SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87733; File No. SR-NYSECHX-2019-26)

December 12, 2019

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Fee Schedule to Adopt Fees for Orders that are Routed to Other Markets for Execution, and Delete Text that became Obsolete upon the Exchange's Transition to the Pillar Trading Platform

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 December 11, 2019 the NYSE Chicago, Inc. ("NYSE Chicago" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Fee Schedule of NYSE Chicago, Inc. (the "Fee Schedule") to adopt fees for orders that are routed to other markets for execution, and delete text that became obsolete upon the Exchange's transition to the Pillar trading platform. The Exchange proposes to implement the fee change effective December 11, 2019. 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.

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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

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

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

1. Purpose

The Exchange proposes to adopt fees for orders that are routed to other markets for execution, and delete text that became obsolete upon the Exchange's transition to the Pillar trading platform. The Exchange proposes to implement the fee change effective December 11, 2019.[4]

On November 4, 2019, the Exchange transitioned to trading on Pillar.[5] Pillar is an integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by the Exchange and its affiliates, NYSE Arca, Inc. ("NYSE Arca"), NYSE American, LLC ("NYSE American"), NYSE National, Inc. ("NYSE National"), and New York Stock Exchange LLC ("NYSE").

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4 The Exchange originally filed to amend the Fee Schedule on December 2, 2019 (SR-NYSECHX-2019-25). SR-NYSECHX-2019-25 was subsequently withdrawn and replaced by this filing.

5 See Trader Update, available at https://www.nyse.com/publicdocs/nyse/notifications/trader-update/NYSEChicago_Migration_FINAL.pdf. See also Securities Exchange Act Release No. 87264 (October 9, 2019), 84 FR 55345 (October 16, 2019) (SR-NYSECHX-2019-08).

Background

The Exchange operates in a highly competitive environment. 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."[6]

As the Commission itself recognized, the market for trading services in NMS stocks has become "more fragmented and competitive."[7] Indeed, equity trading is currently dispersed across 13 exchanges,[8] 31 alternative trading systems,[9] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single equities exchange has more than 18% market share (whether including or excluding auction volume).[10] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in October 2019, the Exchange had 0.43% market share

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6 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

7 See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Transaction Fee Pilot for NMS Stocks Final Rule).

8 See Cboe U.S Equities Market Volume Summary at https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.

9 See FINRA ATS Transparency Data, available at https://otctransparency.finra.org/otctransparency/AtsIssueData. A list of alternative trading systems registered with the Commission is available at https://www.sec.gov/foia/docs/atslist.htm.

10 See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

of executed volume of non-auction equity trading.[11]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow.

Proposed Rule Change

In May 2015, the Chicago Stock Exchange, Inc. ("CHX"), the Exchange's predecessor, launched outbound routing functionality called CHX Routing Service.[12] Due to infrequent use of this functionality by Participants, CHX decommissioned the functionality in December 2018.[13] When the Exchange transitioned to trading to Pillar, the Exchange again began to provide outbound routing service to Participants but without charging a fee for such service. As a result, the Exchange currently does not charge a fee for orders that are routed to another market for execution. The Exchange now proposes to adopt fees for routing. Specifically, the Exchange proposes to add a new column under Section E.1 titled "Routing Fees" which would provide the fees applicable to all orders that are routed. For executions in securities with a price at or above $1.00 that route to and execute on an Away Market,[14] the Exchange proposes to charge a fee of $0.0030 per share.

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11 See id.

12 See Securities Exchange Act Release No. 73150 (September 10, 2014), 79 FR 57603 (September 25, 2014) (SR-CHX-2014-15).

13 See Securities Exchange Act Release No. 84852 (December 19, 2018), 83 FR 66808 (December 27, 2018) (SR-CHX-2018-09). See also Securities Exchange Act Release No. 85248 (March 5, 2019), 84 FR 8773 (March 11, 2019) (SR-NYSECHX-2019-01) (Amending the Fee Schedule to Eliminate Fees Related to the CHX Routing Service).

14 The term "Away Market" is defined in Rule 1.1(b) to mean any exchange, alternative

For securities priced below $1.00 that route to and execute on an Away Market, the Exchange proposes to charge a fee of 0.30% of the total dollar value of the transaction.

