

or computer-to-computer interfaces.<sup>60</sup> The Exchange also represents that orders for covered accounts from Options Members will be transmitted from a remote location directly to the proposed C-SAM by electronic means. Because no Exchange Options Member may submit orders into the C-SAM from on the floor of the Exchange, the Commission believes that the C-SAM satisfies the off-floor transmission requirement.

Second, the Rule requires that the member and any associated person not participate in the execution of its order after the order has been transmitted. The Exchange represents that at no time following the submission to the C-SAM of an order or C-SAM response is an Options Member able to acquire control or influence over the result or timing of the order's or response's execution.<sup>61</sup> According to the Exchange, the execution of an order (including the Agency and the Solicited Order) or a C-SAM response sent to the C-SAM is determined by what other orders and responses are present and the priority of those orders and responses.<sup>62</sup> Accordingly, the Commission believes that an Options Member does not participate in the execution of an order or response submitted to the C-SAM.

Third, Rule 11a2-2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated exchange facilities, such as the C-SAM, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.<sup>63</sup> The Exchange

represents that the C-SAM is designed so that no Options Member has any special or unique trading advantage in the handling of its orders or responses after transmitting its orders to the mechanism.<sup>64</sup> Based on the Exchange's representation, the Commission believes that the C-SAM satisfies this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T) thereunder.<sup>65</sup> The Exchange represents that Options Members relying on Rule 11a2-2(T) for transactions effected through the C-SAM must comply with this condition of the Rule and that the Exchange will enforce this requirement pursuant to its obligations under Section 6(b)(1) of the Act to enforce compliance with federal securities laws.<sup>66</sup>

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>67</sup> that the proposed rule change (SR-CboeEDGX-2019-064) be, and hereby is, approved.

independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release, *supra* note 48.

<sup>64</sup> See Notice, *supra* note 3, at 59876.

<sup>65</sup> In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member or any associated person thereof in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2-2(T)(d). See also 1978 Release, *supra* note 51, at 11548 (stating "[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

<sup>66</sup> See Notice, *supra* note 3, at 59876-77.

<sup>67</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>68</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

#### Extension:

Rule 147A(f)(1)(iii) Written Representation as to Purchaser Residency, SEC File No. 270-806, OMB Control No. 3235-0757.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 147A(f)(1)(iii) (17 CFR 230.147A(f)(1)(iii)) requires the issuer to obtain from the purchaser a written representation as to the purchaser's residency in order to qualify for safe harbor under Securities Act Rule 147A (17 CFR 230.147A). Rule 147A is an exemption from registration under Securities Act Section 28 (15 U.S.C. 77z-3). Under Rule 147A, the purchaser in the offering must be a resident of the same state or territory in which the issuer is a resident. While the formal representation of residency by itself is not sufficient to establish a reasonable belief that such purchasers are in-state residents, the representation requirement, together with the reasonable belief standard, may result in better compliance with the rule and maintaining appropriate investor protections. The representation of residency is not provided to the Commission. Approximately 700 respondents provide the information required by Rule 147A(f)(1)(iii) at an estimated 2.75 hours per response for a total annual reporting burden of 1,925 hours (2.75 hours x 700 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the

<sup>68</sup> 17 CFR 200.30-3(a)(12).

<sup>60</sup> See Notice, *supra* note 3, at 59876.

<sup>61</sup> See *id.* (also representing, among other things, that no Options Member, including the Initiating Member, will see a C-SAM response submitted into C-SAM and therefore will not be able to influence or guide the execution of their Agency Orders, Solicited Orders, or C-SAM responses, as applicable).

<sup>62</sup> See *id.* The Exchange notes that an Initiating Member may not cancel or modify an Agency Order or Solicited Order after it has been submitted into C-SAM, but that Options Members may modify or cancel their responses after being submitted to a C-SAM. See *id.* at 59876 n.77. As the Exchange notes, the Commission has stated that the non-participation requirement does not preclude members from cancelling or modifying orders, or from modifying instructions for executing orders, after they have been transmitted so long as such modifications or cancellations are also transmitted from off the floor. See Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542, 11547 (the "1978 Release").

<sup>63</sup> In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an

performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: December 9, 2019.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87695; File No. SR-NYSENAT-2019-30]

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

December 9, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 27, 2019, NYSE National, Inc. ("NYSE National" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 ("Fee Schedule") to eliminate the fees currently charged for MPL orders that add liquidity on the Exchange and provide that liquidity-removing orders that execute at prices better than the contra-side NBBO will not be subject to any fee. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://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 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend its Fee Schedule to (1) eliminate the fee currently charged for non-tiered MPL orders adding liquidity in securities priced at or above \$1.00, (2) eliminate the fee currently charged for liquidity-adding MPL orders in Adding Tiers 1, 2, and 3, and (3) revise its rates for removing liquidity to provide that liquidity-removing orders that execute at prices better than the contra-side NBBO will not be subject to any fee.

The Exchange proposes to implement the rule change on December 2, 2019.

###### Background

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."<sup>3</sup>

As the Commission itself recognized, the market for trading services in NMS stocks has become "more fragmented and competitive."<sup>4</sup> Indeed, equity trading is currently dispersed across 13 exchanges,<sup>5</sup> 31 alternative trading systems,<sup>6</sup> and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 17% of the market share of executed volume of equity trades (whether excluding or including auction volume).<sup>7</sup> Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in each of the last three months, the Exchange had approximately 2% market share of executed volume of equity trades (whether excluding or including auction volume).<sup>8</sup>

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 or reduce use of certain 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 trading venues to which a firm routes order flow. These fees vary month to month, and not all are publicly available. With respect to non-marketable order flow that would provide liquidity on an exchange, ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem

<sup>3</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (S7-10-04) (Final Rule) ("Regulation NMS").

<sup>4</sup> 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) ("Transaction Fee Pilot").

<sup>5</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/). See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

<sup>6</sup> See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. Although 54 alternative trading systems were registered with the Commission as of July 29, 2019, only 31 are currently trading. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

<sup>7</sup> See Cboe Global Markets U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/).

<sup>8</sup> See id.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.