

twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c-3(b)(1) under the Act permits an interval fund to deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the interval fund and is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

4. Applicants request relief under section 6(c), discussed above, and section 23(c)(3) from rule 23c-3 to the extent necessary for each Fund to impose early withdrawal charges on shares of the Fund submitted for repurchase that have been held for less than a specified period.

5. Applicants state that the early withdrawal charges they intend to impose are functionally similar to contingent deferred sales loads imposed by open-end investment companies under rule 6c-10 under the Act. Rule 6c-10 permits open-end investment companies to impose contingent deferred sales loads, subject to certain conditions. Applicants note that rule 6c-10 is grounded in policy considerations supporting the employment of contingent deferred sales loads where there are adequate safeguards for the investor and state that the same policy considerations support imposition of early withdrawal charges in the interval fund context. In addition, applicants state that early withdrawal charges may be necessary for the Fund's Distributor to recover distribution costs. Applicants represent that any early withdrawal charge imposed by a Fund will comply with rule 6c-10 under the Act as if the rule were applicable to closed-end investment companies. Each Fund will disclose early withdrawal charges in accordance with the requirements of Form N-1A concerning contingent deferred sales loads.

Asset-Based Service and/or Distribution Fees

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection

with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d-1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d-3 under the Act provides an exemption from section 17(d) and rule 17d-1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b-1 under the Act. Applicants request an order under section 17(d) and rule 17d-1 under the Act to permit the Fund to impose asset-based service and/or distribution fees. Applicants have agreed to comply with rules 12b-1 and 17d-3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its shares through asset-based service and/or distribution fees.

For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based service and/or distribution fees is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition: Each Fund relying on the requested order will comply with the provisions of rules 6c-10, 12b-1, 17d-3, 18f-3, 22d-1 and, where applicable, 11a-3 under the Act, as amended from time to time or replaced, as if those rules applied to closed-end management investment companies, and will comply with FINRA Rule 2341, as amended from

time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-05562 Filed 3-17-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88373; File No. SR-NYSE-2020-14]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Transition Period for Member Organizations To Transition to the Utilization of Ports That Connect to the Exchange Using Pillar Technology

March 12, 2020.

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 2, 2020, New York Stock Exchange LLC ("NYSE" 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 its Price List to (1) extend the Transition Period for member organizations to transition to the utilization of ports that connect to the Exchange using Pillar technology; (2) shorten the Decommission Period from six to four months; (3) extend the effective date that the Exchange would prorate the monthly fee for ports activated on or after July 1, 2019; and (4) revise the fees charged for legacy port connections during the Decommission Period. The Exchange proposes to implement these changes to its Price List effective March 2, 2020. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

Effective July 3, 2019, the Exchange introduced transition pricing designed to provide member organizations an extended transition period to connect to the Exchange using Pillar technology with no fee increase. Specifically, the Exchange (1) adopted a cap on monthly fees for the use of certain ports connecting to the Exchange for the billing months July 2019 through March 2020 (the "Transition Period"); (2) adopted a Decommission Extension Fee applicable for the billing months April 2020 through September 2020 (the "Decommission Period") for legacy port connections; and (3) prorated the monthly fee for certain ports activated after July 1, 2019, effective April 1, 2020.⁴

The Exchange proposes to

- extend the end of the Transition Period from March 2020 to August 2020 for member organizations to transition to the utilization of ports that connect to the Exchange using Pillar technology;
- shorten the Decommission Period that begins once the transition period ends from six months (April 2020–September 2020) to four months (September–December 2020);

- extend the effective date that the Exchange would prorate the monthly fee for certain ports activated on or after July 1, 2019 from April 1, 2020 to September 1, 2020; and

- revise the fees charged for legacy port connections during the Decommission Period.

The purpose of this filing is to provide additional time for member organizations to transition from older to

newer and more efficient Pillar technology. The Exchange is not proposing to adjust the amount of the port fees, which will remain at the current level for all market participants. The Exchange would continue to provide a cap on how much member organizations would be charged for ports during the proposed extra five months of the Transition Period so that they would not incur additional charges during the transition to Pillar communication protocols. Moreover, the Exchange proposes to shorten the period during which the few firms that do not transition during the proposed longer Transition Period would be charged fees to offset the Exchange's continuing costs of supporting legacy ports, and proposes to increase those fees to account for the overall longer time period that the Exchange would need to support legacy ports.

