

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83687; File No. SR-NYSENAT-2018-16)

July 23, 2018

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Schedule of Fees and Rebates to Adopt Two New Adding Tiers and Regulatory Fees in Connection with Use of the Central Registration Depository

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 9, 2018, NYSE National, Inc. (“Exchange” or “NYSE National”) 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 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 its Schedule of Fees and Rebates to adopt (1) two new adding tiers, and (2) regulatory fees in connection with use of the Central Registration Depository (“CRD”) by Exchange ETP Holders that are not also members of the Financial Industry Regulatory Authority, Inc. (“FINRA”). The Exchange proposes to implement the rule change on July 9, 2018.⁴ 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.

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 June 27, 2018 (SR-NYSENAT-2018-14) and withdrew such filing on July 9, 2018. This filing replaces SR-NYSENAT-2018-14 in its entirety.

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 amend its Schedule of Fees and Rebates to adopt (1) two new adding tiers, and (2) regulatory fees in connection with use of CRD.

The Exchange proposes to implement the rule change on July 9, 2018.

Proposed Adding Tiers

The Exchange proposes two new adding tiers for displayed and non-displayed orders in securities priced at or above \$1.00, as follows. Current Adding Tier would be re-named “Adding Tier 1.”

Adding Tier 2

Under proposed Adding Tier 2, the Exchange would offer the following fees for transactions in stocks with a per share price of \$1.00 or more when adding liquidity to the Exchange if the ETP Holder quotes at least 5% of the NBBO⁵ in 1,000 or more symbols on an

⁵ The Exchange would explain the proposed 5% requirement in a new footnote **. As proposed, ETP Holders would have to maintain a bid or an offer at the NBB or the NBO for at least 5% of the trading day in round lots in a security for that security to count toward the tier requirement. The terms “NBB,” “NBO,” “NBBO,” and “BBO” are defined in NYSE National Rule 1.1. The Exchange believes that the proposed 5% threshold is appropriate for a market of NYSE National’s size and trading volume.

average daily basis, calculated monthly:

- \$0.0005 per share for adding displayed orders;
- \$0.0005 per share for orders that set a new Exchange BBO;
- \$0.0007 per share for adding non-displayed orders; and
- \$0.0005 per share for MPL orders.

For example, in a given month, if an ETP Holder quotes at least 5% of the NBBO in 800 symbols in round lots on the first day of the month and 1,400 symbols on the second day of the month, the ETP Holder would have 1,100 securities on average daily basis that meet the 5% NBBO requirement after the second day, and would qualify for the proposed Adding Tier 2 after the second day. Further, in a given symbol on a given day, if the ETP Holder maintains a bid at the NBB for 4% of the trading day and an offer at the NBO for 8% of the trading day, that would result in the ETP Holder quoting 6% of the NBBO in that symbol for that day and that symbol meeting the 5% NBBO requirement for that day.

Adding Tier 3

Under proposed Adding Tier 3, the Exchange would offer the following fees for transactions in stocks with a per share price of \$1.00 or more when adding liquidity to the Exchange if the ETP Holder quotes at least 5% of the NBBO⁶ in 600 or more symbols on an average daily basis, calculated monthly:

- \$0.0012 per share for adding displayed orders;
- \$0.0012 per share for orders that set a new Exchange BBO;
- \$0.0014 per share for adding non-displayed orders; and
- \$0.0005 per share for MPL orders.

⁶ See note 5, *supra*.

Finally, as reflected in footnote * of the Schedule of Fees and Rebates, the volume requirements for the current Adding Tier and the Taking Tier are waived until July 1, 2018. The Exchange proposes to extend the volume requirements [sic] for these tiers indefinitely. To effect this change, the Exchange would delete “until July 1, 2018” from footnote *. As noted, the current Adding Tier would be re-named “Adding Tier 1,” which will also be reflected in footnote *.

CRD Fees

The Exchange proposes to adopt regulatory fees related to CRD that would be collected by FINRA.⁷ As proposed, FINRA would collect and retain certain regulatory fees via CRD for the registration of persons associated with an Exchange ETP Holder that is not also a FINRA member. The CRD fees are use-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a member of an exchange but not a FINRA member.

Accordingly, the Exchange proposes to adopt the following fees to mirror those assessed by FINRA pursuant to Section (4) of Schedule A to the FINRA By-Laws:⁸

- (1) \$100 for each initial Form U4 filed for the registration of a representative or principal;
- (2) \$110 for the additional processing of each initial or amended Form U4, Form U5 or

Form BD that includes the initial reporting, amendment, or certification of one or more

⁷ CRD is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through CRD, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker dealers.

