

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91371; File No. SR-NYSEArca-2021-19)

March 19, 2021

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Equities Proprietary Market Data Fee Schedule and the NYSE Arca Options Proprietary Market Data Fee Schedule

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 March 10, 2021, 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, 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 the NYSE Arca Equities Proprietary Market Data Fee Schedule and the NYSE Arca Options Proprietary Market Data Fee Schedule (together, “Market Data Fee Schedules”) to adopt a billing dispute practice substantially similar to the practice adopted by another group of exchanges for their transaction and market data fees. 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

The Exchange proposes to amend the Market Data Fee Schedules to adopt a billing dispute practice similar to the practice adopted by another group of exchanges for their transaction and market data fees. As discussed below, the proposed provision would be substantially similar to provision in the fee schedules of the Cboe U.S. Equities markets - Cboe BZX Exchange, Inc. (“BZX Equities”),⁴ Cboe BYX Exchange, Inc. (“BYX Equities”),⁵ Cboe EDGA Exchange, Inc. (“EDGA Equities”),⁶ Cboe EDGX Exchange, Inc. (“EDGX Equities”)⁷ -

⁴ See BZX Equities Fee Schedule, available at, https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/. See also Securities Exchange Act Release No. 90897 (January 11, 2021), 86 FR 4161 (January 15, 2021) (SR-CboeBZX-2020-094).

⁵ See BYX Equities Fee Schedule, available at, https://markets.cboe.com/us/equities/membership/fee_schedule/byx/. See also Securities Exchange Act Release No. 90899 (January 11, 2021), 86 FR 4156 (January 15, 2021) (SR-CboeBYX-2020-034).

⁶ See EDGA Equities Fee Schedule, available at, https://markets.cboe.com/us/equities/membership/fee_schedule/edga/. See also Securities Exchange Act Release No. 90900 (January 11, 2021), 86 FR 4149 (January 15, 2021) (SR-CboeEDGA-2020-032).

⁷ See EDGX Equities Fee Schedule, available at, https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/. See also

and the Cboe U.S Options markets - Cboe Exchange, Inc. (“Cboe Options”),⁸ Cboe C2 Exchange, Inc. (“C2 Options”),⁹ the options platform of Cboe BZX Exchange, Inc. (“BZX Options”),¹⁰ the options platform of Cboe EDGX Exchange, Inc. (“EDGX Options”) (collectively, the “Cboe Exchanges”).¹¹ In addition, the Exchange and the Exchange’s affiliates, New York Stock Exchange LLC (“NYSE”), NYSE American LLC (“NYSE American”), NYSE Chicago, Inc. (“NYSE Chicago”) and NYSE National, Inc. (“NYSE National”) as well as other equities and options markets¹² already have in place a similar billing dispute provision for

Securities Exchange Act Release No. 90901 (January 11, 2021), 86 FR 4137 (January 15, 2021) (SR-CboeEDGX-2020-064).

⁸ See Cboe Options Fee Schedule, footnote 7, available at, https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf. See also Securities Exchange Act Release No. 91053 (February 3, 2021), 86 FR 8814 (February 9, 2021) (SR-Cboe-2021-010).

⁹ See C2 Options Fee Schedule, available at, https://markets.cboe.com/us/options/membership/fee_schedule/ctwo/. See also Securities Exchange Act Release No. 91049 (February 3, 2021), 86 FR 8824 (February 9, 2021) (SR-C2-2021-002).

¹⁰ See BZX Options Fee Schedule, available at, https://markets.cboe.com/us/options/membership/fee_schedule/bzx/. See also Securities Exchange Act Release No. 90897 (January 11, 2021), 86 FR 4161 (January 15, 2021) (SR-CboeBZX-2020-094).

¹¹ See EDGX Options Fee Schedule, available at, https://markets.cboe.com/us/options/membership/fee_schedule/edgx/. See also Securities Exchange Act Release No. 90901 (January 11, 2021), 86 FR 4137 (January 15, 2021) (SR-CboeEDGX-2020-064).

¹² See NASDAQ Equity Rules, Equity 7 (Pricing Schedule), Section 70(b) (all fee disputes must be submitted no later than 60 days after receipt of billing invoice, in writing and accompanied by supporting documentation); NASDAQ Options Rules, Options 7 (Pricing Schedule), Section 7(a)-(b) (same); NASDAQ BX Equity Rules, Equity 7 (Pricing Schedule), Section 111(b) (Collection of Exchange Fees and Other Claims and Billing Policy) (same); NASDAQ BX Options Rules, Options 7 (Pricing Schedule), Section 7(a)-(b) (BX Options Fee Disputes) (same); NASDAQ PHLX Equity Rules, Equity 7 (Pricing Schedule), Section 1(a) (same); NASDAQ PHLX Options Rules, Options 7 (Pricing Schedule), Section 1(a) (same); NASDAQ ISE Options Rules, Options 7 (Pricing Schedule), Section 1(b) (same); NASDAQ GEMX Options Rules, Options 7 (Pricing Schedule), Section 1(b) (same); NASDAQ MRX Options Rules,

transaction fees.

Background

The Exchange proposes to amend the Market Data Fee Schedules to adopt a billing dispute procedure to prevent market data subscribers from contesting their bills long after they have been sent an invoice. The Exchange and other equities and options markets already have a billing dispute procedure in effect for their transaction fees that allows for sixty (60) days to dispute billing errors.¹³ The Cboe Exchanges also have a billing dispute procedure in place for both its equities markets and options markets and apply that procedure to both transaction fees and market data fees on each of the Cboe Exchanges.¹⁴ In contrast to the other exchanges, the Cboe Exchanges' billing dispute policy allows for "three full calendar months" to dispute billing errors.¹⁵ Similar to the Cboe Exchanges, the Exchange is proposing a ninety (90) day period for market data subscribers to dispute billing errors.