Additionally, the Exchange proposes non-substantive, clarifying amendments to the Fee Schedule. First, the Exchange proposes to delete the term "Matching System" throughout the Fee Schedule and replace it with the term "Exchange." When the Exchange transitioned to trading to Pillar, the term "Matching System" became obsolete. Second, the Exchange proposes to delete the words "in either of the Exchange's data centers" in Section D.1 of the Fee Schedule. With the Exchange's move to the Mahwah data center, the Exchange now only has one data center. The Exchange believes that these proposed changes would promote clarity and transparency of the Fee Schedule, without making any substantive changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[16] 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

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over

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trading system ("ATS") or other broker-dealer (1) with which the Exchange maintains an electronic linkage and (2) that provides instantaneous responses to orders routed from the Exchange.

15 15 U.S.C. 78f(b).

16 15 U.S.C. 78f(b)(4) and (5).

regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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."[17]

As the Commission itself recognized, the market for trading services in NMS stocks has become "more fragmented and competitive."[18] Indeed, equity trading is currently dispersed across 13 exchanges,[19] 31 alternative trading systems,[20] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume).[21] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, as noted earlier, the Exchange averaged less than 1% market share of executed volume of equity trades (excluding auction volume)[22] for October 2019.

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17 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

18 See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Final Rule).

19 See Cboe Global Markets, U.S Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share.

20 See FINRA ATS Transparency Data, available at https://otctransparency.finra.org/otctransparency/AtsIssueData. A list of alternative trading systems registered with the Commission is available at https://www.sec.gov/foia/docs/atslist.htm.

21 See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

22 See note 10, supra.

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 to reduce use of certain categories of products, in response to fee changes. With respect to non-marketable orders which provide liquidity on an Exchange, Participants can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

In particular, the Exchange believes that the proposed rule change is reasonable because it seeks to recoup costs incurred by the Exchange when routing orders to Away Markets. In determining its proposed routing fees, the Exchange took into account transaction fees assessed by the Away Markets to which the Exchange routes orders. Additionally, the proposed routing fees are similar to fees currently charged by the Exchange's affiliates, NYSE, NYSE Arca, NYSE National and NYSE American, and are also comparable to the fees in place at other exchanges, such as Cboe BZX Exchange, Inc. ("Cboe BZX").[23] The Exchange believes that because the proposed fees are same as, or comparable to, fees charged on other exchanges, Participants may choose to continue to send routable orders to the Exchange, thereby directing order flow to be entered on the Exchange.

As noted above, the Exchange's proposal to charge a fee of $0.0030 per share for orders in securities priced at or above $1.00 that are routed to an Away Market is consistent with fees

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[23] See Cboe BZX U.S. Equities Exchange Fee Schedule, at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.

charged by the Exchange's affiliate NYSE,[24] NYSE Arca,[25] NYSE National[26] and NYSE American,[27] and the fee charged on other exchanges.[28]

Further, the proposal to charge a fee of 0.30% of total dollar value for transactions in securities with a price under $1.00 that are routed to an Away Market is reasonable because it is consistent with fees charged by the Exchange's affiliates, NYSE, NYSE Arca, NYSE National and NYSE American and other exchanges.[29]

With respect to the proposed deletion of obsolete text, the Exchange believes that the proposed change would remove impediments to and perfect the mechanisms of a free and open market by eliminating references to terms that are no longer applicable, thereby improving the clarity of the Exchange's rules and enabling market participants to more easily navigate the Fee

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24 See New York Stock Exchange Price List, Routing Fee, at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf. NYSE charges a routing fee of $0.0035 per share, except that for member organizations that have adding ADV in Tapes A, B, and C combined that is at least 0.20% of Tapes A, B and C CADV combined, the routing fee is $0.0030 per share.

25 See NYSE Arca Equities Fees and Charges, Tiers 1, 2 and 3, at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.

26 See NYSE National Schedule of Fees and Rebates, Section II, Routing Fees, at https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.

27 See NYSE American Equities Price List, Section III, Fees for Routing for all ETP Holders, at https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf.

