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**SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-86360; File No. SR-NYSE-2019-39]**

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Price List to Adopt Transition Pricing to Support the Introduction of Ports that Connect to the Exchange Using Pillar Technology

July 11, 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 July 3, 2019, 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 adopt transition pricing to support the introduction of ports that connect to the Exchange using Pillar technology. The Exchange proposes to implement these changes to its Price List effective July 3, 2019. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Price List to adopt transition pricing to support the introduction of ports that connect to the Exchange using Pillar technology. With the proposed transition fee pricing, the Exchange would (1) adopt a cap on monthly fees for the use of certain ports connecting to the Exchange for the billing months July 2019 through March 2020; (2) adopt a Decommission Extension Fee applicable for the billing months April 2020 through September 2020 for legacy port connections; and (3) prorate the monthly fee for certain ports activated after July 1, 2019, effective April 1, 2020. Without this proposed rule change, the Exchange would be required to charge a member organization for all of its ports -- both legacy ports and the new ports using Pillar technology -- during the transition period, which could significantly increase costs to member organizations.

This filing does not propose to increase the rates charged for ports. Rather, the purpose of this filing is to incent the transition from older to newer and more efficient Pillar technology with no fee increase. Moreover, the Exchange proposes to do so in essentially the same way that the Exchange's affiliate, NYSE Arca, Inc. ("NYSE Arca"), did in 2017⁴ by, first, providing a cap on how much member organizations would be charged for ports for a nine-

⁴ See Securities Exchange Act Release No. 81901 (October 19, 2017), 82 FR 49426 (SR-NYSEArca-2017-121) (adopting decommission extension fee for initial three months of March-May 2018); Securities Exchange Act Release No. 83410 (June 12, 2018), 83 FR 28300 (SR-NYSEArca-2018-42) (extending decommission extension fee for the additional three months of June-September 2018).

month period so that they would not incur additional charges during the transition to Pillar communication protocols and, second, providing that the fees for the few firms that do not transition during the nine-month period offset the Exchange's continuing costs of supporting legacy ports.

The Exchange proposes to implement these changes to its Price List effective July 3, 2019.⁵

Overview of the Proposed Fee Changes

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.

The Exchange currently makes available ports that provide this connectivity 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 for such ports.⁶ Designated Market Makers ("DMMs") connect via "DMM Gateways" and are not charged for the first 12 ports per month that connect to the Exchange.⁷ The Exchange also currently makes ports available for drop copies and charges \$550 per port per month,⁸ except that DMMs are not charged for drop copy

⁵ The Exchange originally filed to amend the Schedule of Fees and Rebates on June 28, 2019 (SR-NYS-2019-36). SR-NYSE-2019-36 was subsequently withdrawn and replaced by this filing.

⁶ All ports on the Exchange currently connect via a Common Customer Gateway ("CCG") that accesses its equity trading systems. See, e.g., Securities Exchange Act Release No. 64542 (May 25, 2011), 76 FR 31659 (June 1, 2011) (SR-NYSE-2011-13).

⁷ See Securities Exchange Act Release No. 68229 (November 14, 2012), 77 FR 69688 (November 20, 2012) (SR-NYSE-2012-60) (Notice).

⁸ Only one fee per drop copy port applies, even if receiving drop copies from multiple order/quote entry ports.

ports that connect to the Exchange via the DMM Gateway. Fees for order/quote entry ports and drop copy ports have remained relatively stable over time and have not increased since 2015, and not since 2017 for DMMs.⁹

The Exchange is undergoing a multi-phase transition to the Pillar trading platform that began in April 2018, when the Exchange introduced trading of UTP Securities on the Pillar trading platform.¹⁰ Because Exchange-listed securities are not yet on the Pillar trading platform, all ports currently communicate with the Exchange using CCG (“Phase I ports”), regardless of whether trading UTP securities or Exchange-listed securities.

