



8011-01
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86943; File No. SR-NYSENAT-2019-20)

September 12, 2019

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

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on September 4, 2019, NYSE National, Inc. (“NYSE National” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Rebates (“Fee Schedule”) to specify that the Exchange may exclude from its average daily volume and quoting calculations the date of the annual reconstitution of the Russell Investments Indexes. 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 Fee Schedule to specify that the Exchange may exclude from its average daily volume and quoting calculations the date of the annual reconstitution of the Russell Investments Indexes (the "Russell Rebalance").

Proposed Rule Change

The Exchange's Fee Schedule currently provides that, for purposes of determining transaction fees and credits based on quoting levels, average daily volume ("ADV"), and consolidated ADV ("CADV"), the Exchange may exclude shares traded any day that (1) the Exchange is not open for the entire trading day and/or (2) a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours. The Exchange proposes to specify that the Exchange may also exclude from its quoting levels, ADV, and CADV calculations the date of the annual Russell Rebalance.

The Russell Rebalance, which typically occurs in June, is characterized by high trading volumes, much of which derive from market participants who are not generally as active entering the market to rebalance their holdings in-line with the Russell Rebalance.⁴ The Exchange believes that the high trading volumes during the Russell Rebalance can significantly impact

⁴ See, e.g., Securities Exchange Act Release No. 69793 (July 18, 2013), 78 FR 37865, 37866 (July 24, 2013) (SR-BATS-2013-034) (excluding the Russell Reconstitution Day from the definition of ADV); Securities Exchange Act Release No. 72002 (April 23, 2014), 79 FR 24028, 24029 (April 29, 2014) (SR-EDGX-2014-10) (same).

ADV, CADV and quoting calculations. The Exchange believes that excluding the date of the Russell Rebalance will mitigate the uncertainty faced by ETP Holders as to their quoting, ADV, and CADV levels and the corresponding rebate amounts during the month of the Russell Rebalance, thereby providing ETP Holders with an increased certainty as to that month's cost for trades executed on the Exchange. The Exchange further believes that removing this uncertainty will encourage ETP Holders to participate in trading on the Exchange during the remaining trading days in the month of the Russell Rebalance in a manner intended to be incented by the Exchange's Fee Schedule.

To effectuate this change, the Exchange proposes to add a new subsection (2) to the second bullet under Section I, heading B titled "General." As proposed, the new clause would provide that the Exchange may exclude shares traded any day that "is the date of the annual reconstitution of the Russell Investments Indexes." The proposed change is similar to, and consistent with, the rules of the Exchange's affiliates and other self-regulatory organizations.⁵

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁷ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other

⁵ See, e.g., NYSE Arca Equities Fees and Charges, available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf ("the date of the annual reconstitution of the Russell Investments Indexes does not count toward volume tiers"); Cboe BZX U.S. Equities Exchange Fee Schedule, available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/ ("The Exchange excludes from its calculation of ADAV and ADV shares added or removed on ... the last Friday in June (the 'Russell Reconstitution Day')").

⁶ 15 U.S.C. 78f(b).

⁷ 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 Exchange notes that it operates in a highly fragmented and competitive market in which competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Proposed Change is Reasonable

The Exchange believes that it is reasonable to permit the Exchange to eliminate from the calculation of quoting levels, ADV, and CADV the date of the annual Russell Rebalance because it will provide ETP Holders with a greater level of certainty as to their level of rebates and fees for trading in the month of the Russell Rebalance. By eliminating a trading day that would almost certainly lower an ETP Holder's ADV as a percentage of CADV, the Exchange believes that the proposal will make the majority of ETP Holders more likely to meet the minimum thresholds of higher tiers, which will provide additional incentive for ETP Holders to increase their participation on the Exchange and earn more favorable rates. As noted above, other self-regulatory organizations have adopted rules that are substantially similar to the change being proposed by the Exchange.⁸

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants. Specifically, the Exchange believes that the proposal constitutes an equitable allocation of fees because the exclusion would apply equally to all ETP Holders and market participants and to all volume tiers. Further, the Exchange believes that removing a single known day of atypical trading behavior would allow all ETP Holders to more predictably

⁸ See notes 4-5, *supra*.

calculate the costs associated with their trading activity on the Exchange on the Russell Rebalance day, thereby enabling such participants to operate their business without concern of unpredictable and potentially significant changes in revenues and expenses.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because the exclusion would apply equally to all permit holders, to all market participants and to all volume tiers. Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. Rather, as discussed above, the Exchange believes that removing a single known day of atypical trading behavior would allow all ETP Holders to more predictably calculate the credits and fees associated with their trading activity on the Russell Rebalance day, thereby enabling such participants to operate their business without concern of unpredictable and potentially significant changes in expenses.

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,⁹ 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. Rather, as noted above, by eliminating a trading day that would almost certainly result in lowering an ETP Holder's ADV as a percentage of CADV, the Exchange believes that the proposal will benefit the majority of ETP Holders by making it more likely for them to meet the minimum thresholds of higher tiers, which will provide additional

⁹ 15 U.S.C. 78f(b)(8).

incentive for ETP Holders to increase their participation on the Exchange and earn more favorable rates. The Exchange believes that the proposal thus fosters competition by providing an additional incentive to ETP Holders to submit orders to the Exchange. The proposed exclusion would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intramarket Competition. The proposed change is designed to eliminate a trading day that would almost certainly result in lowering an ETP Holder's ADV as a percentage of CADV. The Exchange believes that the proposal would provide additional incentive for ETP Holders to increase their participation on the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed exclusion would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. 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. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. By providing ETP Holders with a greater level of certainty as to their level of rebates and costs for trading in the month of the Russell Rebalance, the Exchange believes that the proposed change could promote competition between the Exchange and other execution venues by encouraging ETP Holders to their participation on

the Exchange in order to earn more favorable rates.

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)¹⁰ of the Act and subparagraph (f)(2) of Rule 19b-4¹¹ 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)¹² 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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSENAT-2019-20 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-NYSENAT-2019-20. 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 offices 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-NYSENAT-2019-20, 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.¹³

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Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).

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