

Capital Raise is consistent with the Exchange Act.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,⁹⁴ that the proposed rule change (SR-NASDAQ-2020-057), as modified by Amendment No. 2 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹⁵

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91936; No. SR-NYSEArca-2021-41]

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 19, 2021.

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 May 12, 2021, 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”) to adopt a new incentive program for Floor Brokers. The Exchange proposes to implement the fee

change effective May 12, 2021.⁴ 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 modify the Fee Schedule to introduce the Floor Broker Professional Customer Manual Program (the “Program”), a new incentive program intended to encourage Floor Brokers to increase their Professional Customer billable volume on the Exchange.⁵

Specifically, the Exchange proposes that the Program would offer Floor Brokers a credit of \$0.13 on each billable Professional Customer contract that exceeds a baseline average daily volume (“ADV”) for the month, as specified below.

The Exchange proposes to implement the rule change on May 12, 2021. The Exchange further proposes that the Program expire at the close of business on June 30, 2021.

Proposed Rule Change

As proposed, the Program would provide that a Floor Broker would earn a credit of \$0.13 per contract (the “Credit”) for Professional Customer volume in each month that the Floor Broker achieves certain Professional Customer ADV in billable ADV. The Exchange proposes that the calculation of Professional Customer ADV for purposes of the Program will include Manual executions by a Floor Broker on

behalf of a Professional Customer, but exclude any Professional Customer QCC volume, Firm Facilitation trades, and any volume calculated to achieve the Strategy Execution Fee Cap (regardless of whether the cap is achieved).⁶ That is, any volume (or contract side) for which a Floor Broker is (potentially) not billed, including because of monthly fee caps, would not count towards qualifying for the Program because Floor Brokers are already eligible for incentives to execute such transactions.

To qualify for the proposed Program, a Floor Broker must execute 60% over the greater of:

- (i) 20,000 ADV in contract sides, or
- (ii) the Floor Broker’s Professional Customer Manual Transaction ADV in contract sides during the second half of 2020 (i.e., July–December 2020).⁷

The Exchange believes that a qualifying threshold of 60% over 20,000 contract sides in Professional Customer Manual Transaction ADV is reasonable for a Floor Broker, including one that may be new to the Exchange, to achieve based on the volume executed by Floor Brokers in 2020. Similarly, the Exchange believes that the alternative threshold of a 60% increase over a Floor Broker’s Professional Customer Manual Transaction ADV in contract sides during the second half of 2020 is reasonable for those Floor Brokers that achieve more than 20,000 ADV billable contract sides, given the increased options volume executed by Floor Brokers in the past year.

The Exchange believes the proposed Credit would encourage Floor Brokers to seek out, and increase, Professional Customer order flow for execution on the Exchange. The Exchange’s fees are constrained by intermarket competition, as OTP Holders and OTP Firms (collectively, “OTP Holders”) may direct their order flow to any of the 16 options exchanges, including those that may offer similar incentives. Thus, OTP Holders have a choice of where they direct their order flow. Fees and credits for Floor Broker activity are designed to encourage Floor Brokers to execute a variety of transaction types on the Exchange, and the Program is intended to augment those fees and credits by offering an incentive to encourage the execution of Professional Customer billable volume. The Exchange notes that all market participants stand to benefit from any increase in billable volume by Floor Brokers, which promotes market depth, facilitates tighter spreads, and enhances price discovery, and may lead to a

⁹⁴ 15 U.S.C. 78s(b)(2).

⁹⁵ 17 CFR 200.30-3(a)(12).

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 May 3, 2021 (SR-NYSEArca-2021-35) and withdrew such filing on May 12, 2021.

⁵ See proposed Fee Schedule, FB PROFESSIONAL CUSTOMER MANUAL PROGRAM.

⁶ See *id.*

⁷ See *id.*

corresponding increase in order flow from other market participants.

The Exchange proposes that the Program expire at the close of business on June 30, 2021 because, among other reasons, the Exchange cannot predict with certainty whether the proposed Program will achieve its intended goal of incentivizing Floor Brokers to increase their Professional Customer billable volume on the Exchange. However, the Exchange notes that all Floor Brokers have the opportunity to qualify for the Credit available through the Program, and the Exchange believes that the proposed alternative thresholds to qualify for the Credit are attainable by Floor Brokers, as described above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁹ 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.”¹⁰

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.¹¹ Therefore, currently no exchange

possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in March 2021, the Exchange had less than 11% market share of executed volume of multiply-listed equity & ETF options trades.¹²

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.