As proposed, all disputes concerning market data fees and credits billed by the Exchange would have to be submitted to the Exchange in writing and accompanied by supporting documentation. Further, all disputes would have to be submitted no later than ninety (90) days after receipt of a billing invoice. After ninety days, all market data fees assessed by the

Options 7 (Pricing Schedule), Section 1(b) (same); MIAX Options Fee Schedule, available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_01_13_21.pdf (same); MIAX Pearl Fee Schedule, available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_PEARL_Options_Fee_Schedule_03012021.pdf (same); and MIAX Emerald Fee Schedule, available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_02_22_21.pdf (same).

¹³ See id.

¹⁴ See notes 4-11, supra.

¹⁵ The Cboe Exchanges' billing dispute policy provides, in relevant part: "All fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final."

Exchange would be considered final. The Exchange believes that this requirement, which is substantially similar to that in place on the Cboe Exchanges,¹⁶ will streamline the billing dispute process. The Exchange would resolve an error by crediting or debiting market data subscribers based on the fees or credits that should have applied and will make billing adjustments regardless of whether the error was discovered by the Exchange or by a subscriber that submitted a dispute to the Exchange.

The Exchange believes it is reasonable for market data subscribers to become aware of any potential billing errors within ninety (90) calendar days of receiving an invoice. The Exchange provides all subscribers on-line access to view their current subscriptions and their invoices. In addition to being able to view the level of their subscription, the Exchange also sends subscribers an invoice by mail each month. Given the tools that the Exchange provides to allow subscribers to monitor their billing, requiring that subscribers dispute an invoice within ninety (90) calendar days will encourage them to review their invoices promptly so that any disputed charges can be addressed in a timely manner while the information and data underlying those charges (e.g., applicable fees and subscriber information) is still easily and readily available. This practice will avoid issues that may arise when subscribers 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.¹⁷ As such, the proposed rule change would alleviate administrative burdens related to billing disputes, which could divert staff resources away from the Exchange's regulatory and business purposes. The proposed rule change to

¹⁶ See notes 4-11, supra.

¹⁷ The same rationale has been advanced by the other markets that have adopted a similar billing procedure. See, e.g., Securities Exchange Act Release No. 71286 (January 14, 2014), 79 FR 3442, 3442 (January 21, 2014) (SR-ISE-2014- 02).

provide all fees and credits are final after ninety (90) days also provides both the Exchange and subscribers finality and the ability to close their books after a known period of time. Finally, the Exchange notes that it routinely conducts audits of its market data customers to ensure that customers are complying with the terms of the subscriber agreement they have signed. The audit process is independent of the billing process. The audit function is administered by the Exchange's market data compliance group and the billing function is administered by the Exchange's market data operations group. Each group is charged with distinct responsibilities that do not overlap. The proposed billing dispute provision is not intended to circumvent the audit process in any manner and the adoption of the ninety (90) day period to dispute billing errors would not affect subscribers' ability to take a position with respect to billing charges identified through the audit process.

In order for subscribers to be fully aware of this rule regarding fee disputes, the Exchange proposes to include the language proposed for the Market Data Fee Schedules on each customer invoice.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,¹⁸ in general, and Section 6(b)(5) of the Act.¹⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be 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

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the requirement to submit all billing disputes in writing, and with supporting documentation, within ninety (90) days from receipt of the invoice, is reasonable because, as noted above, the Exchange provides ample tools for market data subscribers to properly and swiftly monitor and account for various charges incurred in a given month. Also, the proposal is not unfairly discriminatory because it would apply equally to all market data subscribers. The proposed provision regarding fee disputes in the Market Data Fee Schedules promotes the protection of investors and the public interest by providing a clear and concise time frame for market data subscribers to dispute market data fees and for the Exchange to review such disputes in a timely manner. In addition, the proposed 90-day limitation promotes just and equitable principles of trade because it would be implemented prospectively on all market data subscribers, 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 substantially similar to the billing dispute language adopted by the Cboe Exchanges,²⁰ and with the one difference noted above,²¹ the proposed provision is same as that in place at the Exchange's affiliates for transaction fees and at other equities and options

²⁰ See notes 4-11, supra.

²¹ Whereas the Exchange, its affiliates and other equities and options markets allow for sixty (60) days to dispute billing errors, the Cboe Exchanges' billing dispute policy allows for "three full calendar months." See note 15, supra.

markets.²²

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,²³ 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 market data subscribers, would establish a clear process for billing disputes, and is substantially similar to rules adopted by the Cboe Exchanges and rules adopted by other equities and options markets as well as by the Exchange's affiliates for transaction fees. The Exchange does not believe the proposed rule change would impair the ability of market data subscribers or competing venues that also sell market data products to maintain their competitive standing in the financial markets. Moreover, because the Exchange does not propose to alter or modify specific fees or credits applicable to market data subscribers, 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

²² See note 12, *supra*.

²³ 15 U.S.C. 78f(b)(8).

the Act²⁴ and Rule 19b-4(f)(6) thereunder.²⁵ 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.

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-NYSEArca-2021-19 on the subject line.

²⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁵ 17 CFR 240.19b-4(f)(6).

²⁶ 15 U.S.C. 78s(b)(2)(B).

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-2021-19. 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-2021-19 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

Eduardo A. Aleman
Deputy Secretary

²⁷ 17 CFR 200.30-3(a)(12).