The Exchange next plans to transition Exchange-listed securities to the Pillar trading platform.¹¹ In anticipation of the transition of Exchange-listed securities to the Pillar trading platform, the Exchange will be introducing new technology to support how all member organizations, including DMMs, will communicate with the Exchange when trading on the Pillar trading platform. The Exchange plans to make available ports using Pillar gateways (“Phase II ports”) beginning July 1, 2019, at which time such ports will be available for trading UTP

⁹ See Securities Exchange Act Release No. 76072 (October 5, 2015), 80 FR 61258 (October 9, 2015) (SR-NYSE-2015-43) (Notice); Securities Exchange Act Release No. 79748 (January 6, 2017), 82 FR 3828 (January 12, 2017) (SR-NYSE-2016-93) (Notice).

¹⁰ The term “UTP Security” is defined under Rule 1.1(aa) to mean a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges. The Exchange began trading UTP Securities on the Pillar trading platform on April 9, 2018. See also Securities Exchange Act Release No. 82945 (March 26, 2018), 83 FR 13553 (March 29, 2018) (SR-NYSE-2017-36) (Order approving trading rules to support trading of UTP Securities on the Pillar trading platform).

¹¹ The Exchange has announced that, subject to rule approvals, it will begin transitioning Exchange-listed securities to Pillar on August 5, 2019, available here: https://www.nyse.com/publicdocs/nyse/markets/nyse/Revised_Pillar_Migration_Timeline.pdf. See also Securities Exchange Act Release No. 85962 (May 29, 2019), 84 FR 26188 (June 5, 2019) (SR-NYSE-2019-05) (Order approving rules to support the transition of Exchange-listed securities to Pillar).

Securities on the Exchange. The Phase II ports will also be available for trading Exchange-listed securities once they transition to the Pillar trading platform. Once Exchange-listed securities transition to Pillar, DMMs will communicate with the Exchange using Phase II ports and will no longer use DMM Gateways.¹²

As the experience of the Exchange’s affiliates that trade on the Pillar trading platform and use the Phase II ports shows, the Phase II ports constitute a significant performance improvement over current ports, with an expected reduction in average latency up to 80% over Phase I ports.¹³ The Phase II ports will provide member organizations with a low-latency connection that will provide a more deterministic trading experience on the Exchange. Because of the latency improvements of the Phase II ports and because Exchange member organizations that are members of one or more of the Affiliated Exchanges already use Phase II ports, the Exchange expects its member organizations to transition expeditiously to using Phase II ports. However, because of the technology changes that a member organization would need to make to connect to Phase II ports, the Exchange anticipates that there will be a period of time before all member organization will be fully transitioned to the Phase II ports. During that transition period, a member organization may choose to maintain its Phase I ports while it replaces them with Phase II ports. Accordingly, during this implementation, there will be a period when both the Phase I and Phase II ports will be available to member organizations.¹⁴

¹² The Exchange accordingly proposes to refer generally to DMM ports that connect to the Exchange by deleting the phrase “via the DMM Gateway” in the sections of the Price List describing order/quote entry ports and drop copy ports.

¹³ Latency statistics for the Pillar gateways are available at <https://www.nyse.com/pillar>. These gateways are currently available on NYSE American LLC (“NYSE American”), NYSE Arca, Inc. (“NYSE Arca”), and NYSE National, Inc. (“NYSE National”) (collectively, the “Affiliated Exchanges”).

¹⁴ The Exchange’s affiliate NYSE Arca similarly offered a parallel period when both Pillar phase I and Pillar phase II protocols were available to its members. See Securities

In connection with this transition, the Exchange proposes transition pricing that has two distinct phases.

- The first phase would be a transition period during which the fees charged for both order/quote entry and drop copy ports would, with certain exceptions, be 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. The first phase would last nine months, from July 2019 through March 2020, during which the Exchange will be making both the Phase I and Phase II ports available to member organizations.
- The second phase would encompass a six-month decommission period between April 2020 and September 2020 during which the Exchange's proposed pricing would provide increased costs to member organizations that did not transition in the nine-month transition period. Effective April 1, 2020, the Exchange would also prorate the monthly fee for certain ports activated on or after July 1, 2019.

