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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-87650; File No. SR-NYSECHX-2019-24]

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

December 3, 2019

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 November 29, 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 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 Fee Schedule to (a) adopt the same billing dispute practice as the Exchange’s affiliates and other exchanges, (b) adopt the same policy regarding the aggregation of affiliated Participants’ activity as applied by the Exchange’s affiliates and other exchanges, and (c) delete text referencing fees and services that became obsolete upon the Exchange’s transition to the Pillar trading platform. 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 its Fee Schedule to (a) adopt the same billing dispute practice as the Exchange’s affiliates and other exchanges, (b) adopt the same policy regarding the aggregation of affiliated Participants’⁴ activity as applied by the Exchange’s affiliates and other exchanges, and (c) delete text referencing fees and services that became obsolete upon the Exchange’s transition to the Pillar trading platform (“Pillar”).⁵

Proposed Billing Procedure

The Exchange proposes to amend its Fee Schedule to adopt a billing procedure to prevent Participants from contesting their bills long after they have received an invoice. The proposed

⁴ As defined in Article 1, Rule 1(s) of the Exchange’s Rules, “Participants” refers to persons who are permitted to trade on the Exchange. See Securities Exchange Act Release No. 87264 (October 9, 2019), 84 FR 55345, 55346 n.25 (October 16, 2019) (SR-NYSECHX-2019-08) (Approval Order).

⁵ Pillar is an integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by the Exchange’s affiliates New York Stock Exchange LLC (“NYSE”), NYSE American LLC (“NYSE American”), NYSE Arca, Inc. (“NYSE Arca”), and NYSE National, Inc. (“NYSE National” and, together, the “Affiliate SROs”). See Securities and Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR-NYSECHX-2019-12).

provision would be based on those in the fee schedules of the Affiliate SROs,⁶ and substantially the same as that in place at other equities and options exchanges.⁷

Under the proposed billing procedure, all disputes concerning fees billed by the Exchange would have to be submitted to the Exchange in writing and accompanied by

⁶ See New York Stock Exchange Price List 2019 (“NYSE Price List”), available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf (“All fee disputes concerning fees billed by the Exchange must be submitted to the Exchange in writing and must be accompanied by supporting documentation. All fee disputes must be submitted no later than sixty (60) days after receipt of a billing invoice.”); NYSE American Equities Price List (“NYSE American Equities Price List”), available at https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_American_Equities_Price_List.pdf (same); NYSE American Options Fee Schedule (“NYSE American Options Fee Schedule”), available at https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf (same); NYSE Arca Equities Fees and Charges (“NYSE Arca Equities Fee Schedule”), available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf (same); NYSE Arca Options Fees and Charges (“NYSE Arca Options Fee Schedule”), available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf (same); and NYSE National, Inc. Schedule of Fees and Rebates (“NYSE National Fee Schedule”), at https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf (same).

⁷ 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, 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_10222019.pdf (same); MIAX Pearl Fee Schedule, available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_PEARL_Fee_Schedule_10222019.pdf (same); and MIAX Emerald Fee Schedule, available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Emerald_Fee_Schedule_10222019.pdf (same).

supporting documentation. Further, all fee disputes would have to be submitted no later than sixty (60) days after receipt of a billing invoice. After sixty days, all fees assessed by the Exchange would be considered final. The Exchange believes that this requirement, which is the same as that in place at the Exchange's equities and options market affiliates,⁸ will streamline the billing dispute process.

The Exchange believes it is reasonable for Participants to become aware of any potential billing errors within sixty calendar days of receiving an invoice. Requiring that Participants dispute an invoice within this time period will encourage Participants to review their invoices promptly and allow disputed charges to be addressed while the information and data underlying those charges (e.g., applicable fees and order information) are still easily and readily available. This practice would avoid issues that may arise when Participants do not dispute an invoice in a timely manner and conserve Exchange resources that would be expended to resolve untimely billing disputes.⁹

In order for Participants to be fully aware of this rule regarding fee disputes, the Exchange proposes to include the proposed Fee Schedule language in each customer invoice.

To effect this change, the Exchange proposes to amend Section P of the Fee Schedule, which is currently designated as "Reserved," to title it "Billing Disputes" and add text describing the billing procedure. The Exchange also proposes a non-substantive change to add a heading of "Q. Minor Rule Violation Plan" before the next section of the Fee Schedule.

⁸ See note 6, supra.

