SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92337; No. SR–NYSEArca–2021–58]

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

July 7, 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 July 1, 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'') regarding incentive programs offered by the Exchange. The Exchange proposes to implement the fee change effective July 1, 2021. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

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

[3] 17 CFR 240.19b–4.

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

1. Purpose

The purpose of this filing is to amend the Fee Schedule to make modifications to one of the Customer Posting Credit Tiers in Non-Penny Issues and to introduce an additional Discount in Take Liquidity Fees for Professional Customers and Non-Customer Liquidity Removing Interest, as described below. The Exchange proposes to implement the fee change effective July 1, 2021.

Customer Posting Credit Tiers in Non-Penny Issues (the ''Non-Penny Tiers'')

The Non-Penny Tiers provide that OTP Holders and OTP Firms (''OTP Holders'') can qualify for per contract credits applied to electronic options transactions based on meeting certain minimum volume thresholds from Customer posting interest in non-Penny issues. The Exchange proposes to modify the Non-Penny Tiers by providing an alternative qualification method to achieve Non-Penny Tier F.

The proposed alternative qualification for Non-Penny Tier F would offer the same ($1.02) per contract credit and would be available to OTP Holders that execute at least at least 2.00% of Total Industry Customer equity and ETF option average daily volume (''TCADV'') [4] from Customer posted interest in all issues and at least 2.00% of TCADV from Professional Customer and Non-Customer Liquidity Removing interest in all issues.[5]

The proposed alternative qualification to achieve Non-Penny Tier F is designed to continue to attract Customer order flow for all issues to the Exchange and also to reward posted liquidity, which provides benefits to all market participants by providing more trading opportunities, which in turn attracts Customers, Market Makers, and other Non-Customer interest. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Notwithstanding the proposed change to Non-Penny Tier F, OTP Holders are still eligible to qualify for the Non-Penny Tier F per contract credit of ($1.02) under the alternative (and unchanged) threshold, which requires that an OTP Holder execute at least 1.00% of TCADV from Customer posted interest in all issues, plus executed ADV of 0.30% of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market to achieve the ($1.02) per contract credit. By continuing to provide such alternative methods to qualify for a Non-Penny Tier, the Exchange believes the opportunities to qualify for credits is increased, which benefits all participants through increased volume to the Exchange.

Discount in Take Liquidity Fees for Professional Customers and Non-Customer Liquidity Removing Interest (Each a ''Take Fee Discount'')

If an OTP Holder executes a transaction that removes or ''takes'' liquidity on the Exchange, the OTP Holder is charged a ''Take Liquidity'' fee (referred to herein as ''Take Fees'') and such liquidity may be referred to as ''Liquidity Removing'' or liquidity taking.[6] To offset such costs and to encourage market participants to direct order flow to the Exchange, the Exchange offers, among other incentives, the Take Fee Discounts for executions in Penny Issues.[7]

The Exchange proposes to add an additional means of qualifying for a Take Fee Discount for executions in Penny Issues. As proposed, the Exchange would offer a new Take Fee Discount, which would provide an additional $0.03 per contract discount on Take Fees for OTP Holders that executed at least 2.00% of TCADV from Customer posted interest in all issues and at least 2.00% of TCADV from Professional Customer and Non-Customer Liquidity Removing interest in all issues. The Exchange also proposes to add text to the Fee Schedule making clear that only one of the three alternative Take Fee Discounts for executions in Penny Issues would apply to an OTP Holder's activities.

The Exchange believes this proposed change would incent OTP Holders to increase the amount of Customer posted volume executed on the Exchange

[4] *See* Fee Schedule, Endnote 8 (providing that TCADV ''includes OCC calculated Customer volume of all types, including Complex Order Transactions and QCC transactions, in equity and ETF options'').

[5] ''Non-Customer'' interest on the Exchange includes interest from Firms, Broker Dealers, and Market Makers. *See* Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS (preamble).

[6] *See* Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, TRANSACTION FEE FOR ELECTRONIC EXECUTIONS-PER CONTRACT (setting forth a per contract Take Fee of $1.10 for such non-Penny executions in Professional Customer, Firm, Broker Dealer, and Market Maker range as compared to a per contract take fee of $0.85 for such non-Penny executions in the Customer range).