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

Exchange Act Release No. 79588 (December 23, 2016), 81 FR 96534 (December 30, 2016) (SR-NYSEArca-2016-170) (Notice of filing and immediate effectiveness of proposed rule change).

successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁵

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”¹⁶ Indeed, equity trading is currently dispersed across 13 exchanges,¹⁷ 31 alternative trading systems,¹⁸ and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 18% of the market share of executed volume of equity trades (whether excluding or including auction volume).¹⁹ 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.

¹⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (“Regulation NMS”).

¹⁶ 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”).

¹⁷ See Cboe Global Markets, U.S. Equities Market Volume Summary (June 28, 2019), available at http://markets.cboe.com/us/equities/market_share/. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

¹⁸ See FINRA ATS Transparency Data (June 3, 2019), available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. Although 54 alternative trading systems were registered with the Commission as of May 31, 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/atslist.htm>.

¹⁹ See Cboe Global Markets U.S. Equities Market Volume Summary (June 27, 2019), available at http://markets.cboe.com/us/equities/market_share/.

The Exchange is proposing this transition pricing 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 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 nine-month period, the pricing is designed to offset the Exchange's continuing costs of supporting the Phase I ports.

Proposed Rule Change

As noted above, the Exchange proposes to introduce transition pricing designed to provide member organizations an extended transition period to connect to Phase II ports without subjecting them to fee increases as they transition and once that transition period ends, to prorate fees for order/quote entry and drop copy ports, as follows.

The Exchange proposes to set forth the proposed "Pillar Port Transition Fee Pricing" as a separate entry on its Price List, to be added after the entry for Ports for drop copies. As proposed, the Pillar Port Transition Fee Pricing would be applicable to both order/quote entry and drop copy ports. Accordingly, all references to ports in this proposed pricing refer to both types of ports.

Proposed Transition Period Pricing

During the billing months of July 2019 through March 2020 (the "Transition Period"), the Exchange proposes that the total number of ports charged per member organization would be capped at the total number of such ports that the member organization has activated as of the

June 2019 invoice, which is the last full month prior to the introduction of the new gateways (the “Transition Cap”).

As further proposed, the Transition Cap pricing would be 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 has fully transitioned to using only ports that communicate using Pillar phase II protocols. For example, if in June 2019, Firm A has 10 ports, that firm’s Transition Cap would be 10 ports. At any time during the Transition Cap period, if Firm A keeps those 10 Phase I ports and adds 10 Phase II ports, Firm A would only be charged for 10 ports. If, during the Transition Period, Firm A no longer had any Phase I ports and had eight Phase II ports, it would no longer be eligible for the Transition Cap pricing and would be charged for those eight ports.

As an exception to the cap, the Exchange proposes that 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. The purpose of the Transition Cap is to facilitate the transition to Phase II ports. If this were not a transition period, and a member organization increased its number of ports, it would be charged accordingly. The Exchange therefore believes that if a member organization increases the number of Phase I ports, i.e., is not transitioning to the new technology, it should be charged for those additional ports no differently than during periods when the Transition Cap pricing is not in effect.

The Exchange further proposes that 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. For example, if during the Transition

Period, Firm A with a Transition Cap of 10 ports had four Phase I ports and five Phase II ports that firm would be charged for only nine ports, which is under its Transition Cap.

As proposed, the charge per port (order/quote entry and drop copy) will not be changing, and would remain at \$550 per port per month for all ports. 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 \$550 per order/quote entry port that connects to the Exchange per month thereafter.²⁰

Application and Impact of Transition Period Pricing

The purpose of Transition Period Pricing is to cap port fees to allow member organizations sufficient time to implement technology changes necessary to connect to the Exchange using the Phase II ports without incurring any additional Exchange fees. Based on the experience of the Exchange's affiliate NYSE Arca, the Exchange believes that nine months provides sufficient time for all member organizations, regardless of size, to be able to complete the necessary changes. The Exchange proposes to extend the Transition Pricing through March 2020 so that if a member organization is unable to complete its changes in 2019, it would have sufficient time in 2020 to plan for and implement the changes.