The Exchange proposes to implement these changes to its Price List effective March 2, 2020.

Competitive Environment

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."⁵

As the Commission itself recognized, the market for trading services in NMS stocks has become "more fragmented and competitive."⁶ Indeed, equity trading is currently dispersed across 13 exchanges,⁷ 31 alternative trading systems,⁸ and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 20% of

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) ("Regulation NMS").

⁶ 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").

⁷ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

⁸ 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/atstlist.htm>.

the market share of executed volume of equity trades (whether excluding or including auction volume).⁹ 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 categories of products, including ports, in response to fee changes. Accordingly, the Exchange's fees, including port fees, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange is proposing these changes in the context of a competitive environment in which market participants can and do shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Because ports are used by member organizations to trade electronically on the Exchange, fees associated with ports are subject to these same competitive forces. The Exchange believes that the proposal represents a reasonable attempt to provide member organizations with additional time to effect an orderly transition to upgraded technology without incurring additional costs. If a member organization is unable to complete this transition within the proposed longer period, the proposed pricing is designed to offset the Exchange's continuing costs of supporting legacy ports for a longer period of time.

Proposed Rule Change

Member organizations enter orders and order instructions, and receive information from the Exchange, by establishing a connection to a gateway that uses communication protocols that map to the order types and modifiers described in Exchange rules. These gateway connections, also known as logical port connections, are referred to as "ports" on the Exchange's Price List. Legacy ports connect with the Exchange via a Common Customer Gateway (known as "CCG") that accesses its equity trading systems ("Phase I ports"). Beginning July 1, 2019, the Exchange began to make available ports using Pillar gateways to its member organizations ("Phase II ports").

Extension of the Date To Prorate Ports

The Exchange currently makes available ports that provide connectivity

⁹ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

⁴ See Securities Exchange Act Release No. 86360 (July 11, 2019), 84 FR 34210 (SR–NYSE–2019–39).

to the Exchange's trading systems (*i.e.*, ports for entry of orders and/or quotes ("order/quote entry ports")) and charges \$550 per port per month. Designated Market Makers ("DMMs") are not charged for the first 12 ports per month that connect to the Exchange.¹⁰ The Exchange also currently makes ports available for drop copies and charges \$550 per port per month,¹¹ except that DMMs are not charged for drop copy ports that connect to the Exchange.

During the ongoing first phase of the Exchange's transition pricing, the fees charged for both order/quote entry and drop copy ports are, with certain exceptions, capped at—and thus not charged for more than—the total number of both order/quote entry and drop copy ports that the member organization has activated as of its June 2019 invoice.

Effective April 1, 2020, the Exchange will prorate fees for order/quote entry and drop copy ports activated after July 1, 2019, to the number of trading days that a port is eligible for production trading with the Exchange, including any scheduled early closing days.

The Exchange proposes to extend the effective date for the prorating of order/quote entry and drop copy ports to September 1, 2020 to coincide with the end of the proposed extended Transition Period in August 2020, discussed below.

Extension of the Transition Period

Currently, during the billing months of July 2019 through March 2020 (the "Transition Period"), the total number of ports charged per member organization is capped at the total number of ports that the member organization activated as of the June 2019 invoice, which was the last full month prior to the introduction of the new gateways (the "Transition Cap"). Transition Cap pricing is available until the earlier of (1) the end of the Transition Period, *i.e.*, March 2020, or (2) the billing month during which a member organization fully transitions to using only ports that communicate using Pillar phase II protocols. If during the Transition Period, a member organization increases the number of Phase I ports above the Transition Cap, those ports would be charged at the current rates for order/quote entry ports and drop copy ports. Finally, if during the Transition Period a member organization has a total number of ports below the Transition Cap, the Exchange

would charge a member organization for their actual number of ports.

The Exchange proposes to extend the Transition Period by five months to August 2020. As proposed, the charge per port (order/quote entry and drop copy) would remain at \$550 per port per month. DMMs would continue not to be charged for drop copy ports and for their first 12 order/quote entry ports per month that connect to the Exchange and then charged \$550 per order/quote entry port that connects to the Exchange per month thereafter.

