and, as such, the Exchange does not believe that the proposed change 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 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.[13] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in March 2022, the Exchange had less than 14% market share of executed volume of multiply-listed equity & ETF options trades.[14]

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 (particularly Customer posted interest and cross asset activity) to the Exchange, which would provide liquidity and attract order flow to the Exchange. 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.

The Exchange also believes that the proposed change could promote competition between the Exchange and other execution venues, including an exchange that currently offers similarly structured customer posting credits,[15] by encouraging additional orders to be sent to the Exchange for execution.

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) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] 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) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2022–26 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–2022–26. 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-2022–26, and should be submitted on or before June 7, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10515 Filed 5–16–22; 8:45 am]

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

[13] *See* note 9, *supra.*

[14] Based on OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.*, the Exchange's market share in equity-based options increased from 10.16% for the month of March 2021 to 13.57% for the month of March 2022.

[15] *See* note 11, *supra.*

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).