The proposed cap would have the effect of waiving the port fees during the Transition Period of any new Phase II ports that a member organization may use. Without this proposed rule change, the Exchange would be required to charge a member organization for all of its ports -- both Phase I and Phase II ports -- during the transition period, which could significantly increase costs to member organizations.

Proposed Decommission Extension Fee

²⁰ See note 12, supra.

The Exchange proposes to amend the Price List to adopt a Decommission Extension Fee that would apply during the billing months of April 2020 through September 2020 (the “Decommission Period”). As proposed, during the Decommission Period, in addition to the current port fees, member organizations would 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. The proposed Decommission Extension Fee would apply only to member organizations that use Phase I ports during the Decommission Period. The Exchange proposes that ports using Pillar phase I protocols would no longer be available beginning October 1, 2020.

For example, in June 2019, Firm A has 10 Phase I ports and a Transition Cap of 10 ports. By April 2020, the first month of the Decommission Period, Firm A still has four Phase I ports. In this scenario, Firm A would be charged the standard port rate for the four Phase I ports plus \$500 per port for the Decommission Extension Fee.

If Firm A has the same four Phase I ports in May 2020, Firm A would be charged the standard port rate for the four Phase I ports plus \$1,000 per port for the Decommission Extension Fee.

If Firm A retains the four Phase I ports until September 2020, the final month of the Decommission Extension Pricing, Firm A would be charged the standard port rate for the four Phase I ports plus \$3,000 per port for the Decommission Extension Fee.

Application and Impact of the Proposed Decommission Extension Fee

As noted above, the Exchange believes that a nine-month Transition Period is 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 September 2020. To cover the costs associated with maintaining and supporting both Phase I ports and Phase II ports beyond the nine-month Transition Period, the Exchange proposes that such costs would be paid by the expected very small number of member organizations that would need longer to transition than the nine-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 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 proposed Decommission Extension Fee is not novel. As noted previously, the Exchange's affiliate NYSE Arca previously adopted a decommission extension fee and was successful in using the fee to incent its members to fully transition to the phase II ports within a seven-month transition period.²¹ Specifically, NYSE Arca introduced its Phase II ports in August 2017. Beginning March 1, 2018, NYSE Arca began charging a decommission extension fee. Accordingly, NYSE Arca members had seven months to transition before the decommission extension fee was to be charged. During March 2018, the first month that NYSE Arca charged a decommission extension fee, 29 members of the 139 members that had Phase I ports prior August 2017, or 21% of the total, were subject to the decommission extension fee. In other

²¹ See note 4, supra.

words, 79% of NYSE Arca members had fully transitioned to the Phase II ports before NYSE Arca began charging its decommission extension fee. Sixteen of those firms were relatively large firms with at least ten ports that choose to absorb the cost rather than to transition to Phase II ports within the seven-month transition period.

By September 2018, the last month that NYSE Arca charged a decommission extension fee, only five NYSE Arca members out of 139 (4% of the total), were subject to the decommission extension fee. Of those five members, three were relatively large firms with at least 10 ports.

Based on NYSE Arca's experience, the Exchange believes that a similarly small number of larger firms will be subject to the proposed Decommission Extension Fee because they choose not to fully move to Phase II ports during the Transition Period. The Exchange notes that it proposes a Transition Period of nine months, which will provide firms two more months to transition as compared to NYSE Arca. The Exchange believes that these additional two 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 nine months, as compared to the number of firms that paid the NYSE Arca's decommission extension fee.

