

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87422; File No. SR-NYSECHX-2019-16)

October 30, 2019

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

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 October 28, 2019 the NYSE Chicago, Inc. (“NYSE Chicago” 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 Fee Schedule of NYSE Chicago, Inc. (the “Fee Schedule”) to eliminate Market Data Revenue Rebates. The Exchange proposes to implement the fee change effective November 1, 2019. 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 it

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 to eliminate Market Data Revenue (“MDR”) Rebates. The Exchange proposes to implement the fee changes effective November 1, 2019.

Background

The Exchange operates in a highly competitive environment. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation National Market System (“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.”⁴

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”⁵ Indeed, equity trading is currently dispersed

⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005)

⁵ See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Transaction Fee Pilot for NMS Stocks Final Rule).

across 13 exchanges,⁶ 31 alternative trading systems,⁷ and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information for August 2019, no single exchange has more than 19% market share (whether including or excluding auction volume).⁸ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in the first eight months of 2019, the Exchange averaged less than 0.6% market share of executed volume of non-auction equity trading.⁹

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 a firm routes order flow.

Elimination of MDR Rebates

The Exchange proposes to amend its Fee Schedule to eliminate MDR Rebates by removing the text within Section P of the Fee Schedule in its entirety, replacing it with "Reserved."

⁶ See Cboe U.S. Equities Market Volume Summary at https://markets.cboe.com/us/equities/market_share. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

⁷ 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>.

⁸ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

⁹ Based on Cboe U.S. Equities Market Volume Summary, the Exchange's market share of intraday trading (excluding auctions) for the months of January 2019, February 2019, March 2019, April 2019, May 2019, June 2019, July 2019 and August 2019 was 0.52%, 0.52%, 0.56%, 0.50%, 0.50%, 0.48%, 0.46% and 0.43%, respectively.

The Current MDR Rebates Program

In response to the competitive environment in which the Exchange operates, in 2013, the Exchange established the MDR Rebates program to improve displayed liquidity and promote order flow to the Exchange by offering an incentive for market participants to quote on the Exchange.¹⁰ The Exchange then enhanced the MDR Rebates program by including trade reports within the purview of the MDR Rebates program.¹¹

The current MDR Rebates program provides that 50% of MDR received by the Exchange that exceeds an applicable threshold (“Excess MDR”) is shared with Participants.¹² MDR and Excess MDR is calculated separately each quarter for quotes and trade reports in each of Tapes A, B, and C securities, for a total of six MDR pools. The Exchange distributes to each Participant the Excess MDR in proportion to its respective Eligible Quote Activity¹³ or Eligible Trade Activity¹⁴ in a pool from the previous calendar quarter.¹⁵

¹⁰ See Securities Exchange Act Release No. 70546 (September 27, 2013), 78 FR 61413 (October 3, 2013) (SR-CHX-2013-18) (notice of filing and immediate effectiveness of proposed rule change to adopt a Market Data Revenue Rebates program).

¹¹ See Securities Exchange Act Release No. 72759 (August 5, 2014), 79 FR 46890 (August 11, 2014) (SR-CHX-2014-11) (notice of filing and immediate effectiveness of proposed rule change to amend Section P of the Fee Schedule concerning the Market Data Revenue Rebates program); see also Securities Exchange Act Release No. 71210 (December 31, 2013), 79 FR 869 (January 7, 2014) (SR-CHX-2013-24) (notice of filing and immediate effectiveness of proposed rule change to amend the Market Data Revenue Rebates program).

¹² A “Participant” is, except as otherwise described in the Rules of the Exchange, “any Participant Firm that holds a valid Trading Permit and any person associated with a Participant Firm who is registered with the Exchange under Articles 16 and 17 as a Market Maker Authorized Trader or Institutional Broker Representative, respectively.” Article 1, Rule 1(s).

¹³ Section P.1 of the Fee Schedule defines “Eligible Quote Activity” as “a Participant’s quoting of displayed orders in Tapes A, B and C securities.”

¹⁴ Section P.1 of the Fee Schedule defines “Eligible Trade Activity” as “trades resulting from single-sided resting orders submitted by the Participant in Tapes A, B and C securities.”

Current Section P.2 of the Fee Schedule provides the following MDR thresholds for Tape B securities:

- For quotes, the threshold is \$204,000.
- For trade reports, the threshold is \$36,000.

The dollar value represents the amount of MDR that the Exchange keeps (i.e., not eligible for sharing). Any MDR in excess of the thresholds is Excess MDR.

For Tape A and Tape C securities, there is no threshold for quotes. Therefore, all MDR received in those quote pools is considered Excess MDR, and 50% of all MDR received in Tape A and Tape C securities is eligible for sharing with Participants pursuant to the MDR Rebates program.

For Tape A and Tape C securities, the threshold value for trade reports is equal to the MDR received by the Exchange that can be attributed to trade reports resulting from cross orders, as defined under Article 1, Rule 2(a)(2).¹⁶

In 2017, the Exchange paid a total of \$907,035 under the MDR Rebates program to 13 Participants. In 2018, the Exchange paid a total of \$1,243,774 under the MDR Rebates program to 10 Participants.

Application of Proposed Change

The MDR Rebates program has not achieved its intended objective, which was to encourage Participants to increase their quoting and trading activity on the Exchange, as significantly as the Exchange had anticipated. Since the program (in its current form) began, the

¹⁵ The Exchange does not distribute MDR Rebates to a Participant if the total MDR Rebate attributed to the Participant is less than \$500.

¹⁶ A cross order is an order to buy and sell the same security at a specific price, and may only execute on the Exchange if it is priced better than the Working Price of all resting orders on the book.

