

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92234; File No. SR-NYSE-2021-36)

June 22, 2021

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Price List Regarding Ports

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 June 10, 2021, New York Stock Exchange LLC (“NYSE” 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 its Price List to extend the end of the Decommission Period from June 2021 to August 2021. The Exchange proposes to implement these changes to its Price List effective June 10, 2021.⁴ 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 Price List on May 28, 2021 (SR-NYSE-2021-34). SR-NYSE-2021-34 was subsequently withdrawn and replaced by this filing.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to provide additional time for member organizations to finalize their transition from older to newer and more efficient Pillar technology. The Exchange is not proposing to adjust the amount of the port fees or the fees charged to offset the Exchange's continuing costs of supporting legacy ports, which will remain at the current level for all market participants.

Effective July 3, 2019, the Exchange introduced transition pricing designed to provide member organizations an extended transition period to connect to the Exchange using Pillar technology with no fee increase. Specifically, the Exchange (1) adopted a cap on monthly fees for the use of certain ports connecting to the Exchange for the billing months July 2019 through March 2020 (the "Transition Period"); (2) adopted a Decommission Extension Fee applicable for the billing months April 2020 through September 2020 (the "Decommission Period") for legacy

port connections; and (3) prorated the monthly fee for certain ports activated after July 1, 2019, effective April 1, 2020.⁵

Effective March 2, 2020, the Exchange (1) extended the end of the Transition Period from March 2020 to August 2020 for member organizations to transition to the utilization of ports that connect to the Exchange using Pillar technology; (2) shortened the Decommission Period from six months (April 2020-September 2020) to four months (September-December 2020); (3) extended the effective date that the Exchange would prorate the monthly fee for certain ports activated on or after July 1, 2019 from April 1, 2020 to September 1, 2020; and (4) revised the fees charged for legacy port connections during the Decommission Period.⁶

Effective August 1, 2020, the Exchange (1) extended the end of the Transition Period from August 2020 to October 2020; (2) extended the beginning of the Decommission Period from September 2020 to November 2020 and the end of the Decommission Period from December 2020 to February 2021; and (3) extended the effective date that the Exchange would prorate the monthly fee for ports activated on or after July 1, 2019 from September 1, 2020 to November 1, 2020.⁷

Effective October 1, 2020, the Exchange (1) extended the end of the Transition Period from October 2020 to December 2020; (2) extended the beginning of the Decommission Period from November 2020 to January 2021 and the end of the Decommission Period from February 2021 to April 2021; and (3) extended the effective date that the Exchange would prorate the

⁵ See Securities Exchange Act Release No. 86360 (July 11, 2019), 84 FR 34210 (July 17, 2019) (SR-NYSE-2019-39).

⁶ See Securities Exchange Act Release No. 88373 (March 12, 2020), 85 FR 15533 (March 18, 2020) (SR-NYSE-2020-14).

⁷ See Securities Exchange Act Release No. 89591 (August 18, 2020), 85 FR 52159 (August 24, 2020) (SR-NYSE-2020-14).

monthly fee for ports activated on or after July 1, 2019 from November 1, 2020 to January 1, 2021.⁸

Effective December 1, 2020, the Exchange (1) extended the end of the Transition Period from December 2020 to February 2021; (2) extended the beginning of the Decommission Period from January 2021 to March 2021 and the end of the Decommission Period from April 2021 to June 2021; and (3) extended the effective date that the Exchange would prorate the monthly fee for ports activated on or after July 1, 2019 from January 1, 2021 to March 1, 2021.⁹

The Exchange proposes to extend the end of the Decommission Period two months from June 2021 to August 2021 in order to allow member organizations that did not complete the transition during the Transition Period the ability to choose to continue using Phase I ports until August 2021.

The Exchange proposes to implement these changes to its Price List effective June 1, 2021.

Competitive Environment

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

⁸ See Securities Exchange Act Release No. 90180 (October 14, 2020), 85 FR 66612 (October 20, 2020) (SR-NYSE-2020-82).

⁹ See Securities Exchange Act Release No. 90661 (December 14, 2020), 85 FR 82532 (December 18, 2020) (SR-NYSE-2020-99).

promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁰

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 recognized that “such competition can lead to the fragmentation of order flow in that stock.”¹¹ Indeed, equity trading is currently dispersed across 16 exchanges,¹² 31 alternative trading systems,¹³ and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange has more than 16% market share.¹⁴ 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, including ports, in response to fee changes. Accordingly, the Exchange’s fees, including port fees, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

¹⁰ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS”).

¹¹ 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).

¹² See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

¹³ 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>.

¹⁴ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

The Exchange is proposing these changes in the context of a competitive environment in which market participants can and do shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Because ports are used by member organizations to trade electronically on the Exchange, fees associated with ports are subject to these same competitive forces. The Exchange believes that the proposal represents a reasonable attempt to provide member organizations with additional time to finalize an orderly transition to upgraded technology.

Proposed Rule Change

Member organizations enter orders and order instructions, and receive information from the Exchange, by establishing a connection to a gateway that uses communication protocols that map to the order types and modifiers described in Exchange rules. These gateway connections, also known as logical port connections, are referred to as “ports” on the Exchange’s Price List. Legacy ports connect with the Exchange via a Common Customer Gateway (known as “CCG”) that accesses its equity trading systems (“Phase I ports”). Beginning July 1, 2019, the Exchange began making available ports using Pillar gateways to its member organizations (“Phase II ports”).

Currently, member organizations that have not transitioned to Phase II ports and are still utilizing Phase I ports during the billing months of March 2021 through June 2021 (*i.e.*, the Decommission Period), would, in addition to the current port fees, be charged a Decommission Extension Fee of \$1,000 per port per month, increasing by \$1,000 per port for each month for any ports that communicate using Pillar phase I protocols. As per the Price List, ports using Pillar phase I protocols would no longer be available beginning July 1, 2021.