28 See supra, note 23. Additionally, the NASDAQ Stock Market LLC ("NASDAQ") charges a rate of $0.0030 per share to remove liquidity for shares executed at or above $1.00. See NASDAQ Fee Schedule at http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.

29 See supra, notes 23-27. Additionally, NASDAQ charges a fee of 0.30% (i.e. 30 basis points) of total dollar volume to remove liquidity for shares executed below $1.00. See NASDAQ Fee Schedule at http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.

Schedule. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of obsolete text would make the Fee Schedule more accessible and transparent and facilitate market participants' understanding of the fees charged for services currently offered by the Exchange.

The Proposed Rule Change is an Equitable Allocation of Fees

The Exchange believes that the proposed rule change constitutes an equitable allocation of reasonable fees because the proposed fee is designed to reflect the costs incurred by the Exchange for orders submitted by Participants that remove liquidity from away markets and would apply equally to all Participants that choose to use the Exchange to route liquidity removing orders to an Away Market. Furthermore, the Exchange notes that routing through the Exchange is voluntary, and, because the Exchange operates in a highly competitive environment as discussed below, Participants that do not favor the proposed pricing can readily direct order flow directly to an Away Market or through competing venues or providers of routing services.

The proposed change may impact the submission of orders to a national securities exchange, and to the extent that Participants continue to submit liquidity removing orders to the Exchange, the proposed rule change would not have a negative impact to Participants trading on the Exchange because the proposed fee would be in line with the routing fee charged by other exchanges. However, without having a view of Participant's activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in a change in trading behavior by Participants.

With respect to the proposed deletion of obsolete text, the Exchange believes that the proposed change would protect investors and the public interest because it would permit the

Exchange to streamline the Fee Schedule by removing references to obsolete terms from the Fee Schedule and make the Fee Schedule easier to read, understand and administer.

The Proposed Rule Change is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, Participants are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The proposal to adopt routing fees for orders that are routed to an Away Market for execution and to delete obsolete text from the Fee Schedule neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the proposed fees would be applied to all Participants, who would all be charged the same fee on an equal basis. Accordingly, no Participant already operating on the Exchange would be disadvantaged by this allocation of fees.

Finally, the submission of orders to the Exchange is optional for Participants in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. 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,[30] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed rule change could promote competition between the Exchange and competing venues or providers of

[30] 15 U.S.C. 78f(b)(8).

routing services. 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."[31]

Intramarket Competition

The Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the Exchange would uniformly assess the proposed routing fee on all Participants who choose to route orders through the Exchange to an Away Market. The Exchange does not believe that the proposed rule change will impair the ability of Participants to compete in the financial markets. There are 13 exchanges, 31 alternative trading systems, and numerous broker-dealer internalizers and wholesalers, all competing for order flow from which Participants may choose to send their quotes and trades. The Exchange also does not believe the proposed rule change would impact intramarket competition as the proposed rule change would apply to all Participants equally that transact on the Exchange, and therefore the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the Exchange operates in a highly competitive market in which market

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31 See Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee and rebate levels at those other venues to be more favorable. As noted earlier, the Exchange's market share of intraday trading (i.e., excluding auctions) was 0.43% in October 2019. In such an environment, the Exchange must carefully consider any increases to its fees, balancing its desire to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges, while also considering its need to cover the costs associated with providing a well-regulated market. In particular, the proposed rule change is a response to this competitive environment where the Exchange is adopting a fee for functionality that is widely available among its competitors. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe the proposed change can impose any burden on intermarket competition.

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)[32] of the Act and subparagraph (f)(2) of Rule 19b-4[33] 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

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32 15 U.S.C. 78s(b)(3)(A).

33 17 CFR 240.19b-4(f)(2).

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)[34] 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSECHX-2019-26 on the subject line.

Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090.

All submissions should refer to File Number SR-NYSECHX-2019-26. This file number should be included on the subject line if e-mail 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

34 15 U.S.C. 78s(b)(2)(B).

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, D.C. 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-NYSECHX-2019-26 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Jill M. Peterson
Assistant Secretary

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35 17 CFR 200.30-3(a)(12).