Proration of Port Fees

Effective April 1, 2020, the fee for order/quote entry and drop copy ports activated after July 1, 2019, will be prorated to the number of trading days that a port is eligible for production trading with the Exchange, including any scheduled early closing days.²²

²² Cboe BZX prorates port fees for the first month of service. See Cboe BZX U.S. Equities Exchange Fee Schedule, available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.

Application and Impact of Proration of Port Fees

The purpose of prorating the fees for order/quote entry and drop copy ports activated after July 1, 2019 is to charge member organizations port fees only for the days in which the member organization's port is connected to the Exchange.

For example, in June 2019, Firm A has 10 Phase I ports and a Pillar Transition Cap of 10 ports. If, in the first month after the Transition Cap, April 2020, Firm A has 10 Phase II ports and adds 2 Phase II ports on April 15, 2020, Firm A would be charged the standard port rate for the 10 Phase II ports, plus a prorated rate for the 2 additional Phase II ports added mid-month. The prorated rate would be calculated by dividing the number of trading days that a port is eligible for production trading with the Exchange by the total number of trading days in that month, then multiplying by the standard port rate.

The Exchange does not propose to introduce such pro-rated pricing until after the Transition Period because during the Transition Period, member organizations will be subject to the Transition Cap pricing, which will cap the total port costs as member organizations add Phase II ports and drop Phase I 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,²³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²⁴ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(4) & (5).

charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change is 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.”²⁵

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”²⁶ Indeed, equity trading is currently dispersed across 13 exchanges,²⁷ 31 alternative trading systems,²⁸ and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 18% of the market share of executed volume of equity trades (whether excluding or including auction volume).²⁹ The Exchange believes that the ever-shifting market share among the

²⁵ See Regulation NMS, 70 FR at 37499.

²⁶ See Transaction Fee Pilot, 84 FR at 5253.

²⁷ See Cboe Global Markets, U.S. Equities Market Volume Summary (June 28, 2019), available at http://markets.cboe.com/us/equities/market_share/. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangeshtml.html>.

²⁸ See FINRA ATS Transparency Data (June 3, 2019), available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. Although 54 alternative trading systems were registered with the Commission as of May 31, 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/atslist.htm>.

²⁹ See Cboe Global Markets U.S. Equities Market Volume Summary (June 28, 2019), available at http://markets.cboe.com/us/equities/market_share/.

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 reasonable method of providing member organizations with a means to make an orderly transition to upgraded technology without increasing their costs. As noted, the purpose of this filing is not to change the rates charged for ports. Rather the proposal would provide a cap on how much member organizations would be charged for ports during a nine-month period so that they would not incur additional charges during the transition to Pillar communication protocols. Accordingly, the Exchange believes that the proposal is a fair and reasonable way for member organizations to transition to upgraded technology without needing to incur any additional Exchange fees. If a member organization is unable to complete this transition within the nine-month period, the

pricing is designed so that only those few member organizations that may not transition within the nine-month period pay for the Exchange to continue to support the Phase I ports.

Transition Period Pricing

The Exchange believes that the proposed Transition Cap for the billing months of July 2019 through March 2020, which will be available until the earlier of the end of the Transition Period or the billing month during which a member organization has fully transitioned to using only ports that communicate using Pillar phase II protocols, is reasonable.

The proposed change is designed to permit member organizations an extended transition period to adjust to the new gateways. The Exchange believes that a nine-month transition period is reasonable and provides sufficient notice of the changeover. The proposed pricing is designed to provide all member organizations with no fee increases while they transition, and provides certainty for when this transition pricing ends so that firms can plan when and how to fully transition to the new gateways. Without such Transition Period pricing, member organizations costs would increase because, without this proposed rule change, the Exchange would be required to charge a member organization for all of its ports -- both Phase I and Phase II ports -- during the transition period, which could significantly increase costs to member organizations. In this regard, absent similar transition pricing, the Exchange's affiliate NYSE Arca's transition to Phase II protocols would have increased the average firms' port fees by 67.5% in the first month of the migration. Thus, the proposed cap balances the Exchange's desire to improve technology without increasing Exchange fees for member organizations.