⁸ The proposed CRD fees are those charged by FINRA to non-FINRA members when such fees are applicable. The Exchange notes that there are certain FINRA CRD fees and requirements that are specific to FINRA members but do not apply to Exchange ETP Holders that are not also FINRA members. Exchange ETP Holders that are also FINRA members would be charged CRD fees according to Section (4) of Schedule A to the FINRA By-Laws.

disclosure events or proceedings;

(3) \$15 for processing and posting to the CRD system each set of fingerprint cards submitted electronically by the Member, plus a pass-through of any other charge imposed by the United States Department of Justice for processing each set of fingerprints;

(4) \$30 for processing and posting to the CRD system each set of fingerprint cards submitted in non-electronic format by the Member, plus a pass-through of any other charge imposed by the United States Department of Justice for processing each set of fingerprints;

(5) \$30 for processing and posting to the CRD system each set of fingerprint results and identifying information that has been processed through another self-regulatory organization and submitted to FINRA; and

(6) \$45 annually for system processing for each registered representative and principal.

* * * * *

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

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 6(b)(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.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) & (5).

New Adding Tiers

The Exchange believes that the proposed Adding Tier 2 and Adding Tier 3 fees for ETP Holder with at least 5% of the NBBO in 1,000 or more symbols on an average daily basis, calculated monthly or 600 or more symbols on an average daily basis, calculated monthly, respectively, who maintain a bid or an offer at the NBB or NBO in each assigned security in round lots averaging at least 5% of the trading day on an average daily basis, calculated monthly, in securities with a per share price of \$1.00 or more when adding liquidity are reasonable because the proposed tiers would further contribute to incentivizing ETP Holders to provide increased displayed liquidity on the Exchange, benefiting all ETP Holders. In addition, the Exchange believes that the proposed Adding Tier 2 and Adding Tier 3 fees are equitable and not unfairly discriminatory as all similarly situated market participants will be subject to the same fees on an equal and non-discriminatory basis. The Exchange further believes that providing the same fee for adding displayed orders as that for orders that set a new Exchange BBO under Adding Tier 2 and Adding Tier 3 is reasonable because the \$0.0005 and \$0.0012 fee per share in Adding Tier 2 and Adding Tier 3, respectively, are sufficient incentive for providing liquidity.

Finally, the Exchange believes it is reasonable to indefinitely waive the Adding Tier (which would be re-named Adding Tier 1) and Taking Tier volume requirements because the waiver will enable the Exchange to continue to improve its overall competitiveness and strengthen its market quality for all market participants. The proposed waiver is not unfairly discriminatory because it will apply equally to all similarly situated ETP Holders.

CRD Fees

The proposed CRD fees are reasonable because they are identical to those adopted by FINRA for use of the CRD system for disclosure and the registration of associated persons of

FINRA members.¹¹ As FINRA noted in its filing adopting its existing fees, FINRA believes the fees are reasonable based on the increased costs associated with operating and maintaining the CRD system, and listed a number of enhancements made to the CRD system since the last fee increase, including: (1) incorporation of various uniform registration form changes; (2) electronic fingerprint processing; (3) Web EFT™, which allows subscribing firms to submit batch filings to the CRD system; (4) increases in the number and types of reports available through the CRD system; and (5) significant changes to BrokerCheck, including making BrokerCheck easier to use and expanding the amount of information made available through the system.¹² These increased costs are similarly borne by FINRA when an Exchange ETP Holder that is not a FINRA member uses the CRD system, so the fees collected for such use should, as proposed by the Exchange, mirror the fees assessed on FINRA members. FINRA further noted that the proposed fees are reasonable because they help to ensure the integrity of the information in the CRD system, which is important because the Commission, FINRA, other self-regulatory organizations and state securities regulators use the CRD system to make licensing and registration decisions, among other things.¹³

The Exchange similarly believes that the proposed fees, like FINRA's fees, are consistent with an equitable allocation of fees because the fees will apply equally to all individuals and firms required to report information to the CRD system. Thus, those members that register more individuals or submit more filings through the CRD system will generally pay more in fees than those that use the CRD system to a lesser extent. In addition, the proposed fees, like FINRA's

¹¹ See Securities Exchange Act Release No. 67247 (June 25, 2012), 77 FR 38866 (June 29, 2012) (SR-FINRA-2012-30).

¹² See id., 77 FR at 38868.

¹³ Id.

fees, are equitable and not unfairly discriminatory because they will result in the same regulatory fees being charged to all ETP Holders required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such ETP Holder is a FINRA member.

Further, the Exchange believes the proposed CRD fees provide for the equitable allocation of reasonable fees and other charges among its permit holders, and does not unfairly discriminate between customers, issuers, brokers and dealers. All similarly situated ETP Holders are subject to the same fee structure, and every Member firm must use the CRD system for registration and disclosure.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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

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

In accordance with Section 6(b)(8) of the Act,¹⁴ 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 changes would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

¹⁴ 15 U.S.C. 78f(b)(8).

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. 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 believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets.

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)¹⁵ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁶ 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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(2).

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)¹⁷ 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-NYSENAT-2018-16 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSENAT-2018-16. 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 withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

¹⁷ 15 U.S.C. 78s(b)(2)(B).

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-NYSENAT-2018-16 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.¹⁸

Eduardo A. Aleman
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).