SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90677; File No. SR–NYSE–2020–96]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Its Rules Establishing Maximum Fee Rates To Be Charged by Member Organizations for Forwarding Proxy and Other Materials to Beneficial Owners

December 15, 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 December 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 rules establishing maximum fee rates to be charged by member organizations for forwarding proxy materials to beneficial owners. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 451 requires NYSE member organizations that hold securities for beneficial owners in street name to solicit proxies from, and deliver proxy and issuer communication materials to, beneficial owners on behalf of issuers.[4] For this service, issuers reimburse NYSE member organizations for out-of-pocket, reasonable clerical, postage and other expenses incurred for a particular distribution. This reimbursement structure stems from SEC Rules 14b–1 and 14b–2 under the Act,[5] which impose obligations on companies and nominees to ensure that beneficial owners receive proxy materials and are given the opportunity to vote. These rules require companies to send their proxy materials to nominees, *i.e.,* broker-dealers or banks that hold securities in street name, for forwarding to beneficial owners and to pay nominees for reasonable expenses, both direct and indirect, incurred in providing proxy information to beneficial owners. The Commission's rules do not specify the fees that nominees can charge issuers for proxy distribution; rather, they state that issuers must reimburse the nominees for ''reasonable expenses'' incurred.[6]

Currently, the Supplementary Material to NYSE Rules 451 and 465 establish the fee structure for which a NYSE member organization may be reimbursed for expenses incurred in connection with distributing proxy materials to beneficial shareholders. This fee structure is also replicated in Section 402.10 of the NYSE Listed Company Manual. The NYSE fee structure represents the maximum approved rates that an issuer can be billed for proxy distribution services absent prior notification to and consent of the issuer.

All the SROs whose member organizations hold securities on behalf of street name holders have rules requiring their member organizations to forward proxy materials and other distributions on behalf of companies to street name account holders. The rules of all other exchanges simply provide that member organizations must undertake this activity if they receive ''reasonable'' reimbursement, without specifying any schedule of maximum permitted charges.[7] By contrast, FINRA includes a specific schedule of maximum charges that is substantively identical to that of the NYSE.[8]

Given the significant evolution of the securities industry during the period in which the NYSE has taken the lead in establishing proxy distribution reimbursement rates, the NYSE does not believe that it is best positioned to retain this responsibility going forward. All the NYSE member organizations that are subject to the NYSE fee schedule are also members of FINRA. In addition, all of the brokers who are not NYSE members but who hold shares on behalf of street name account holders are also FINRA members. Furthermore, a large percentage of the affected listed issuers are listed on Nasdaq, CBOE or other non-NYSE Group exchanges or are not listed on any national securities exchange, while the development of the

[4] The ownership of shares in street name means that a shareholder, or ''beneficial owner,'' has purchased shares through a broker-dealer or bank, also known as a ''nominee.'' In contrast to direct ownership, where shares are directly registered in the name of the shareholder, shares held in street name are registered in the name of the nominee, or in the nominee name of a depository, such as the Depository Trust Company. For more detail regarding share ownership, *see* Securities Exchange Act Release No. 62495 (July 14, 2010), 75 FR 42982 (July 22, 2010) (Concept Release on the U.S. Proxy System) (''Proxy Concept Release'').

[5] 17 CFR 240.14b–1; 17 CFR 240.14b–2.

[6] In adopting the direct shareholder communications rules in the early 1980s, the Commission left the determination of reasonable costs to the self-regulatory organizations (''SROs'') because they were deemed to be in the best position to make fair evaluations and allocations of costs associated with these rules. *See* Securities Exchange Act Release No. 20021 (July 28, 1983), 48 FR 35082 (August 3, 1983); *see also* Securities Exchange Act Release No. 45644 (March 25, 2002), 67 FR 15440, 15440 n.8 (April 1, 2002).

[7] *See, e.g.,* BZX Exchange, Inc. Rule 13.3; *see also* Investors Exchange Rulebook 6.130.