Decommission Extension Fee

The Exchange believes that the proposed Decommission Extension Fee for member organizations that choose to continue to connect to the Exchange through the use of Phase I ports

after the Transition Period, which is scheduled to end at the close of trading on September 30, 2020, is also reasonable.

As noted above, the Exchange will incur ongoing costs in maintaining Phase I ports during the Decommission Period, including costs to maintain servers and their physical location, monitoring order activity, and other support, with no real benefit. The Exchange believes that it is reasonable to require member organizations to pay the proposed Decommission Extension Fee because a small number of member organizations would need longer to transition than the nine-month Transition Period. Due to the additional costs that the Exchange would continue incur to support Phase I ports after the Transition Period, the Exchange believes that it is fair and reasonable to charge those member organizations that choose not to fully transition during the Transition Period, fees to defray the costs of such support during the Decommission Period because it is expected that the number of member organizations that do not transition to Phase II ports by March 31, 2020 will be small. Further, the Exchange believes that it is reasonable for the Decommission Extension Fee to increase for each month for any ports that communicate using Pillar phase I protocols once the Decommission Period begins because the number of member organizations not fully migrated from legacy technology to the Phase II ports will be expected to diminish over time. Member organizations can avoid or mitigate the impact of the proposed increase of the Decommission Extension Fee by migrating to the new ports before or earlier in the Decommission Period.

Proration of Port Fees

The Exchange believes that the proposal to prorate the monthly fee for ports activated on or after July 1, 2019 to the number of trading days in a billing month the port is connected to the Exchange is fair and reasonable because it would allow all Exchange participants to subscribe to

the most effective connectivity according to their trading requirements and as a result will only be assessed fees for the connectivity they utilize during any trading month beginning April 1, 2020 for ports activated after July 1, 2019.³⁰ The Exchange does not propose to introduce prorated pricing until after the Transition Period because during the Transition Period, member organizations will be subject to the Transition Cap pricing, which will cap the total port costs as member organizations add Phase II ports and drop Phase I ports.

The Exchange believes the proposed proration of fees for ports activated after July 1, 2019 would serve only to charge member organizations port fees for the actual days a member organization's ports are connected to the Exchange. The Exchange further notes that billing for ports activated before July 1, 2019 will continue to be based on the number of ports on the third business day prior to the end of the month consistent with the Exchange's billing policy, and so firms that cancel ports before the third business day prior to the end of the month will not be billed for those ports.

Moreover, as noted above, Cboe BZX currently charges new ports on a prorated basis for the first month of service. The Exchange notes, however, that fees for ports activated before July 1, 2019 would not be pro-rated. The Exchange believes it is reasonable to charge flat fees for ports activated before July 1, 2019 as such ports are expected to be phased out within a short period of time after the introduction of the Phase II ports and would be subject to the proposed Decommission Fee, described above.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market

³⁰ The level of activity with respect to a particular port does not affect the assessment of monthly fees, so even if a particular port that is available to a participant is not used, the participant is still billed for that port.

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 provide an additional fee for those few member organizations that choose not to transition to Phase II ports during the Transition Period and to adopt a fee cap and pro-rata billing for ports without any change to the fees currently charged by the Exchange for the use of ports to connect to the Exchange's trading systems.

The Exchange believes that the proposal constitutes an equitable allocation of fees because all similarly situated member organizations and other market participants would be charged the same rates.

Specifically, the Transition Cap constitutes an equitable allocation of fees because it would be applied to all similarly situated member organizations, who would be eligible for the Transition Cap in equal measure and would thereby all be eligible to not be 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. The Exchange further believes that the proposal is an equitable allocation of fees because the Exchange will be making both the Phase I and Phase II ports available to all member organizations during the Transition Period on an equal basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees.