[7] The Exchange is not proposing to modify the (single) Take Fee Discount available to OTP Holders that achieve the minimum volume executions in non-Penny Issues.

(while maintaining the same level of Liquidity Removing volume required under one of the existing Take Fee Discounts), which activity may result in tighter spreads and more trading making the Exchange a more attractive trading venue to the benefit of all participants.[8]

The proposed new Take Fee Discount is designed to attract additional Customer order flow and to continue to attract a broad spectrum of liquidity-taking volume, which provides benefits for all market participants by providing more trading opportunities, which attracts Customers, Market Makers, and other Non-Customer interest. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes this proposed Take Fee Discount would encourage OTP Holders to achieve this additional discount with increased activity from a variety of business interest. By providing an incentive for take liquidity activity, the Exchange in turn provides more opportunities for execution of posted interest.

The Exchange notes that an OTP Holder that qualifies for the new alternative volume threshold under Non-Penny Tier F would also qualify for the new Take Fee Discount, as both incentives consist of the same minimum volume threshold and the same mix of business activity. The Exchange notes that new Take Fee Discount does not apply to credits associated with the Non-Penny Tiers, and is designed to encourage OTP Holders to direct a variety of business to the Exchange, including liquidity-taking business, which in turn encourages posted interest. To the extent that the proposed incentives operate as intended, the anticipated result would be that the Exchange would be a more attractive execution venue for all options business.

Notwithstanding the proposed new Take Fee Discount, the Exchange notes that OTP Holders are still eligible to qualify for the existing alternative (and unchanged) Take Fee Discounts for executions in Penny Issues. By continuing to provide such alternative methods to qualify for Take Fee Discounts, the Exchange believes the opportunities to qualify for credits is increased, which benefits all participants through increased volume to the Exchange.

The Exchange cannot predict with certainty whether any OTP Holders will avail themselves of the proposed changes to the Non-Penny Tiers or Take Fee Discounts. At present, whether or when an OTP Holder would qualify for the enhanced credit varies month-to-month. Thus, the Exchange cannot predict with any certainty the number of OTP Holders that may qualify for the proposed new qualifications, but believes that OTP Holders would be encouraged to increase volume to take advantage of the proposed incentive credits/discounts.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[10] 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.'' [11]

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.[12] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in May 2021, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[13]

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. In response to this competitive environment, the Exchange has established incentives, such as the Non-Penny Tiers and the Take Fee Discount.

The Exchange believes that the proposed modification to the Non-Penny Tier F—to provide an alternative qualification basis through a mix of Customer posted interest and Professional Customer and Non-Customer liquidity-taking interest—is reasonably designed to continue to incent OTP Holders to increase the amount and type of Customer interest sent and to also to reward posted liquidity. An increase in Customer volume would create more trading opportunities, which, in turn attracts Market Makers. A resulting increase in Market-Maker activity may facilitate tighter spreads, which may lead to an additional increase of order flow from other market participants, further contributing to a deeper, more liquid market to the benefit of all market participants by creating a more robust and well-balanced market ecosystem. With regard to Professional Customer and Non-Customer liquidity-taking interest, the Exchange believes that the proposed Tier F is reasonably designed to incent OTP Holders to increase trading activity in all issues and in a variety of account types on the Exchange, which increased liquidity benefits all market participants because of increased trading opportunities and price discovery. Moreover, to the extent that the proposed change to Non-Penny Tier F results in an increase in both posted Customer interest and Professional Customer and Non-Customer liquidity-taking interest, this increased volume benefits all market participants as it may result in tighter spreads and more trading making the Exchange a more attractive trading venue to the benefit of all participants.

[8] The Exchange notes that it currently offers a $0.02 per contract Take Fee Discount for executions in Penny Issues provided an OTP Holder execute at least 1.00% TCADV from Customer posted interest in all issues OR at least 2.00% of TCADV from Professional Customer and Non-Customer Liquidity Removing interest in all issues.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

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

[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 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 from 11.17% for the month of May 2020 to 9.28% for the month of May 2021.

