

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101879; File No. SR-NYSECHX-2024-35)

December 11, 2024

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule of NYSE Chicago, Inc.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 2, 2024, the NYSE Chicago, Inc. (“NYSE Chicago” or “Exchange”) filed with the Securities and Exchange Commission (“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 the Fee Schedule of NYSE Chicago, Inc. (the “Fee Schedule”) by modifying certain fees and credits applicable to Participants for executions resulting from single-sided orders. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Fee Schedule by modifying certain fees and credits applicable to Participants⁴ for executions resulting from single-sided orders, as described below. The Exchange proposes to implement the fee changes effective December 2, 2024.

Background

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.”⁵

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has

⁴ The term “Participant” is defined in Article 1, Rule 1(s) to mean, among other things, any Participant Firm that holds a valid Trading Permit and that a Participant shall be considered a “member” of the Exchange for purposes of the Act. If a Participant is not a natural person, the Participant may also be referred to as a Participant Firm.

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7-10-04) (Final Rule) (“Regulation NMS”).

recognized that “such competition can lead to the fragmentation of order flow in that stock.”⁶ Indeed, equity trading is currently dispersed across 16 exchanges,⁷ numerous alternative trading systems,⁸ and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 20% market share.⁹ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange’s share of executed volume of equity trades in Tapes A, B and C securities is less than 1%.¹⁰

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 the firm routes order flow. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

Pursuant to Section E.1 of the Fee Schedule, the Exchange currently charges a fee for

⁶ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

⁷ See Cboe U.S Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share.

⁸ 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/atlist.htm>.

⁹ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

¹⁰ See *id.*

removing liquidity and for providing liquidity in single-sided orders in Tape A, B and C securities. For each of Tape A, B and C securities with a share price equal to or greater than \$1.00, the Exchange charges a fee of \$0.0010 per share for orders that both remove liquidity and provide liquidity.

The Exchange proposes the following changes for single-sided orders in Tape A, B and C securities that remove liquidity and provide liquidity. For each single-sided order in Tape A, B and C securities that removes liquidity, the Exchange proposes to modify the fee from \$0.0010 per share to \$0.0030 per share. For each single-sided order in Tape A, B and C securities that provides liquidity, the Exchange proposes to replace the current fee of \$0.0010 per share with a credit of \$0.0029 per share for orders that provide displayed liquidity, and a credit of \$0.0014 per share for orders that provide non-displayed liquidity, including Mid-Point Liquidity (“MPL”) Orders.¹¹

The proposed rule change is intended to encourage Participants to direct orders that add liquidity, thereby contributing to robust levels of trading, which would benefit all market participants. The Exchange believes that the proposed changes, taken together, will encourage submission of additional liquidity in Tape A, B and C securities to qualify for higher credits, thereby promoting price discovery and transparency and enhancing order execution opportunities for Participants. The Exchange notes that despite the fee increase proposed for orders that remove liquidity, the Exchange’s fees remain competitive with the fees to remove liquidity in securities with a share price equal to or greater than \$1.00 charged by other equities exchanges.¹²

¹¹ A MPL Order is a limit order that is not displayed and does not route, with a working price at the lower (higher) of the midpoint of the Protected Best Bid/Offer or its limit price. See NYSE Chicago Rule 7.31(d)(3).

¹² See infra, note 17.

In connection with the proposed rule change, the Exchange also proposes to amend the heading of Section E. of the Fee Schedule by adding the words “and Credits.” With this proposed change, Section E. would be titled “Transaction and Order Processing Fees and Credits.” The Exchange similarly proposes to add the words “and credits” to the text that immediately follows the pricing table under Section E.1. Additionally, the Exchange proposes to amend the text of paragraph (a) under Section E.1 by adding the word “fee” after “liquidity removing” and replacing the word “fee” with “credits” after “liquidity providing” and replace the word “charged” with “assessed” to account for the proposed change to adopt credits payable to Participants under this proposed rule change. Finally, the Exchange proposes to amend the heading titled “Liquidity Providing Fee” under Section E.1 of the Fee Schedule to “Liquidity Providing Rate” as that column will now contain fees and credits assessed to Participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁴ 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 Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of sixteen registered equities exchanges, and there are a number of alternative trading

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

systems and other off-exchange venues, to which market participants may direct their order flow. As noted above, based on publicly available information, no single registered equities exchange has more than approximately 20% of the total market share of executed volume of equities trading.¹⁵ Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange represents less than 1% of the overall market share.¹⁶ The Commission and the courts have repeatedly expressed their 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.”¹⁷

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 new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize Participants to direct orders that add and remove liquidity to the Exchange, which the Exchange

¹⁵ See Cboe U.S Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share.

¹⁶ Id.

¹⁷ See Regulation NMS, supra note 5, 70 FR at 37499.

believes would deepen liquidity and promote market quality on the Exchange to the benefit of all market participants.