The purpose of Transition Period pricing is to cap port fees to allow member organizations additional time to implement technology changes necessary to connect to the Exchange using the Phase II ports without incurring additional Exchange fees. As of January 2020, only 42% of Phase I ports have been cancelled. Based on the Exchange's experience to date, the Exchange believes that an additional five months will be necessary to provide sufficient time for all member organizations, regardless of size, to be able to complete the necessary changes and transition fully to the Phase II ports.

Extension of the Decommission Period and New Decommission Extension Fee

Currently, member organizations that have not transitioned to Phase II ports and are still utilizing Phase I ports during the billing months of April 2020 through September 2020 (*i.e.*, the Decommission Period), would, in addition to the current port fees, be charged a Decommission Extension Fee of \$500 per port per month, increasing by \$500 per port for each month for any ports that communicate using Pillar phase I protocols. As per the Price List, ports using Pillar phase I protocols would no longer be available beginning October 1, 2020.

The Exchange proposes that the Decommission Period would begin in September 2020, after the end of the proposed longer Transition Period, and shortened to four months. As proposed, the Decommission Period would commence in September 2020 and end in December 2020. As a result, the Price List would also be amended to provide that ports using Pillar phase I protocols would no longer be available beginning January 1, 2021. The Exchange further proposes to increase the Decommission Extension Fee to \$1,000 per port per month and increasing by \$1,000 per port for each month for any ports that communicate using Pillar phase I protocols.

For example, in January 2020, Firm A has 10 Phase I ports and a Transition Cap of 10 ports. By September 2020, the

first month of the proposed Decommission Period, Firm A still has two Phase I ports. In this scenario, Firm A would be charged the standard port rate for two Phase I ports plus \$1,000 per port for the Decommission Extension Fee.

If Firm A has the same two Phase I ports in October 2020, Firm A would be charged the standard port rate for the two Phase I ports plus \$2,000 per port for the Decommission Extension Fee.

If Firm A retains the two Phase I ports until December 2020, the final month of the proposed enlarged Decommission Period, Firm A would be charged the standard port rate for the two Phase I ports plus \$4,000 per port for the Decommission Extension Fee.

As noted above, the Exchange believes that a longer Transition Period would provide sufficient time for member organizations to fully transition to Phase II ports and eliminate their use of Phase I ports. To the extent that member organizations do not complete the transition during the Transition Period, the Exchange will offer member organizations the ability to choose to continue using Phase I ports until December 2020. To cover the costs associated with maintaining and supporting both Phase I ports and Phase II ports beyond the longer Transition Period, and to provide an added incentive for member organizations to migrate to Phase II ports before the end of the Transition Period, the Exchange proposes to increase the costs for the expected very small number of member organizations that would need longer to transition than the 14-month Transition Period. Specifically, to support the continued availability of the Phase I ports, the Exchange would have to maintain additional hardware and devote technology resources to maintain and operate those ports, which is a cost to the Exchange. While these costs cannot be specifically quantified and it is unknown how many (if any) member organizations would need to continue to access the Exchange using Phase I ports after the Transition Period, the Exchange believes that the proposed increased Decommission Extension Fee would, in part, cover the costs associated with continuing to support the Phase I port infrastructure for use by a dwindling number of member organizations. The Exchange believes that the proposed additional five months will provide more than sufficient time for the transition and that fewer member organizations will choose to pay the proposed Decommission Fee because they do not transition within the extended Transition Period.

¹⁰ DMMs completed the transition to Phase II ports last year.

¹¹ Only one fee per drop copy port applies, even if receiving drop copies from multiple order/quote entry ports.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹³ 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 Changes Are Reasonable

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.”¹⁴

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”¹⁵ Indeed, equity trading is currently dispersed across 13 exchanges,¹⁶ 31 alternative trading systems,¹⁷ and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 20% of the market share of executed volume of equity trades (whether excluding or including auction volume).¹⁸ 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 categories of products, including ports, in response to fee changes. Accordingly, the Exchange’s fees, including port fees, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

If a particular exchange charges excessive fees for connectivity, impacted members and non-members may opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange’s data indirectly. Accordingly, if the Exchange charges excessive fees, it would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.