Exchange's market share has remained largely unchanged. In the third quarter of 2014, the Exchange's market share in cash equities trading, excluding auctions, was 0.56%¹⁷ and in the fourth quarter of 2014, after the current version of the program was implemented, it declined to 0.44%.¹⁸ In the first six months of 2019, the Exchange's market share, excluding auctions, remained below 0.6%.¹⁹ Because the program has not achieved the intended growth in trading on the Exchange, the Exchange proposes to eliminate the program in its entirety.

Based on 2018 payments under the program, only 10 Participants will be impacted by this proposed change.²⁰ Although the Exchange is proposing to eliminate the MDR Rebates program mid-quarter, the Exchange will distribute MDR Rebates to Participants for the month of October 2019 unless the total MDR Rebate attributed to a Participant is less than \$500.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²¹ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,²² 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 Rule Change is Reasonable

¹⁷ See note 8, supra.

¹⁸ Id.

¹⁹ See note 9, supra.

²⁰ As of December 31, 2018, there were 77 Participants on the Exchange that could have qualified for the program.

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(4) and (5).

As noted above, 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. Specifically, 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.”²³

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”²⁴ Indeed, equity trading is currently dispersed across 13 exchanges,²⁵ 31 alternative trading systems,²⁶ and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 19% market share (whether including or excluding auction volume).²⁷ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in the first eight months of 2019, the Exchange averaged less than 0.6% market share of executed volume of equity trades (excluding auction volume).²⁸

²³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁴ See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Final Rule).

²⁵ See Cboe U.S Equities Market Volume Summary at https://markets.cboe.com/us/equities/market_share.

²⁶ 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>.

²⁷ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

²⁸ See note 9, *supra*.

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 to reduce use of certain categories of products, in response to fee changes. With respect to non-marketable orders which provide liquidity on an Exchange, Participants can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed change to eliminate the credits associated with the MDR Rebates program is reasonable because the MDR Rebates program has not served to incentivize Participants to increase quoting and trading to the level anticipated by the Exchange. The Exchange operates in a highly competitive environment, particularly for attracting order flow that provides displayed liquidity on an exchange. As noted above, the Exchange's market share since 2017 has not changed in any meaningful way.

The Exchange further believes it is reasonable to eliminate the market data revenue sharing because the program has not had a meaningful impact.

The Proposed Rule Change is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees and credits among its market participants.

The Exchange is proposing to eliminate the MDR Rebates program because it has not served to incentivize quoting and trading activity for which the program was designed. The Exchange expects to continue to explore additional opportunities to provide an incentive for order flow on the Exchange.

The Exchange believes the proposed rule change eliminating the MDR Rebates program is equitable as it is intended to remove a program that does not serve as an incentive to attract more liquidity to the Exchange. The proposal does not target any one particular category of market participant. However, the proposal will impact one participant more significantly as that participant received a large majority of the MDR Rebates under the program. As to those market participants that do not presently qualify for the revenue sharing, the proposal will not impact their existing pricing for transactions or their ability to qualify for other fees or credits provided by the Exchange.

The Proposed Rule Change is Not Unfairly Discriminatory

The Exchange believes that the proposed elimination of the MDR Rebates program is not unfairly discriminatory because it would apply to all Participants on an equal and non-discriminatory basis. The proposal to eliminate the MDR Rebates neither targets or will it have a disparate impact on any particular category of market participant. As noted above, in 2017, the Exchange paid a total of \$907,035 under the MDR Rebates program to 13 Participants, and in 2018, the Exchange paid a total of \$1,243,774 under the MDR Rebates program to 10 Participants. These Participants comprised firms that trade on both a principal and an agency basis and represent more than 75% of the total liquidity providing shares executed on the Exchange. Most of these Participants are also members of other exchanges and likely directed their order flow primarily to those other market centers and not to the Exchange.

The Exchange believes that the proposed rule change is not unfairly discriminatory because all similarly situated Participants would be equally impacted by the elimination of the MDR Rebates program.

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,²⁹ 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.

Intramarket Competition

The Exchange does not believe that the proposed elimination of the MDR Rebates program will impair the ability of Participants to compete in the financial markets. There are 13 exchanges, 31 alternative trading systems, and numerous broker-dealer internalizers and wholesalers, all competing for order flow from which Participants may choose to send their quotes and trades. The Exchange also does not believe the proposed rule change would impact intramarket competition as it would apply to all Participants equally that transact on the Exchange, and therefore the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition

The Exchange does not believe that eliminating the MDR Rebates program would impact intermarket competition because the program has not achieved its intended objective of attracting liquidity to the Exchange and therefore, eliminating the program would not have a material impact to the Exchange's standing with respect to its competitors, none of whom provide a similar rebate. The Exchange notes that in the first eight months of 2019, the Exchange averaged

²⁹ 15 U.S.C. 78f(b)(8).

less than 0.6% market share of executed volume of non-auction equity trading.³⁰ In such an environment, the Exchange must continually adjust 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, and because market participants may readily adjust their order routing practices, the Exchange does not believe the proposed change can impose any burden on 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 and rebate levels at those other venues to be more favorable. Further, inefficient pricing, including rebates that do not incentivize increased trading and quoting activity, would serve to impair an exchange's ability to compete for order flow rather than burdening 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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)³¹ of the Act and subparagraph (f)(2) of Rule 19b-4³² thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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

³⁰ See note 9, *supra*.

³¹ 15 U.S.C. 78s(b)(3)(A).

³² 17 CFR 240.19b-4(f)(2).

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)³³ 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-NYSECHX-2019-16 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-2019-16. 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

³³ 15 U.S.C. 78s(b)(2)(B).

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, D.C. 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- NYSECHX-2019-16 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.³⁴

Jill M. Peterson
Assistant Secretary

³⁴ 17 CFR 200.30-3(a)(12).