

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88230; File No. SR-NYSEARCA-2020-13)

February 18, 2020

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Equities Fees and Charges and the NYSE Arca Options Fees and Charges Related to Co-location Services

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 February 4, 2020, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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 the NYSE Arca Equities Fees and Charges (the “Equities Fee Schedule”) and the NYSE Arca Options Fees and Charges (the “Options Fee Schedule” and, together with the Equities Fee Schedule, the “Fee Schedules”) related to co-location services to (a) update the text of General Note 1 to correct a typographical error, make a non-substantive change, and to include reference to NYSE Chicago, Inc. (“NYSE Chicago”) and (b) make non-substantive changes to the text of General Note 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.

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

Overview

The Exchange proposes to amend its Fee Schedules related to co-location⁴ services to (a) update the text of General Note 1 to include reference to NYSE Chicago, and (b) make non-substantive changes to the text of General Note 4. General Note 1 and General Note 4 appear in both the Equities Fee Schedule and the Options Fee Schedule, and the Exchange proposes to amend them in both locations, as follows.

Proposed Change to General Note 1

General Note 1 currently provides that a User⁵ that incurs co-location fees for a particular co-location service would not be subject to co-location fees for the same co-location service

⁴ The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (“Commission”) in 2010. See Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR-NYSEArca-2010-100). The Exchange operates a data center in Mahwah, New Jersey (the “data center”) from which it provides co-location services to Users.

⁵ For purposes of the Exchange’s co-location services, a “User” shall mean any market participant that requests to receive co-location services directly from the Exchange. See Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR-NYSEArca-2015-82).

charged by the New York Stock Exchange LLC (“NYSE”), NYSE American LLC (“NYSE American”), and NYSE National, Inc. (“NYSE National” and together, the “Affiliate SROs”).⁶ General Note 1 currently does not include NYSE Chicago among the Affiliate SROs.

The Exchange proposes to make three changes to the version of General Note 1 that currently appears in the Equities Fee Schedule. First, the current version of General Note 1 in the Equities Fee Schedule contains a typographical error, in that it refers to the Equities Fee Schedule instead of the Options Fee Schedule. The Exchange proposes to correct that error by substituting the word “Options” for “Equities.” This is not a substantive change, and will have no effect on the Exchange’s actual billing practices for co-location services; it simply clarifies that the Exchange will not charge a User co-location fees for any co-location service already being charged to the User under the NYSE Arca Options Fee Schedule.

Second, the current General Note 1 lists the Exchange’s affiliate, NYSE, in the middle of the list of exchanges, instead of at the start of the list, as is the Exchange’s general practice. The Exchange proposes to reorder the list of affiliate exchanges to put NYSE at the start of the list.

Third, in late 2019, NYSE Chicago filed rule changes with the Commission establishing its co-location services.⁷ The Exchange now proposes to add NYSE Chicago to General Note 1 of the Equities Fee Schedule. All three changes are indicated below (deletions bracketed, additions underlined):

A User that incurs co-location fees for a particular co-location service pursuant to this Fee Schedule shall not be subject to co-location fees for the same co-location

⁶ See Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR-NYSEArca-2013-80).

⁷ See Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR-NYSECHX-2019-12).

service charged pursuant to the NYSE Arca [Equities] Options Fee Schedule or by the Exchange's affiliates New York Stock Exchange LLC (NYSE), NYSE American LLC (NYSE American), [New York Stock Exchange LLC (NYSE) and] NYSE Chicago, Inc. (NYSE Chicago), and NYSE National, Inc. (NYSE National).

The Exchange also proposes to reorder the list of exchanges and to add NYSE Chicago to General Note 1 in the Options Fee Schedule, as follows (deletions bracketed, additions underlined):

A User that incurs co-location fees for a particular co-location service pursuant to this Fee Schedule shall not be subject to co-location fees for the same co-location service charged pursuant to the NYSE Arca Equities Fee Schedule or by the Exchange's affiliates New York Stock Exchange LLC (NYSE), NYSE American, Inc. (NYSE American), [New York Stock Exchange LLC (NYSE)] NYSE Chicago, Inc. (NYSE Chicago), and NYSE National, Inc. (NYSE National).

By including the proposed reference to NYSE Chicago, General Note 1 would provide that the fees a User pays for co-location services would not depend on whether the User connects to none, one, some, or all of the Exchange, the Affiliate SROs, and NYSE Chicago.