Given this competitive environment, the proposal represents a fair and reasonable attempt to provide member organizations with additional time to make an orderly transition to upgraded technology without increasing their costs. As noted, more than half of legacy ports have not been cancelled. If a member organization is unable to complete this transition within the additional five months of the extended Transition Period, the pricing is designed so that only those few member organizations that may not transition within that time period would pay for the Exchange to continue to support their Phase I ports. Additionally, the Exchange believes that the revised Decommission Extension Fee for member organizations that choose to continue to connect to the Exchange through the use of Phase I ports following the end of the Transition Period is reasonable because the Exchange would continue to incur ongoing costs in maintaining Phase I ports for a longer period of time.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants. The Exchange is not proposing to adjust the amount of the port fees, which will remain at the current level for all market participants. Rather, the proposal would revise the

Decommission Extension Fee for those few member organizations that choose not to transition to Phase II ports during the extended Transition Period.

The Exchange believes that the proposal constitutes an equitable allocation of fees because all similarly situated member organizations and other market participants eligible for the Decommission Extension Fee would be charged the same rates. Specifically, the proposed revised Decommission Extension Fee would apply equally to all member organizations that choose to connect to the Exchange through the use of Phase I ports during the Decommission Period. Moreover, as noted above, the Exchange proposes a longer transition period which the Exchange expects should be more than sufficient for all member organizations, regardless of size, to transition to Phase II ports before the proposed revised Decommission Fee goes into effect.

The proposal to pro-rate port fees beginning September 1, 2020, is also an equitable allocation of fees since it would apply equally to all member organizations that connect to the Exchange, who would equally receive the benefit of being charged only for the connectivity utilized during any trading month beginning in September 1, 2020. As noted above, to the extent a member organization continues to use ports activated before July 1, 2019 to connect to the Exchange during the new September 1, 2020 date and any subsequent months, the Exchange believes it is fair and equitable to continue to charge flat fees for such ports until such time that connection to the Exchange through the use of Phase I ports is no longer available beginning January 1, 2021.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange’s pricing if they believe that alternatives offer them better value, and are free to discontinue to connect to the Exchange through its ports. As noted, the Exchange is offering upgraded connections in an effort to keep pace with changes in the industry and evolving customer needs as new technologies emerge and products continue to develop and change.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal does not permit unfair discrimination because the proposal would be applied to all similarly

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) & (5).

¹⁴ See Regulation NMS, 70 FR at 37499.

¹⁵ See Transaction Fee Pilot, 84 FR at 5253.

¹⁶ See Cboe Global Markets, U.S. Equities Market Volume, available at http://markets.cboe.com/us/equities/market_share/. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

¹⁷ 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>.

¹⁸ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

situated member organizations and other market participants would be charged the same rates.

The Exchange believes that the proposal does not permit unfair discrimination because the Exchange will be making available both the Phase I and Phase II ports available to all member organizations during the extended Transition Period on an equal basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees. For the same reasons, the Exchange believes that the proposal would not permit unfair discrimination between member organizations.

Similarly, the proposal does not permit unfair discrimination between member organizations because the proposed revised Decommission Extension Fee would apply equally to all member organizations that choose to connect to the Exchange through the use of such ports during the proposed Decommission Period. If a member organization becomes subject to the Decommission Fee, it would only be because such firm chose not to complete its transition to the Phase II ports by the end of the longer Transition Period. While the Exchange cannot predict with certainty whether any firms would be subject to the Decommission Fee, and if so, which ones, the Exchange anticipates that it would be a limited set of member organizations that would incur such fees. Moreover, the Exchange believes that increasing the Decommission Extension Fee for each month for ports that communicate using Pillar phase I protocols once the new Decommission Period begins would also apply equally to all member organizations that continue to choose to connect to the Exchange utilizing legacy ports.