[8] *See* FINRA Rule 2251. The Exchange notes that FINRA Rule 2251 differs from Rule 451 in one respect. Section 5 (Notice and Access Fees) of Supplementary Material .90 of Rule 451 provides that the Notice and Access fees set forth therein will also be charged with respect to the distribution of investment company shareholder reports pursuant to any ''notice and access'' rules adopted by the SEC in relation to such distributions and that such fee will not be charged for any account with respect to which an investment company pays a Preference Management Fee in connection with a distribution of investment company shareholder reports. It further provides that, in calculating the rates at which the issuer will be charged Notice and Access fees for investment company shareholder report distributions, all accounts holding shares of any class of stock of the applicable issuer eligible to receive the same distribution will be aggregated in determining the appropriate pricing tier under this Section 5 (Notice and Access Fees) of Supplementary Material .90 of Rule 451. FINRA has not adopted this text as part of FINRA Rule 2251. Pursuant to Rule 30e–3 under the Investment Company Act of 1940, the SEC has adopted a ''notice and access'' rule for investment companies. Investment companies that have met the requirements of Rule 30e–3(i)(1)(i) are permitted to utilize this ''notice and access'' approach for distributions to beneficial owners beginning January 1, 2021. *See also* Rule 30e–3(i)(1)(ii) for other transition period requirements.

mutual fund industry has led to the existence of a huge number of issuers who must pay these costs but have no relationship with any listing exchange.

The current fee schedule has been in place since 2013 [9] and a comprehensive review of fee levels may be necessary in the near future to respond to the continuing evolution in both technology and the securities ownership patterns of investors since that time. All of the brokers who hold shares on behalf of street name account holders are FINRA members, while only a subset of them are members of the NYSE. Furthermore, a large and increasing number of the affected issuers are listed on Nasdaq, CBOE or other non-NYSE Group exchanges or are traded solely over the counter, while the development of the mutual fund industry has led to the existence of a huge number of issuers who are not listed on any exchange.

In response to the developments described above. the NYSE proposes to amend Rule 451 by deleting the fee schedule and replacing it with text comparable to that of other exchanges providing that member organizations are entitled to receive fair and reasonable rates of reimbursement for all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with proxy solicitations and the processing of proxy and other material required under Rule 451. In addition, the amended rule text will provide that member organizations must comply with any schedule of approved charges set forth in the rules of any other national securities exchange or association of which such member organization is a member. As all NYSE member organizations subject to the NYSE fee schedule are also members of FINRA, this provision will effectively require member organizations to comply with the fee schedule set forth in FINRA Rule 2551.

The Exchange proposes to delete Section 402.10 of the Manual in its entirety as it is identical to provisions with respect to issuers other than mutual funds as set forth in Rule 451 and is therefore redundant.

Rule 465 governs the role of NYSE member organizations in distributing on behalf of issuers interim reports and other materials to ''street name'' account holders. Supplementary Material .20 to Rule 465 specifies that these distributions are subject to the fee schedule set forth in Supplementary Material 90–95 to Rule 451. The Exchange proposes to delete the current text of Supplementary Material .20 to Rule 465 and replace it with a paragraph that parallels the proposed new form of Supplementary Material .90 to Rule 451, providing that, in determining fair and reasonable rates of reimbursement for all out-of-pocket expenses, including reasonable clerical expenses, incurred in connection with copies of interim reports of earnings or other material being sent to stockholders pursuant to Rule 465, member organizations must comply with any schedule of approved charges set forth in the rules of any other national securities exchange or association of which such member organization is a member.

The Exchange notes that this proposal is in no way intended to take a position on the appropriateness of the fee schedules for proxy and other distributions currently set forth in Rules 451 and 465 or in the rules of any other national securities exchange or national securities association. The sole purpose of this proposal is obtain approval to delete the fee schedules from the NYSE rules and establish in their place a requirement to comply with the fee provisions set forth in the rules of any other national securities organization or national securities association of which an NYSE member organization is a member.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act'') generally.[10] Section 6(b)(4) [11] requires that exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using the facilities of an exchange. Section 6(b)(5) [12] requires, among other things, that exchange rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect the public interest and the interests of investors, promote just and equitable principles of trade and that they are not designed to permit unfair discrimination between issuers, brokers or dealers. Section 6(b)(8) [13] prohibits any exchange rule from imposing any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposal is consistent with Sections 6(b)(4) and 6(b)(5) of the Act as it will not result in any substantive change in the reimbursement rates received by member organizations for proxy and other document distributions on behalf of issuers, as all NYSE member organizations are also subject to the fee schedule set forth in FINRA rules.