⁹ The same rationale has been advanced by other exchanges that have adopted the Exchange's proposed billing procedure. See, e.g., Securities and Exchange Act Release Nos. 79061 (October 6, 2016), 81 FR 70721 (October 13, 2016) (SR-ISE-2016-23); 74895 (May 7, 2015), 80 FR 27352 (May 13, 2015) (SR-NASDAQ-2015-50); and 73452 (October 28, 2014), 79 FR 65279 (November 3, 2014) (SR-BX-2014-54).

Aggregation of Affiliate Activity

The Fee Schedule currently provides that activity of affiliated Participants may be aggregated for specified purposes.¹⁰ The Exchange proposes to amend its Fee Schedule to replace the current method of aggregation of affiliated Participant activity with the method used by the Affiliated SROs to aggregate activity of affiliated Participants.¹¹ Other exchanges also include similar provisions in their rules.¹²

The proposed rule change would provide that for purposes of applying any provision of the Exchange's Fee Schedule where the charge assessed, or credit provided, by the Exchange depends on the volume of a Participant's activity (i.e., where a volume threshold or volume percentage is required to obtain the pricing), a Participant may request that the Exchange aggregate its eligible activity with the eligible activity of its affiliates. The Exchange further proposes that a Participant 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

¹⁰ See Section O of the Fee Schedule.

¹¹ See, e.g., NYSE Price List available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf; NYSE American Equities Price List, available at https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_American_Equities_Price_List.pdf; NYSE Arca Equities Price List, available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf; and NYSE National Fee Schedule, available at https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.

¹² See, e.g., NASDAQ Equity Rules, Equity 7, Section 127; NASDAQ Options Rules, Options 7, Section 127; NASDAQ BX Equity Rules, Equity 7, Section 127; NASDAQ BX Options Rules, Options 7; NASDAQ PHLX Equity Rules, Equity 7, Section 3; NASDAQ PHLX Options Rules, Options 7, Section 1.

entities and reserves the right to request additional information to verify the affiliate status of an entity. The Exchange would approve a request, unless it determines that the certificate is not accurate.

The Exchange also proposes to establish a standard practice for determining an affiliation as of the month's beginning or close in time to when the affiliation occurs, provided the Participant submits a timely request. Specifically, if two or more Participants 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 Participants 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 based on the requirements of the Affiliate SROs without any substantive differences, 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 Fee Schedule where the charge assessed, or credit provided, by the Exchange depends upon the volume of a Participant's activity, references to an entity would be deemed to include the entity and its affiliates that have been approved for aggregation. Consistent with the requirements of the Affiliate SROs,¹³ the Exchange proposes to provide that Participants may not aggregate volume wherever the Fee Schedule may specify that aggregation is not permitted.

Finally, the Exchange proposes to simplify its definition of "affiliate" for purposes of the Fee Schedule. Currently, the term "affiliate" is defined in the Fee Schedule as any wholly owned

¹³ See note 11, supra.

subsidiary, parent, or sister of the Participant that is also a Participant, with the terms “wholly owned subsidiary,” “parent,” and “sister” also individually defined. The proposed change would define “affiliate” as any Participant under 75% common ownership or control of that Participant. This proposed definition is consistent with rules adopted by the Affiliate SROs and other exchanges.¹⁴

To effect this change, the Exchange proposes to delete the text currently set forth in Section O of the Fee Schedule, replace it with the above-described rule, and amend the title of that section to “Aggregate Billing of Affiliated Participants.”

Removal of Obsolete Fees

Because the Exchange does not offer the Connect service in Pillar, in connection with the transition to Pillar, the Exchange deleted Article 4, Rule 2 relating to the Connect service in its entirety.¹⁵ The Exchange proposes to similarly delete reference to the Connect service in the Fee Schedule by deleting the text set forth in Section “L” of the Fee Schedule and designating that section as “Reserved.”

The Exchange also proposes to delete certain text in the Fee Schedule referencing fees for services that have become obsolete because of the Exchange’s move to the Mahwah data center. Specifically, the Exchange proposes to delete Section D.2 of the Fee Schedule, which sets forth Cross Connection Charges for physical connections that are no longer used by Participants now that the Exchange has moved to the Mahwah data center. The Exchange also proposes to delete Section G of the Fee Schedule, which sets forth fees for co-location services that were provided

¹⁴ See notes 11-12, supra.