The proposed change to add NYSE Chicago to General Note 1 would be consistent with General Note 1 under "Co-location" in the Fee Schedule of NYSE Chicago (the "NYSE Chicago Fee Schedule"), which similarly provides that a User that incurs fees for co-location services under that fee schedule is not subject to fees for the same co-location services charged by the Exchange, NYSE, NYSE American, or NYSE National.

Proposed Changes to General Note 4

General Note 4 currently provides that, when a User purchases access to the Liquidity Center Network (“LCN”) or the internet protocol (“IP”) network, the two local area networks available in the data center,⁸ a User would receive (a) the ability to access the trading and execution systems of the Exchange and Affiliate SROs (“Exchange Systems”) as well as of Global OTC (the “Global OTC System”) and (b) connectivity to any of the listed data products (“Included Data Products”) that it selects.

The Exchange now proposes to make three non-substantive changes to the text of the first sentence of General Note 4. First, the Exchange proposes to delete the full name of “NYSE Chicago, Inc.” from General Note 4, since that term would be defined earlier in proposed General Note 1 as “NYSE Chicago.” Second, the Exchange proposes to delete the quotation marks around the term “Global OTC System,” because the other General Notes generally do not include quotation marks around defined terms. Third, the Exchange proposes to add a serial comma after the term “NYSE National” near the end of the first sentence of General Note 4, as follows (additions underlined, deletions in brackets):

When a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the NYSE, NYSE American, NYSE Arca, NYSE Chicago[, Inc. (NYSE Chicago)], and NYSE National (together, the Exchange Systems) as well as of Global OTC (the [“]Global OTC System[”]), subject, in each case, to authorization by the NYSE, NYSE American, NYSE Arca, NYSE Chicago, NYSE National₂ or Global OTC, as applicable.

⁸ See Securities Exchange Act Release No. 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR-NYSEArca-2016-172).

These changes are typographical in nature and are not intended to change the substance or meaning of the text of the Fee Schedules.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.⁹

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(5) of the Act,¹¹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change to add NYSE Chicago to General Note 1 would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendments would update General Note 1 to reflect NYSE Chicago's provision of co-location

⁹ Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2020-09, SR-NYSEAmer-2020-08, and SR-NYSENat-2020-06.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

services. By including the proposed reference to NYSE Chicago, General Note 1 would clarify that NYSE Chicago is included among the affiliates of the Exchange referenced in the statement that a User paying for co-location services will not be subject to co-location fees for the same co-location services charged by any of the Exchange's affiliates. The proposed change would make the Fee Schedules consistent with General Note 1 under "Co-location" in the Fee Schedule of NYSE Chicago, alleviating any possible market participant confusion.

The Exchange believes that the other changes to General Note 1 and the non-substantive changes to General Note 4 would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendments would clarify Exchange rules, making the Fee Schedules easier to read and understand and alleviating any possible market participant confusion caused by the current text of the note.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹² 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. This is true because the proposed amendments to General Note 1 would simply clarify that a User that incurs co-location fees for a particular co-location service pursuant to the Fee Schedules will not be subject to co-location fees for the same co-location services charged by any of the Exchange's affiliates, including NYSE Chicago. The Exchange also believes that the proposed amendments to General Note 1 provide 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

¹² 15 U.S.C. 78f(b)(4).

discriminate between customers, issuers, brokers, or dealers because they clarify that the Exchange, NYSE Chicago, and the other Affiliate SROs do not receive the proceeds from multiple fees despite providing a service only once.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the use of co-location services being completely voluntary, they are available to all Users on an equal basis (i.e., the same range of products and services are available to all Users).

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 because the proposed rule change would not change the services and fees to which market participants already have access. Rather, it seeks simply to clarify that a User that incurs co-location fees for a particular co-location service pursuant to the Fee Schedules will not be subject to co-location fees for the same co-location services charged by any of the Exchange's affiliates, including NYSE Chicago.

In addition, the Exchange believes that the proposed non-substantive changes to General Note 4 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it would have no impact on pricing or existing services. Rather, the changes would clarify Exchange rules, making the Fee Schedules easier to understand and alleviating any possible market participant confusion caused by the current text of the note.

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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴ 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.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiver of the operative delay is consistent with the protection

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

of investors and the public interest because NYSE Chicago offers co-location services, and the waiver of the operative delay would alleviate the possibility of confusion among members, the public, and the Commission that could be caused by inconsistencies between the Exchange's Fee Schedules and the NYSE Chicago Fee Schedule. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹⁸

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)¹⁹ 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:

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

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-NYSEARCA-2020-13 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-NYSEARCA-2020-13. 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-NYSEARCA-2020-13 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.²⁰

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Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).