

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-101962; File No. SR-NYSEARCA-2024-114)

December 18, 2024

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

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 17, 2024, 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 transaction fees. The Exchange proposes to implement the fee change effective December 17, 2024. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 certain transaction fees. Specifically, the Exchange proposes to adopt pricing incentives to encourage trading in options on Exchange Traded Funds that hold digital assets (“digital asset ETFs”) that are listed on NYSE Arca Equities. The Exchange proposes to implement the fee change effective December 17, 2024.<sup>4</sup>

On November 22, 2024, the Exchange began trading options on the following digital asset ETFs, each of which is listed on NYSE Arca Equities: Grayscale Bitcoin Trust ETF (GBTC); Grayscale Bitcoin Mini Trust ETF (BTC); and Bitwise Bitcoin ETF Trust (BITB).<sup>5</sup> To incentivize trading in these newly available options on digital asset ETFs (as well as in other options series in digital asset ETFs that may be listed on NYSE Arca Equities in the future), the Exchange proposes to offer a per contract discount or credit, which may be combined with other discounts or credits unless otherwise specified.

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<sup>4</sup> On December 2, 2024, the Exchange filed to amend the Fee Schedule (NYSEARCA-2024-107) and withdrew such filing on December 3, 2024 (SR-NYSEARCA-2024-109), which latter filing the Exchange withdrew on December 17, 2024.

<sup>5</sup> See Trader Update, November 21, 2024 (announcing that on November 22, 2024, the Exchange would begin listing and trading options on GBTC, BTC, and BITB), available here, <https://www.nyse.com/trader-update/history#110000945911>.

Specifically, the Exchange proposes that executions in options on NYSE Arca Equities-listed digital asset ETFs (excluding QCC transactions) will receive an additional discount of \$0.05 per contract on electronic take liquidity, manual, and electronic complex-to-complex executions or an additional credit of \$0.05 per contract on electronic post liquidity executions.<sup>6</sup> The Exchange proposes to exclude QCC transactions from this proposal because QCC transactions are subject to separate fees and credits.<sup>7</sup> Similarly, the Exchange proposes that the already-discounted executions in options on NYSE Arca Equities-listed digital asset ETFs will not be included in the daily fee cap on strategy executions (i.e., the Limit of Fee [sic] on Options Strategy Executions) nor will they be included in calculations for or rebates available through the Manual Billable Rebate Program.<sup>8</sup>

Although the Exchange cannot predict with certainty whether any OTP Holders would seek to trade digital asset ETF options, the Exchange believes that the proposed change would incentivize OTP Holders to submit these types of orders to the Exchange, which brings increased liquidity and order flow for the benefit of all market participants. .

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

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<sup>6</sup> See proposed Fee Schedule, Endnote 12, currently held as “Reserved.” The Exchange proposes to add reference to new Endnote 12 to reflect the transaction fee change in the applicable sections of the Fee Schedule Fee. See, e.g., proposed Fee Schedule, ELECTRONIC COMPLEX ORDER EXECUTIONS, TRANSACTION FEE - PER CONTRACT.

<sup>7</sup> See Fee Schedule, QUALIFIED CONTINGENT CROSS (“QCC”) TRANSACTION FEES AND CREDITS.

<sup>8</sup> See proposed Endnote 12. The Exchange also proposes to specify these exclusions in the applicable sections of the Fee Schedule. See proposed Fee Schedule, LIMIT OF FEES ON OPTIONS STRATEGY EXECUTIONS and FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the “FB Prepay Program”). Consistent with the Fee Schedule, manual executions of options on digital asset ETFs would be subject to the Firm and Broker Dealer Monthly Fee Cap, including the assessment of the incremental service fee of \$0.01 per contract once that Cap has been reached. See FIRM AND BROKER DEALER MONTHLY FEE CAP (providing that, “[o]nce a Firm or Broker Dealer has reached the Firm and Broker Dealer Monthly Fee Cap, an incremental service fee of \$0.01 per contract for Firm or Broker Dealer Manual transactions will apply...”).

the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>10</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The proposed change to the Fee Schedule are reasonable, equitable, and not unfairly discriminatory. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>11</sup>

There are currently 18 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.<sup>12</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in October of 2024, the Exchange had 12.55% market share of executed volume of multiply-listed equity & ETF options

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>11</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

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

trades.<sup>13</sup> In such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.

The Exchange believes that the proposed discount/credit of five cents per contract is reasonable because it is designed to encourage liquidity in options classes on digital asset ETFs newly listed and traded on the Exchange, thereby promoting market depth, price discovery and improvement, and enhanced order execution opportunities to the benefit of all market participants. Moreover, the proposal is designed to encourage OTP Holders to utilize the Exchange as a primary trading venue for options on digital asset ETFs.

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits and is not unfairly discriminatory as it available equally to all similarly-situated market participants on an equal and non-discriminatory basis.

To the extent the proposed change continues to attract greater volume and liquidity, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as OTP Holders may direct their order flow to any of the competing options exchanges that list and trade options on digital asset ETFs.

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<sup>13</sup> Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.*, the Exchanges market share in equity-based options increased slightly from 12.19% for the month of October 2023 to 12.55 % for the month of October 2024.

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."<sup>14</sup>

*Intramarket Competition.* The proposed change is designed to encourage market participants to execute options on digital asset ETFs (and, in particular, those listed on NYSE Arca Equities) and to direct such executions to the Exchange. The proposed pricing incentive will be available equally to all similarly-situated market participants. 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 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

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<sup>14</sup> See Reg NMS Adopting Release, supra note 11, at 37499.

the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.<sup>15</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in October 2024, the Exchange had 12.55% market share of executed volume of multiply-listed equity and ETF options trades.<sup>16</sup>

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to encourage market participants to direct trading interest (particularly for options on digital assets ETFs) 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 believes that the proposed change could promote competition between the Exchange and other execution venues, including those that list and trade options on digital asset ETFs, 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.

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<sup>15</sup> The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

<sup>16</sup> Based on OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.*, the Exchanges market share in equity-based options increased slightly from 12.19% for the month of October 2023 to 12.55% for the month of October 2024.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>17</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>18</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>19</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### IV. Solicitation of Comments

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

#### Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSEARCA-2024-114 on the subject line.

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).

<sup>19</sup> 15 U.S.C. 78s(b)(2)(B).



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-2024-114. 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-2024-114 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

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<sup>20</sup> 17 CFR 200.30-3(a)(12).