

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83843; File No. SR-NYSENAT-2018-18)

August 14, 2018

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Schedule of Fees and Rebates

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 August 1, 2018, NYSE National, Inc. (“Exchange” or “NYSE National”) 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 its Schedule of Fees and Rebates to specify that an ETP Holder may request that the Exchange aggregate its eligible activity with activity of its ETP Holder affiliates for purposes of charges or credits based on volume. 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 received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 its Schedule of Fees and Rebates to specify that an ETP Holder may request that the Exchange aggregate its eligible activity with activity of its ETP Holder affiliates for purposes of charges or credits based on volume. As noted below, the proposed provision is based on similar provisions in the price lists of the Exchange’s affiliates New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc. (“NYSE Arca”), and NYSE American Equities (“NYSE American”) (together, the “Exchange Affiliates”).⁴

The Exchange proposes to amend its Schedule of Fees and Rebates to specify that an ETP Holder may request that the Exchange aggregate its eligible activity with eligible activity of its ETP Holder affiliates for purposes of charges or credits based on volume. The proposed rule change is based on the rules of the Exchange Affiliates, which contain substantially the same language.⁵ The Exchange notes that this type of provision is also common among many other exchanges.⁶

⁴ See New York Stock Exchange Price List 2018, available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf; NYSE Arca Equities Fees and Charges, available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf; and the NYSE American Equities Price List, available at https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf.

⁵ See note 4, *supra*. The Exchange proposes to omit a reference to Designated Market Makers or “DMMs” found in price lists of the Exchange Affiliates because the Exchange does not currently have DMMs.

⁶ See, e.g., NASDAQ Stock Market Rule 7027, NASDAQ Options Market Rules at Chapter XV, and the NASDAQ PHLX LLC Pricing Schedule, available at

As proposed, for purposes of applying any provision of the Exchange's Schedule of Fees and Rebates where the charge assessed, or credit provided, by the Exchange depends on the volume of an ETP Holder's activity (i.e., where a volume threshold or volume percentage is required to obtain the pricing), an ETP Holder may request that the Exchange aggregate its eligible activity with eligible activity of its ETP Holder affiliates. The Exchange further proposes that an ETP Holder requesting aggregation of eligible affiliate activity would be required to (1) certify to the Exchange which affiliate(s) it seeks to aggregate prior to receiving approval for aggregation, and (2) inform the Exchange immediately of any event that causes an entity to cease being an affiliate(s). The Exchange would review available information regarding the entities and reserves the right to request additional information to verify the affiliate status of an entity. As further proposed, the Exchange would approve a request, unless it determines that the certificate is not accurate.

The Exchange also proposes that if two or more ETP Holders become affiliated on or prior to the sixteenth day of a month, and submit the required request for aggregation on or prior to the twenty-second day of the month, an approval of the request would be deemed to be effective as of the first day of that month. If two or more ETP Holders become affiliated after the sixteenth day of a month, or submit a request for aggregation after the twenty second day of the month, an approval of the request would be deemed to be effective as of the first day of the next calendar month. The Exchange believes that this requirement, which is also similar to requirements of the Exchange Affiliates, would be a fair and objective way to apply the aggregation rule to fees and streamline the billing process. The Exchange further proposes to provide that for purposes of applying any provision of the Schedule of Fees and Rebates where

http://nasdaqphlx.cchwallstreet.com/NASDAQPHLXTools/PlatformViewer.asp?selectednode=chp_1_5_2&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx-rulesbrd%2F.

the charge assessed, or credit provided, by the Exchange depends upon the volume of an ETP Holder's activity, references to an entity would be deemed to include the entity and its affiliates that have been approved for aggregation. The Exchange proposes to provide that ETP Holders may not aggregate volume where the Schedule of Fees and Rebates specifies that aggregation is not permitted.⁷

Finally, the Exchange proposes that for purposes of the Schedule of Fees and Rebates, the term "affiliate" would mean any ETP Holder under 75% common ownership or control of that ETP Holder. Once again, this is consistent with the rules of the Exchange Affiliates and other exchanges.⁸

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ 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, and because it is designed to promote just and equitable principles of trade, 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.

The Exchange believes that the proposed rule change establishes a reasonable and clear process for the Exchange to treat affiliated ETP Holders for purposes of assessing charges or

⁷ See note 4, supra.

⁸ See note 4, supra; see also, e.g., NASDAQ Rule 7027(c).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) & (5).

credits that are based on volume. The provision is equitable because all ETP Holders seeking to aggregate their activity are subject to the same parameters, in accordance with a standard that recognizes an affiliation as of the month's beginning or close in time to when the affiliation occurs, provided the ETP Holder submits a timely request. Moreover, the proposed billing aggregation language is substantially similar to aggregation language adopted by the NYSE Affiliates and other exchanges.¹¹

The Exchange notes that the proposal would serve to reduce disparity of treatment between ETP Holders with regard to the pricing of different services and reduce any potential for confusion on how activity can be aggregated. The Exchange believes that the proposed rule change avoids disparate treatment of ETP Holders that have divided their various business activities between separate corporate entities as compared to ETP Holders that operate those business activities within a single corporate entity. The Exchange further notes that the proposed rule change is reasonable and is designed to remove impediments to and perfect the mechanism of a free and open market by harmonizing the manner by which the Exchanges permits ETP Holders to aggregate volume with other exchanges. As noted, the Exchange Affiliates and other markets all have the same standard that the Exchange is proposing to adopt.

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,¹² 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

¹¹ See notes 5-6, supra.

¹² 15 U.S.C. 78f(b)(8).

all ETP Holders, would incent submission of order flow to a public exchange by permitting the Exchange to apply price discounts to ETP Holders that have requested aggregation with an affiliated ETP Holder and is substantially similar to rules adopted by the Exchange Affiliates as well as other exchanges. Because the market for order execution and routing is extremely competitive, ETP Holders may readily opt to disfavor the Exchange if they believe that alternatives offer them better value. The Exchange does not believe the proposed changes will impair the ability of ETP Holders or competing order execution venues 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 ETP Holders, 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 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

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 a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule

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 has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, waiving the 30-day operative delay would be consistent with the protection of investors and the public interest because it would enable the Exchange to harmonize its rules with respect to aggregation of affiliate activity with the rules of its affiliates without delay and, as a result, reduce potential confusion for investors. The Exchange explains that as it is harmonizing its Schedule of Fees and Rebates with the requirements in the price lists of its affiliates as well as other exchanges, the proposed change does not present any new or novel issues. 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

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).

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).

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:

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-NYSENAT-2018-18 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-NYSENAT-2018-18. 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

¹⁹ 15 U.S.C. 78s(b)(2)(B).

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; the Commission does not edit personal identifying information from submissions. 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-NYSENAT-2018-18 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

Robert W. Errett
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).