

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-84430; File No. SR-NYSENAT-2018-23)

October 16, 2018

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Schedule of Fees to Adopt the Same Billing Dispute Practice as the Exchange's Affiliates and Other Exchanges

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on October 3, 2018, NYSE National, Inc. (the "Exchange" or "NYSE National") 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 amend its Schedule of Fees and Rebates to adopt the same billing dispute practice as the Exchange's affiliates and other exchanges. 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 Exchange proposes to amend its Schedule of Fees and Rebates to adopt the same billing dispute practice as the Exchange’s affiliates and other exchanges. As discussed below, the proposed provision would be identical to provision [sic] in the fee schedules of the Exchange’s affiliates the New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc. (“NYSE Arca”), and NYSE American LLC (“NYSE American”) as well as other equities and options exchanges.

Background

The Exchange proposes to amend its Schedule of Fees and Rebates to adopt a billing procedure to prevent ETP Holders from contesting their bills long after they have been sent an invoice. The procedure proposed by the Exchange is the same as that in place at the Exchange’s equities and options affiliates<sup>4</sup> and substantially the same as that in place at other equities and

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<sup>4</sup> See New York Stock Exchange Price List 2018, available at [https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE\\_Price\\_List.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf) (“All fee disputes concerning fees billed by the Exchange must be submitted to the Exchange in writing and must be accompanied by supporting documentation. All fee disputes must be submitted no later than sixty (60) days after receipt of a billing invoice”); NYSE Arca Equities Fees and Charges, available at [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE\\_Arca\\_Marketplace\\_Fees.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf) (same); NYSE Arca Options Fees and Charges, available at [https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE\\_Arca\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf) (same); NYSE American Equities Price List, available at [https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE\\_America\\_Equities\\_Price\\_List.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf) (same); and NYSE American Options Fee Schedule, available at <https://www.nyse.com/publicdocs/nyse/markets/american->

options exchanges.<sup>5</sup>

As proposed, all fee disputes concerning fees billed by the Exchange would have to be submitted to the Exchange in writing and accompanied by supporting documentation. Further, all fee disputes would have to be [sic] submitted no later than sixty (60) days after receipt of a billing invoice. After sixty days, all fees assessed by the Exchange would be considered final. The Exchange believes that this requirement, which is the same as that in place at the Exchange's equities and options market affiliates,<sup>6</sup> will streamline the billing dispute process.

The Exchange believes it is reasonable for ETP Holders to become aware of any potential billing errors within sixty calendar days of receiving an invoice. Requiring that ETP Holders dispute an invoice within this time period will encourage ETP Holders to review their invoices promptly so that any disputed charges can be addressed in a timely manner while the information

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[options/NYSE American Options Fee Schedule.pdf](#) (same).