The Exchange believes that the proposed Program, which offers two alternative methods to qualify, is reasonable because it is designed to incent Floor Brokers to increase the amount of Professional Customer billable order flow directed to the Exchange. The Exchange notes that all market participants stand to benefit from any increase in billable volume by Floor Brokers, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

The Exchange’s fees and credits for Floor Broker activity are designed to encourage Floor Brokers to execute a variety of transaction types on the Exchange, and the Program is intended to augment those fees and credits with an incentive to encourage Floor Brokers to execute Professional Customer billable volume. The Exchange believes it is reasonable to only include Professional Customer transactions for which a Floor Broker is billed in the calculation of eligible volume for the Program because Floor Brokers are already incented to execute transactions for which there is no charge (e.g., Firm Facilitation trades) or those on which monthly fees are capped (e.g., the Strategy Execution Fee Cap).

Finally, to the extent the proposed Program 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 proposed rule change is designed to incent OTP Holders to direct liquidity to the Exchange, thereby promoting market depth, price discovery and improvement and enhancing 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 Floor Brokers can opt to attempt to trade sufficient volume to qualify for the Credit or not. All Floor Brokers have the opportunity to qualify for the same Credit under two alternatives means offered (*i.e.*, the greater of at least 60% over 20,000 contract sides in Professional Customer Manual billable ADV or a 60% increase over the Floor Broker’s Professional Customer Manual billable ADV in contract sides during the second half of 2020).

Moreover, the proposed Credit is designed to incent Floor Brokers to encourage OTP Holders to aggregate their executions—particularly Professional Customer billable volume—at the Exchange as a primary execution venue. To the extent that the proposed change attracts more Professional Customer billable 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 that the proposed change is not unfairly discriminatory because the Program and Credit thereunder would be available to all Floor Brokers on an equal and non-discriminatory basis. The proposed Program is not unfairly discriminatory to non-Floor Brokers because it is intended to encourage the important role performed by Floor Brokers in facilitating the execution of orders via open outcry and providing opportunities to obtain price improvement, a function which the

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

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

¹¹ 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>.

¹² 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 decreased slightly from 11.10% for the month of March 2020 to 10.16% for the month of March 2021.

Exchange wishes to support for the benefit of all market participants.

The proposed Program is also based on the amount and type of business transacted on the Exchange, and Floor Brokers are not obligated to try to qualify for the Program. Rather, the proposed Program is designed to encourage these participants to utilize the Exchange as a primary trading venue (if they have not done so previously) or increase Professional Customer Manual billable volume sent to the Exchange. To the extent that the proposed change attracts more order flow to the Exchange (and, specifically, to the Floor), 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 changes would be consistent with charges for similar business at other markets. As a result, the Exchange believes that the proposed changes further 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."¹³

Intramarket Competition. The proposed Credit is designed to assist Floor Brokers in (continuing to) attract additional Professional Customer order

flow to the Exchange, and, specifically, to the Floor, which would enhance the quality of quoting and may increase the volumes of contracts traded on the Exchange. To the extent that the proposed change imposes an additional competitive burden on non-Floor Brokers, the Exchange believes that offering an incentive to Floor Brokers via the proposed Program does not constitute an undue burden on competition in light of Floor Brokers' role in facilitating the execution of orders via open outcry and providing market participants with opportunities for price improvement.

To the extent that this function is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition 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 currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.¹⁴ Therefore, no exchange currently possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in March 2021, the Exchange had less than 11% market share of executed volume of multiply-listed equity & ETF options trades.¹⁵

The Exchange believes that the proposed Credit reflects this competitive environment because it modifies the Exchange's fees in a manner designed to incent Floor Brokers to direct trading interest 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.

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 also believes that the proposed change could promote competition between the Exchange and other execution venues by encouraging additional orders to be sent to the Exchange (and, specifically, to the Floor) 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-4¹⁷ 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:

¹³ See *supra* note 11.