Fees for Orders that Remove Liquidity

The Exchange believes that the proposed increase to the fees for transactions that remove liquidity in Tape A, B and C securities with a share price equal to or greater than \$1.00 is reasonable, equitably allocated and not unfairly discriminatory. Combined with the adoption of credits proposed herein, the purpose of this proposed rule change is to encourage additional liquidity on the Exchange. The proposed pricing structure is designed to continue to encourage Participants to maintain or increase their order flow directed to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. The Exchange notes that the proposed fee for executions of single-sided orders that remove liquidity is comparable to, and competitive with, the fees charged for executions of liquidity-removing orders charged by other equities exchanges.¹⁸ The Exchange further believes the proposed increased fee is fair, equitable and not unfairly discriminatory because the pricing tier will continue to be available to all Participants whose orders remove liquidity. In addition, the Exchange believes that the proposed increased fee is equitable and not unfairly discriminatory as all similarly situated market participants will be subject to the same fee on an equal and non-discriminatory basis.

Credits for Orders that Provide Displayed and Non-Displayed Liquidity

¹⁸ Cboe EDGA Exchange, Inc. (“EDGA”), for example, charges a fee of \$0.0030 per share for orders that remove liquidity in securities priced at or above \$1.00. See EDGA fee schedule, available at https://www.cboe.com/us/equities/membership/fee_schedule/edga/. Long-Term Stock Exchange (“LTSE”) similarly charges a fee of \$0.0030 per share for orders that remove liquidity in securities priced at or above \$1.00. See LTSE fee schedule, available at <https://ltse.com/trading/fee-schedules>.

The Exchange believes that the proposed changes to replace the current fee with proposed credits for orders that provide displayed and non-displayed liquidity in Tape A, B and C securities with a share price equal to or greater than \$1.00, including MPL Orders, are reasonable, equitable and not unfairly discriminatory. The proposed credits for adding liquidity are reasonable because they would serve to incentivize submission of liquidity to a public exchange, thereby benefiting all Participants. The Exchange believes the proposed credits are also reasonable as they would apply to all Participants. The Exchange believes that providing a credit of \$0.0029 per share for executions of single-sided orders that provide displayed liquidity, and a credit of \$0.0014 per share for executions of single-sided orders that provide non-displayed liquidity and for MPL Orders is also reasonable because the proposed credits are comparable to credits provided by other equities exchanges.¹⁹

The Exchange believes that the proposed changes will encourage the submission of a greater number of orders to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for Participants on the Exchange. 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. The Exchange believes that the recalibrated fees and credits for orders that add and remove liquidity may provide an incentive for Participants to increase the number of orders they submit to the Exchange, thereby promote price discovery and increased execution opportunities for all Participants.

¹⁹ LTSE, for example, provides a credit of \$0.0028 per share for orders that provide displayed liquidity, and a credit of \$0.0014 per share for orders that provide non-displayed liquidity. See LTSE fee schedule, available at <https://ltse.com/trading/fee-schedules>. NYSE Arca, Inc. ("NYSE Arca"), for example, provides a credit of \$0.0010 per share for MPL Orders. See NYSE Arca fee schedule, available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.

The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality and price discovery. Additionally, with respect to MPL Orders, the Exchange believes that the proposed credit is reasonable, equitable and not unfairly discriminatory because it may provide increased opportunities for market participants to interact with orders priced at the midpoint of the PBBO, thus providing price improving liquidity to market participants and thereby increase the quality of order execution on the Exchange, which would benefit all market participants. Moreover, all market participants would be eligible for the proposed credit.

The Exchange also believes that the proposed changes to the text under Section E.1. of the Fee Schedule would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency, thereby reducing potential confusion.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant.

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,²⁰ the Exchange believes that the proposed

²⁰ 15 U.S.C. 78f(b)(8).

rule change would not 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 orders to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for 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."²¹

Intramarket Competition. The Exchange believes the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to attract additional orders to the Exchange. The Exchange believes that despite the increased fee, Participants would continue to direct their orders to be executed on the Exchange instead of at a competing exchange, given the introduction of credits for adding liquidity. Greater overall order flow, trading opportunities, and pricing transparency benefit all market participants on the Exchange by enhancing market quality and continuing to encourage Participants to send orders, thereby contributing towards a robust and well-balanced market ecosystem. Additionally, the Exchange believes the proposed credits applicable to orders that provide non-displayed liquidity and to MPL Orders would enhance order execution opportunities for all Participants. The Exchange notes that the current and proposed fees would be available to all similarly situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants

²¹ See Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

on the Exchange. As noted, the proposal would apply to all similarly situated Participants on the same and equal terms, who would benefit from the changes on the same basis.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (i.e., excluding auctions) is currently less than 1%. In such an environment, the Exchange must continually review, and consider adjusting its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed changes 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.

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 has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act²² and Rule 19b-4(f)(2) thereunder.²³ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears

²² 15 U.S.C. 78s(b)(3)(A)(ii).

²³ 17 CFR 240.19b-4(f)(2).

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.

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. Please include file number SR-NYSECHX-2024-35 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-NYSECHX-2024-35. 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-NYSECHX-2024-35 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.²⁴

Sherry R. Haywood,

Assistant Secretary.

²⁴ 17 CFR 200.30-3(a)(12).