Similarly, the proposed 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 experience of the Exchange's affiliate NYSE Arca with a decommission extension fee suggests that most member organizations would complete the transition before the decommission extension fee goes into effect, and that many of

the firms that were subject to the NYSE Arca fee were larger firms that choose to absorb the additional cost. The Exchange proposes a longer transition period than was available on NYSE Arca, which the Exchange expects should be more than sufficient for all member organizations, regardless of their size, to be able to transition Phase II ports before the proposed Decommission Fee goes into effect.

The proposal to pro-rate port fees is also equitable since it would also 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 April 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 April 1, 2020 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 October 1, 2020. Moreover, as noted above, Cboe BZX currently charges new ports on a prorated basis for the first month of service. The Exchange notes, however, that fees for ports activated before July 1, 2019 would not be pro-rated (consistent with current practice). The Exchange believes it is reasonable to charge flat fees for ports activated before July 1, 2019 as such ports are expected to be phased out within a short period of time after the introduction of the new gateways.

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

The Exchange believes that the proposed Transition Cap is not unfairly discriminatory because all member organizations would be eligible for the Transition Cap in equal measure and would thereby all be eligible to not be charged for more than the total number of ports that the member organization has activated as of its June 2019 invoice.

The Exchange further 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 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 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 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 Transition Period. While the Exchange cannot predict with certainty whether any firms would be subject to the Decommission Fee, and if so, which ones,

based on NYSE Arca's experience with its decommission fee, 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 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 April 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 April 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 October 1, 2020.

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,³¹ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in

³¹ 15 U.S.C. 78f(b)(8).

furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would offset the Exchange's continuing costs of supporting the Phase I ports for the few firms that do not transition to during the nine-month period and to adopt a fee cap and pro-rata billing for ports 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 for the billing months July 2019 through March 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 March 2020. Based on the experience of the Exchange's affiliate, 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 providing nine months' notice of the Decommission Fee, all member organizations have an equal opportunity to timely transition to Phase II ports before the 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.

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.”³²

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”³³ Indeed, equity trading is currently dispersed across 13 exchanges,³⁴ 31 alternative trading systems,³⁵ and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 18% of the market share of executed volume of equity trades (whether excluding or including auction volume).³⁶ 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

³² See Regulation NMS, 70 FR at 37499.

³³ See Transaction Fee Pilot, 84 FR at 5253.

³⁴ See Cboe Global Markets, U.S. Equities Market Volume Summary (June 28, 2019), available at http://markets.cboe.com/us/equities/market_share/. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

³⁵ See FINRA ATS Transparency Data (June 3, 2019), available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. Although 54 alternative trading systems were registered with the Commission as of May 31, 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/atslist.htm>.

³⁶ See Cboe Global Markets U.S. Equities Market Volume Summary (June 28, 2019), available at http://markets.cboe.com/us/equities/market_share/.

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 this transition pricing for ports 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 on the Exchange, fees associated with ports are subject to these same competitive forces. 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 orders to the applicable exchange through another participant or market center.

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, first, to provide a cap on how much member organizations would be charged for ports for a nine-month period so that they would not incur additional charges during the transition to Pillar communication protocols, and second, to provide that the fees for the few firms that do not transition to during the nine-month period offset the Exchange's continuing costs of supporting the Phase I ports. The Exchange believes that the proposal represents a reasonable attempt to provide member organizations with 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 nine-month period, the pricing is designed to offset the Exchange's continuing costs of supporting the Phase I ports.

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)³⁷ of the Act and subparagraph (f)(2) of Rule 19b-4³⁸ 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)³⁹ 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-NYSE-2019-39 on the subject line.

³⁷ 15 U.S.C. 78s(b)(3)(A).

³⁸ 17 CFR 240.19b-4(f)(2).

³⁹ 15 U.S.C. 78s(b)(2)(B).

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-2019-39. 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-NYSE-2019-39 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁰

Eduardo A. Aleman
Deputy Secretary

⁴⁰ 17 CFR 200.30-3(a)(12).

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