The proposed new Take Fee Discount has a minimum volume threshold identical to proposed threshold required under new Non-Penny Tier F and similarly includes a take liquidity volume requirement. As stated before, this discount is reasonably designed to increase the amount and type of Professional Customer and Non-Customer interest sent to the Exchange, especially posted and liquidity-taking interest, which benefits all market participants by providing more trading opportunities, which attracts Customers, Market Makers, and Non-Customer interest. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that this proposed new Take Fee Discount would encourage OTP Holders to achieve the alternative discount with trading activity from a variety of market participants, which would make the Exchange a more attractive execution venue.

To the extent the proposed rule change continues to attract greater volume and liquidity by encouraging OTP Holders (and their affiliates) to increase their options volume on the Exchange in an effort to achieve credits through the Non-Penny Tiers as well as the Take Fee Discount, 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 additional text to the Take Fee discount making clear that only one of the three Take Fee Discounts (for executions in Penny Issues) is available to OTP Holders is reasonably designed to add clarity and transparency to the Fee Schedule making it easier to navigate and comprehend.

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 avail themselves of the credits and discounts or not. Moreover, the proposal is designed to incent OTP Holders to aggregate all Customer posting interest and Professional Customer and Non-Customer Take Liquidity interest at the Exchange as a primary execution venue. To the extent that the proposed change attracts more Customer posting interest and more Professional Customer and Non-Customer liquidity-taking 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 Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes the proposed modifications to the Non-Penny Tier F and the Take Fee Discount are not unfairly discriminatory because the proposed modifications 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 proposed qualification basis for Non-Penny Tier F or the new Take Fee Discount, nor are OTP Holders obligated to execute posted interest. Rather, the proposal is designed to encourage OTP Holders to utilize the Exchange as a primary trading venue (if they have not done so previously) for both Customer posted interest and liquidity-taking interest from Professional Customers and Non-Customers. To the extent that the proposed change attracts more Customer interest, including posted and liquidity-taking interest to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, 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 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 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." [14]

Intramarket Competition. The proposed change is designed to attract additional order flow (particularly Customer posted interest and Professional Customer and Non-Customer liquidity-taking interest) to the Exchange. The Exchange believes that the proposed modification to Non-Penny Tier F and the new Take Fee Discount would incent OTP Holders to direct their Customer order flow and their take liquidity order flow from other market participants to the Exchange. Greater liquidity benefits all market participants on the Exchange and increased Customer order flow and Professional Customer and Non-Customer liquidity-taking interest would increase opportunities for execution of other trading interest. The proposed modifications to Non-Penny Tier F and the new Take Fee Discount would be available to all similarly-situated market participants that execute electronic Customer posted interest and Professional Customer and Non-Customer liquidity-taking interest, and, as such, 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

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

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.[15] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in May 2021, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[16]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees and credits in a manner that is competitive and designed to incent OTP Holders to direct trading interest (particularly Customer posted interest and Professional Customer and Non-Customer liquidity-taking 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 believes that the proposed change could promote competition between the Exchange and other execution venues as OTP Holders (and their affiliates) may direct their order flow to any of the 16 options exchanges, including those that offer similar pricing incentives and discounts. The Exchange also believes that the proposed change is designed to provide the public and investors with a Fee Schedule that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

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)[17] of the Act and subparagraph (f)(2) of Rule 19b–4[18] 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)[19] 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–2021–58 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–2021–58. 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–2021–58, and should be submitted on or before August 3, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

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[15] *See supra* note 12.

[16] 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 from 11.17% for the month of May 2020 to 9.28% for the month of May 2021.

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92341; File No. SR–FICC–2021–004]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Confidential Information, Market Disruption Events, and Other Changes

July 7, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2021, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to FICC's Government Securities Division (''GSD'') Rulebook (the ''GSD Rules''), Mortgage-Backed Securities Division (''MBSD'') Clearing Rules (the ''MBSD Clearing Rules'') and

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

[2] 17 CFR 240.19b–4.