¹⁴ Based on OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *supra* note 11, the Exchange's market share in equity-based options decreased slightly from 11.10% for the month of March 2020 to 10.16% for the month of March 2021.

¹⁵ 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).

¹³ See Reg NMS Adopting Release, *supra* note 10, 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-2021-41 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-2021-41. 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-2021-41, and should be submitted on or before June 15, 2021.

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

J. Matthew DeLesDernier,

Assistant Secretary.

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¹⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91935; File No. SR-OCC-2021-004]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change Relating to Revisions to OCC's Auction Participation Requirements

May 19, 2021.

I. Introduction

On March 19, 2021, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2021-004 ("Proposed Rule Change") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4² thereunder to amend the auction participation requirements set forth in Interpretation and Policy ("I&P") .02(c) to OCC Rule 1104 (Creation of Liquidating Settlement Account).³ The Proposed Rule Change was published for public comment in the **Federal Register** on April 6, 2021.⁴ The Commission has received no comments regarding the Proposed Rule Change. This order approves the Proposed Rule Change.

II. Background

The Proposed Rule Change by OCC would change I&P .02(c) to OCC Rule 1104 in order to clarify and streamline the process of on-boarding Clearing Members and non-Clearing Members as potential bidders in future auctions of a suspended Clearing Member's remaining portfolio.

Under OCC's current Rules, following the suspension of any Clearing Member, OCC may take a number of steps designed to reasonably ensure that the Clearing Member's suspension is managed in an orderly fashion. Such steps may include liquidating the remaining collateral, open positions, and/or exercised/matured contracts (*i.e.*, the remaining portfolio) of the suspended Clearing Member. I&P .02(a) to OCC Rule 1104 clarifies that OCC "may elect to use one or more private auctions to liquidate all or any part" of a suspended Clearing Member's remaining portfolio. In this context, the term "private auction" means an auction open to bidders who are invited

by OCC and in which such bidders submit bids on a confidential basis.⁵

I&P .02(c) to Rule 1104 establishes certain basic requirements for the prequalification of bidders who may participate in OCC's private auction process. I&P .02(c) states that OCC "will invite all Clearing Members to apply to become pre-qualified auction bidders" and that "[a]ny Clearing Member may be included in the pool of pre-qualified auction bidders by completing required auction documentation in advance." Further, I&P .02(c) states that "[b]y posting notices on the [OCC]'s website from time to time, [OCC] will also invite non-Clearing Members to apply to become pre-qualified auction bidders." I&P .02(c) establishes that for a non-Clearing Member to be pre-qualified as an auction bidder, it "must (i) actively trade in the asset class in which it proposes to submit bids, (ii) actively trade in markets cleared by [OCC], (iii) be sponsored by, and submit its bids through, a Clearing Member that has agreed to guarantee and settle any accepted bid made by such non-Clearing Member and (iv) complete required auction documentation in advance." I&P .02(c) also states that OCC "will endeavor to maintain a pool of pre-qualified auction bidders by periodically reviewing such bidders and their qualifications" and that OCC "will promptly notify any pre-qualified auction bidder removed from the pool of pre-qualified auction bidders."

OCC proposes to revise I&P .02(c) to eliminate the requirement that Clearing Members must first be invited by OCC before Clearing Members may apply to become pre-qualified auction bidders. Instead, the revised language in I&P .02(c) would state that all Clearing Members are invited to participate in auctions of a suspended Clearing Member's remaining portfolio. The proposed revisions would retain the current requirement that, in order for a Clearing Member to be pre-qualified as an auction bidder, the Clearing Member would need to complete any required auction documentation in advance.

OCC also proposes to revise I&P .02(c) to reflect that non-Clearing Members, in order to become pre-qualified auction bidders, would no longer need OCC to post invitation notices to its website from time to time. The proposed revisions to I&P .02(c) would also remove the existing requirements that a non-Clearing Member must actively trade in the asset class in which it proposes to submit bids and must actively trade in markets cleared by

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing *infra* note 4, 86 FR 17868.

⁴ Securities Exchange Act Release No. 91445 (Mar. 31, 2021), 86 FR 17868 (Apr. 6, 2021) (File No. SR-OCC-2021-004) ("Notice of Filing").

⁵ Interpretation and Policy .02(a) to OCC Rule 1104.