The Exchange believes that the proposal to pro-rate port fees does not permit unfair discrimination because it would apply equally to all member organizations that connect to the Exchange, who would equally receive the benefit of being charged only for the connectivity utilized during any trading month beginning September 1, 2020. As noted, to the extent a member organization continues to use ports activated before July 1, 2019 to connect to the Exchange during September 1, 2020 and any subsequent months, the Exchange believes it is fair, equitable and not unfairly discriminatory to continue to charge flat fees for such ports until such time that connection to the Exchange through the use of old ports is no longer available beginning January 1, 2021.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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,¹⁹ 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. Instead, as discussed above, the Exchange believes that the proposed changes would provide additional time for member organizations to transition from older to newer and more efficient Pillar technology with no fee increase and offset the Exchange's continuing costs of supporting the Phase I ports for the few firms that do not transition to the new ports during the longer transition period without any change to the fees currently charged by the Exchange for the use of ports to connect to the Exchange's trading systems.

Intramarket Competition. The Exchange does not believe the proposed rule change would impose any burden on intramarket competition that is not necessary or appropriate because it would apply to all member organizations equally that connect to the Exchange. All member organizations, regardless of size, will be eligible for the transition pricing through the extended Transition Period ending August 2020 and will be eligible to connect via either Phase I or Phase II ports during this period. In addition, all member organizations will be subject to the proposed Decommission Fee on an equal basis if they do complete the transition to Phase II ports by the end of the new August 2020 date. As noted, the Exchange anticipates that a low percentage of member organizations would be subject to the proposed Decommission Fee, and the firms likely to be subject to such fee would be larger firms that could more easily absorb the cost of that fee. The Exchange further believes that by extending the Transition Period and providing six months' notice of the revised Decommission Fee, all member organizations have an equal opportunity to timely transition to Phase II ports before the new Decommission Fee would take effect.

Intermarket Competition. The Exchange does not believe the proposed

rule change would impose any burden on intermarket competition that is not necessary or appropriate because 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 levels at those other venues to be more favorable. The Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets.

As noted, the no single exchange has more than 20% of the market share of executed volume of equity trades (whether excluding or including auction volume).²⁰ 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 categories of products, including ports, in response to fee changes. Accordingly, the Exchange's fees, including port fees, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange is proposing these changes in the context of a competitive environment in which market participants can and do shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Because ports are used by member organizations to trade electronically on the Exchange, fees associated with ports are subject to these same competitive forces. The Exchange therefore believes that the proposal would not impose an undue burden on intermarket competition because the purpose of this filing is not to change the rates charged for ports but rather to provide member organizations with more time to effect an orderly transition to upgraded technology without needing to incur any additional costs. If a member organization is unable to complete this transition within the proposed longer period, the pricing is designed to offset the Exchange's continuing costs of supporting legacy ports for a shorter period of time.

²⁰ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

¹⁹ 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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)²¹ of the Act and subparagraph (f)(2) of Rule 19b-4²² 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 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)²³ 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 email to rule-comments@sec.gov. Please include File Number SR-NYSE-2020-14 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-NYSE-2020-14. This file number should be included on the subject line if email 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](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-NYSE-2020-14 and should be submitted on or before April 8, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88362; File No. SR-NYSE-2020-13]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Rule 7.31 (Orders and Modifiers) Relating to How Orders are Repriced and Make Related Changes to Rules 7.35, 7.36, and 7.38

March 12, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 28, 2020, New York Stock Exchange LLC ("NYSE" or "Exchange") 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 Rule 7.31 (Orders and Modifiers) relating to how orders are repriced and make related changes to Rules 7.35, 7.36, and 7.38. 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 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 Rule 7.31 (Orders and Modifiers) relating to how orders are repriced and make related changes to Rules 7.35, 7.36, and 7.38.

Background

Currently, if an Away Market updates its PBBO and crosses not only the Exchange's BBO, but also displayed orders in the Exchange Book not represented in the BBO, *i.e.*, depth-of-book orders, and then the Exchange's BBO cancels or trades, the Exchange will not disseminate its next-best priced displayed order as its new BBO to the securities information processor ("SIP").³ Instead, the Exchange reprices

³ The term "Away Market" is defined in Rule 1.1(b) to mean "any exchange, alternative trading system ("ATS") or other broker-dealer (1) with which the Exchange maintains an electronic linkage and (2) that provides instantaneous responses to orders routed from the Exchange." The term "BBO" is defined in Rule 1.1(c) to mean the best bid or offer on the Exchange, and the term "BB" means the best bid on the Exchange, and the term "BO" means the best offer on the Exchange. The term "PBB" is

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(2).

²³ 15 U.S.C. 78s(b)(2)(B).

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.