<sup>5</sup> See NASDAQ Equity Rule 7007(b) (All pricing disputes concerning fees or rebates, which are listed in paragraph (a), which are billed by the Exchange must be submitted to the Exchange in writing and must be accompanied by supporting documentation and all pricing disputes must be submitted no later than sixty (60) days after receipt of a billing invoice); NASDAQ Options Rules, Chapter XV, Sect. 7 (same); NASDAQ BX Options Rules, Chapter XV (Options Pricing), Sec. 7(b)[sic] (BX Options Fee Disputes) (same); NASDAQ PHLX LLC Pricing Schedule, available at <http://nasdaqtrader.com/Micro.aspx?id=PHLXPricing> (same); NASDAQ ISE Schedule of Fees Preface, available at [http://ise.cchwallstreet.com/tools/PlatformViewer.asp?selectednode=chp\\_1\\_1\\_1&manual=%2Fcontents%2Fise%2Fise-fee%2F](http://ise.cchwallstreet.com/tools/PlatformViewer.asp?selectednode=chp_1_1_1&manual=%2Fcontents%2Fise%2Fise-fee%2F) (same); NASDAQ GEMX Schedule of Fees, available at [http://nasdaqgemx.cchwallstreet.com/tools/PlatformViewer.asp?selectednode=chp\\_1\\_1\\_1&manual=%2Fcontents%2Fgemx%2Fise-fee-gemx%2F](http://nasdaqgemx.cchwallstreet.com/tools/PlatformViewer.asp?selectednode=chp_1_1_1&manual=%2Fcontents%2Fgemx%2Fise-fee-gemx%2F) (same); NASDAQ MRX Schedule of Fees, available at [http://nasdaqmrx.cchwallstreet.com/tools/PlatformViewer.asp?selectednode=chp\\_1\\_1\\_1&manual=%2Fcontents%2Fmrx%2Fise-fee-mrx%2F](http://nasdaqmrx.cchwallstreet.com/tools/PlatformViewer.asp?selectednode=chp_1_1_1&manual=%2Fcontents%2Fmrx%2Fise-fee-mrx%2F) (same); MIAX Options Fee Schedule, available at [https://www.miaxoptions.com/sites/default/files/fee\\_schedule-files/MIAX\\_Options\\_Fee\\_Schedule\\_08072018.pdf](https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_08072018.pdf) (same); and MIAX Pearl Fee Schedule, available at [https://www.miaxoptions.com/sites/default/files/fee\\_schedule-files/MIAX\\_Options\\_Fee\\_Schedule\\_08072018.pdf](https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_08072018.pdf) (same).

<sup>6</sup> See note 4, *supra*.

and data underlying those charges (e.g., applicable fees and order information) is still easily and readily available. This practice will avoid issues that may arise when ETP Holders do not dispute an invoice in a timely manner, and will conserve Exchange resources that would have to be expended to resolve untimely billing disputes.<sup>7</sup>

In order for ETP Holders to be fully aware of this rule regarding fee disputes, the Exchange proposes to include the language proposed for the Schedule of Fees and Rebates in each customer invoice.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>9</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, and because it is designed to promote just and equitable principles of trade, to 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.

The Exchange believes the requirement to submit all billing disputes in writing, and with supporting documentation, within sixty days from receipt of the invoice, is reasonable because the Exchange provides ample tools to properly and swiftly monitor and account for various charges incurred in a given month. Also, the proposal is equitable and not unfairly

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<sup>7</sup> The same rationale has been advanced by the other markets that have adopted the proposed billing procedure. See, e.g., Securities Exchange Act Release No. 71286 [sic] (January 14, 2014), 79 FR 3442, 3442 (January 21, 2014) (SR-ISE-2014-02).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4) & (5).

discriminatory because it applies equally to all ETP Holders. The proposed provision regarding fee disputes in the Schedule of Fees and Rebates promotes the protection of investors and the public interest by providing a clear and concise mechanism in Exchange Rules for ETP Holders to dispute fees and for the Exchange to review such disputes in a timely manner. In addition, the proposed 60-day limitation is fair and equitable because it will be implemented prospectively on all ETP Holders, only applying to invoices issued after the proposed rule change becomes operative. Moreover, the proposed billing dispute language, which will lower the Exchange's administrative burden, is the same as the billing dispute language adopted by the NYSE Affiliates as well as other exchanges.<sup>10</sup>

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,<sup>11</sup> 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. The proposed rule change, which would apply equally to all ETP Holders, would establish a clear process for billing disputes, and is the same as rules adopted by the Exchange's affiliates as well as other exchanges. Because the market for order execution and routing is extremely competitive, ETP Holders may readily opt to disfavor the Exchange if they believe that alternatives offer them better value. The Exchange does not believe the proposed changes will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets. Moreover,

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<sup>10</sup> See notes 4-5, *supra*.

<sup>11</sup> 15 U.S.C. 78f(b)(8).

because the Exchange does not propose to alter or modify specific fees or credits applicable to ETP Holders, the proposal does not impose any burden on 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>14</sup>

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>15</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSENAT-2018-23 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-NYSENAT-2018-23. 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 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-2018-23 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.<sup>16</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).