¹⁵ See 84 FR 55345, supra note 4, at 55346 n.19.

prior to the migration to Pillar, and not for co-location services provided in the Mahwah data center.¹⁶ The Exchange proposes to designate Section G of the Fee Schedule as “Reserved.”

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁸ 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 among 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.

With respect to the proposed billing procedure, the Exchange believes that the requirement to submit all billing disputes in writing, and with supporting documentation, within sixty days from receipt of the invoice, is reasonable because the Exchange provides Participants with ample tools to monitor and account for various charges incurred in a given month. The proposed provision also promotes the protection of investors and the public interest by providing a clear and concise mechanism in Exchange Rules for Participants to dispute fees and for the Exchange to review such disputes in a timely manner. In addition, the proposed 60-day limitation is fair, equitable, and not unfairly discriminatory because it will apply equally to all

¹⁶ See Securities Exchange Act Release No. 49728 (May 19, 2004), 69 FR 29988 (May 26, 2004) (SR-CHX-2004-15). The Exchange sets forth fees for the co-location services it currently offers under the heading of “Co-Location Fees” on page 13 of the Fee Schedule.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4)-(5).

Participants and be implemented prospectively on all Participants, 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 based on billing dispute language of the Affiliate SROs without any substantive differences, and is substantially similar to billing dispute language of other exchanges.¹⁹

With respect to the proposed billing aggregation, the Exchange believes that this policy implements a reasonable and clear process for the Exchange to group together affiliated Participants for purposes of assessing charges or credits that are based on volume. The provision is equitable because all Participants 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 Participant submits a timely request. In addition, the Exchange believes that the proposed change would reduce disparity of treatment between Participants with regard to the pricing of different services and reduce any potential for confusion on how activity can be aggregated. For example, the proposed rule change avoids disparate treatment of Participants that have divided their various business activities between separate corporate entities as compared to Participants that operate those business activities within a single corporate entity. The Exchange also believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market by harmonizing the process by which Participants can seek to aggregate volume with the practices of the Affiliate SROs and other exchanges.²⁰

With respect to the proposed deletion of obsolete fees, the Exchange believes that the proposed change would remove impediments to and perfect the mechanisms of a free and open

¹⁹ See notes 6-7, supra.

²⁰ See notes 11-12, supra.

market by eliminating references to services that are no longer offered, thereby improving the clarity of the Exchange's rules and enabling market participants to more easily navigate the Exchange's fee schedule. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of obsolete text would make the Fee Schedule more accessible and transparent and facilitate market participants' understanding of the fees charged for services currently offered by the Exchange.

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

In accordance with Section 6(b)(8) of the Act,²¹ 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.

With respect to the billing procedure and billing aggregation policy, the proposed rule change would establish a clear process that would apply equally to all Participants and is based on the rules of the Affiliate SROs without any substantive differences, and is substantially similar to rules of other exchanges. The Exchange does not believe such proposed changes would impair the ability of Participants or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because the proposed changes would apply equally to all Participants, the proposal does not impose any burden on competition.

With respect to the proposed deletion of text referencing outdated functionalities and services, the changes would not have any impact on competition, because they are solely designed to eliminate obsolete text to accurately reflect the services that the Exchange currently offers.

²¹ 15 U.S.C. 78f(b)(8).

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 Act²² and Rule 19b-4(f)(6) thereunder.²³ 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.²⁴

A proposed rule change filed under Rule 19b-4(f)(6)²⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange asserts that waiver of the operative delay would be consistent with the protection of investors and the public interest because it would allow the Exchange to

²² 15 U.S.C. 78s(b)(3)(A)(iii).

²³ 17 CFR 240.19b-4(f)(6).

²⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization 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.

²⁵ 17 CFR 240.19b-4(f)(6).

²⁶ 17 CFR 240.19b-4(f)(6)(iii).

immediately implement a defined process for billing disputes and the revised rules for how activity of affiliates can be aggregated, and more quickly remove obsolete text from its Fee Schedule. Further, the Exchange states that waiver of the operative delay will allow the Exchange to implement these changes beginning December 2, 2019, which is the first business day in December. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.²⁷

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)²⁸ 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-

²⁷ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁸ 15 U.S.C. 78s(b)(2)(B).

2019-24 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-2019-24. 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-NYSECHX-2019-24 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Jill M. Peterson,
Assistant Secretary.

²⁹ 17 CFR 200.30-3(a)(12).