The Exchange proposes that the Decommission Period would end two months later, in August 2021. As proposed, the Price List would also be amended to provide that ports using Pillar phase I protocols would no longer be available beginning September 1, 2021.

As noted above, the Exchange believes that, to the extent that member organizations do not complete the transition during the Transition Period, the proposed rule change will offer member organizations the ability to choose to continue using Phase I ports until August 2021.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations 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,¹⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(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 Change is Reasonable

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

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4) & (5).

promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁷

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 recognized that “such competition can lead to the fragmentation of order flow in that stock.”¹⁸ Indeed, equity trading is currently dispersed across 16 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 16% market share.²¹ 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, including ports, in response to fee changes. Accordingly, the Exchange’s fees, including port fees, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

¹⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS”).

¹⁸ 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).

¹⁹ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

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/.

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, including ports, in response to fee changes. Accordingly, the Exchange's fees, including port fees, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

If a particular exchange charges excessive fees for connectivity, impacted members and non-members may opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, if the Exchange charges excessive fees, it would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.

Given this competitive environment, the proposal represents a fair and reasonable attempt to provide member organizations with additional time to finalize an orderly transition to upgraded technology. As of April 2021, 16.2% of legacy ports have not been cancelled. The pricing is designed so that these few remaining member organizations utilizing legacy ports would pay for the Exchange to continue to support their Phase I ports through August 2021.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants. The Exchange is not proposing to adjust the amount of the port fees or the fees charged fees to offset the Exchange's continuing costs of supporting legacy ports, which will

remain at the current level for all market participants. Rather, the proposal would provide additional time for member organizations to transition from older to newer and more efficient Pillar technology and would charge the same fee for those few member organizations that choose not to transition to Phase II ports during the extended Transition Period.

The proposal constitutes an equitable allocation of fees because all similarly situated member organizations and other market participants that, following the transition period, choose to connect to the Exchange through the use of Phase I ports during the Decommission Period would continue to be charged the same, unchanged Decommission Extension Fee.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value, and are free to discontinue to connect to the Exchange through its ports. As noted, the Exchange is offering upgraded connections in an effort to keep pace with changes in the industry and evolving customer needs as new technologies emerge and products continue to develop and change.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal does not permit unfair discrimination because the proposal would be applied to all similarly situated member organizations and other market participants would be charged the same rates, which will remain unchanged.

The Exchange believes that the proposal does not permit unfair discrimination because the Decommission Extension Fee would apply equally to all member organizations that require additional time to complete their transition to the Phase II ports. At any point during the

Decommission Period, a member organization could cease to be subject to the Decommission Fee by expediting its transition to the new ports. The Decommission Fee would thus apply equally to all member organizations during the proposed extended Decommission Period that choose to continue to connect to the Exchange through the use of legacy ports. As noted, to the extent a member organization continues to use ports activated before July 1, 2019 to connect to the Exchange during the proposed extended Decommission Period, the Exchange believes it is fair, equitable and not unfairly discriminatory to continue to charge flat fees for such ports until such time that connection to the Exchange through the use of old ports is no longer available beginning, as proposed, on September 1, 2021.

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,²² 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, as discussed above, the Exchange believes that the proposed changes would provide additional time for member organizations to finalize the transition from older to newer and more efficient Pillar technology with no fee increase and offset the Exchange's continuing costs of supporting the Phase I ports for the few firms that do not transition to the new ports during the longer transition period without any change to the fees

²² 15 U.S.C. 78f(b)(8).

currently charged by the Exchange for the use of ports to connect to the Exchange's trading systems.

Intramarket Competition. The Exchange does not believe the proposed rule change would impose any burden on intramarket competition that is not necessary or appropriate because it would apply to all member organizations equally that connect to the Exchange. All member organizations, regardless of size, that did not complete the transition to Phase II ports by the end of February 2021 date are subject to the Decommission Fee on an equal basis and would continue to be subject to the fee on an equal basis for the proposed additional two months if they do not complete the transition to Phase II ports. As noted, as of April 2021, 16.2% of legacy ports have not been cancelled. The pricing is designed so that these few remaining member organizations utilizing legacy ports would pay for the Exchange to continue to support their Phase I ports through August 2021.

Intermarket Competition. The Exchange does not believe the proposed rule change would impose any burden on intermarket competition that is not necessary or appropriate because 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. The Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets.

As noted, the no single exchange has more than 16% of the market share of executed volume of equity trades (whether excluding or including auction volume).²³ The Exchange

²³ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

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, including ports, in response to fee changes. Accordingly, the Exchange's fees, including port fees, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange is proposing these changes in the context of a competitive environment in which market participants can and do shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Because ports are used by member organizations to trade electronically on the Exchange, fees associated with ports are subject to these same competitive forces. The Exchange therefore believes that the proposal would not impose an undue burden on intermarket competition because the purpose of this filing is not to change the rates charged for ports or to offset the Exchange's continuing costs of supporting legacy ports but rather to provide member organizations with more time to effect an orderly transition to upgraded technology without needing to incur any additional costs.

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)²⁴ of the Act and subparagraph (f)(2) of Rule 19b-4²⁵ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

²⁴ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b-4(f)(2).

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)²⁶ 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-NYSE-2021-36 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-NYSE-2021-36. 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

²⁶ 15 U.S.C. 78s(b)(2)(B).

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-NYSE-2021-36, 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.²⁷

J. Matthew DeLesDernier
Assistant Secretary

²⁷ 17 CFR 200.30-3(a)(12), (59).