The Exchange believes that the proposal is also consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, perfect the mechanism of a free and open market and promote just and equitable principles of trade. The maximum reimbursement rates brokers receive for making distributions of proxies and other materials on behalf of issuers will continue to be determined by FINRA, the self-regulatory organization of which all affected brokers are members.

As discussed above, all NYSE member organizations subject to these rules are also members of FINRA and, consequently, subject to the fee schedule set forth in FINRA Rule 2251. As the schedule set forth in FINRA Rule 2251 is substantively identical to the NYSE's current fee schedule, there will be no substantive change in the maximum rates NYSE member organizations may charge as a result of the proposed amendments.

All of the brokers who hold shares on behalf of street name account holders are FINRA members, while only a subset of them are also members of the NYSE. Furthermore, a large and increasing number of the affected issuers are listed on Nasdaq, CBOE or other non-NYSE Group exchanges or are traded solely over the counter, while the development of the mutual fund industry has led to the existence of a huge number of issuers who must pay these costs but have no relationship with any listing exchange. Notably, while mutual funds are not listed on any exchange, they are all held primarily in ''street name'' accounts at brokers that are members of FINRA.

The Exchange believes that the proposal is consistent with Section 6(b)(8), as it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. All of the NYSE member organizations that are subject to the fee schedule in the current forms of Rules 451 and 465 are also subject to the identical provisions of FINRA Rule 2251. Consequently, the proposed rule change will have no effect

[9] *See* Securities Exchange Act Release No. 70720 (October 18, 2013), 78 FR 63530 (October 24, 2013) (SR–NYSE–2013–07) (order approving the most recent comprehensive amendments to the NYSE fee schedule).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(8).

on competition among brokers, as they will all continue to be subject to the same maximum fee schedule. For the same reason there will be no effect on the competition among issuers resulting from the proposed rule change, as all issuers will remain subject to the same maximum fee schedule as applied under the FINRA rule. As all of the issuers listed on all of the national securities exchanges are currently obligated to pay the same maximum fees under the current NYSE rules and FIRNA Rule 2251, the proposal will also have no effect on the competition for listings among the national securities exchanges. For the foregoing reasons, the Exchange believes that the proposal does not impose any burden on competition that that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. All of the NYSE member organizations that are subject to the fee schedule in the current forms of Rules 451 and 465 are also subject to the identical provisions of FINRA Rule 2251. Consequently, the proposed rule change will have no effect on competition among brokers, as they will all continue to be subject to the same maximum fee schedule. For the same reason there will be no effect on the competition among issuers resulting from the proposed rule change, as all issuers will remain subject to the same maximum fee schedule as applied under the FINRA rule. As all of the issuers listed on all of the national securities exchanges are currently obligated to pay the same maximum fees under the current NYSE rules and FIRNA Rule 2251, the proposal will also have no effect on the competition for listings among the national securities exchanges. For the foregoing reasons, the Exchange believes that the proposal does not impose any burden on competition that that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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–2020–96 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–2020–96. 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*). 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–2020–96 and should be submitted on or before January 11, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–28010 Filed 12–18–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90675; File No. SR–NYSEArca–2020–54]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend NYSE Arca Rule 5.3–E To Exempt Registered Investment Companies That List Certain Categories of the Securities Defined as Derivative and Special Purpose Securities Under NYSE Arca Rules From Having To Obtain Shareholder Approval Prior to the Issuance of Securities in Connection With Certain Acquisitions of the Stock or Assets of an Affiliated Company

December 15, 2020.

I. Introduction

On August 28, 2020, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Rule 5.3–E (Corporate Governance and Disclosure Policies) to exempt certain categories of derivative and special purpose securities from the requirement to obtain shareholder approval prior to the issuance of securities in connection with certain acquisitions of the stock or assets of another company. The

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.