



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88109; File No. SR-NYSENAT-2019-31]

Self-Regulatory Organizations; NYSE National, Inc.; Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Establish Fees for the NYSE National Integrated Feed

January 31, 2020

I. Introduction

On December 4, 2019, NYSE National, Inc. (“NYSE National” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to establish fees for the NYSE National Integrated Feed. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.³ The proposed rule change was published for comment in the *Federal Register* on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as “establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.” 15 U.S.C. 78s(b)(3)(A)(ii). However, the Commission notes that, by its terms, the proposed rule change would not impose any fees for the NYSE National Integrated Feed until February 3, 2020. See *infra* note 7 and accompanying text.

December 26, 2019.⁴ The Commission received two comment letters on the proposal.⁵ Pursuant to Section 19(b)(3)(C) of the Act,⁶ the Commission is hereby: (1) temporarily suspending the proposed rule change; and (2) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to establish fees for the NYSE National Integrated Feed and to make these fees operative on February 3, 2020.⁷ According to the Exchange, the NYSE National Integrated Feed is a NYSE National-only market data feed that provides vendors and subscribers on a real-time basis with a unified view of events, in sequence, as they appear on the NYSE National matching engine.⁸ The NYSE National Integrated Feed includes depth-of-book order data, last sale data, security status updates (e.g., trade corrections and trading halts), and stock summary messages.⁹ It also includes information about the Exchange's best bid or offer at any given time.¹⁰ The Exchange proposes the following fees for the NYSE National Integrated Feed:

⁴ See Securities Exchange Act Release No. 87797 (December 18, 2019), 84 FR 71025 (December 26, 2019) (“Notice”).

⁵ See Letter from Tyler Gellasch, Executive Director, The Healthy Markets Association, to Vanessa Countryman, Office of the Secretary, Commission, dated January 16, 2020 (“Healthy Markets Letter”); Letter from Robert Toomey, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”), to Vanessa Countryman, Secretary, Commission, dated January 21, 2020 (“SIFMA Letter”).

⁶ 15 U.S.C. 78s(b)(3)(C).

⁷ The Exchange currently does not charge any fees for the NYSE National Integrated Feed. See Notice, *supra* note 4, at 71026.

⁸ See *id.*

⁹ See *id.*

¹⁰ See *id.*

- \$2,500 per month access fee, which would be charged (once per firm) to any data recipient that receives a data feed of the NYSE National Integrated Feed;¹¹
- \$1,500 per month redistribution fee, which would be charged (once per redistributor account) to any redistributor¹² of the NYSE National Integrated Feed;
- \$10 per month professional per user fee and \$1 per month non-professional per user fee, which would apply to each display device that has access to the NYSE National Integrated Feed;¹³
- Non-display use¹⁴ fees:

¹¹ Data recipients that only use display devices to view NYSE National Integrated Feed data and do not separately receive a data feed would not be charged an access fee. See id.

¹² A redistributor would be a vendor or person that provides a real-time NYSE National market data product externally to a data recipient that is not its affiliate or wholly owned subsidiary, or to any system that an external data recipient uses, irrespective of the means of transmission or access. See id.

¹³ See id.

¹⁴ Non-display use would mean accessing, processing, or consuming the NYSE National Integrated Feed, delivered directly or through a redistributor, for a purpose other than in support of a data recipient's display or further internal or external redistribution. See id. at 71026-27. As proposed, non-display use would include trading uses such as high frequency or algorithmic trading, as well as any trading in any asset class, automated order or quote generation and order pegging, price referencing for algorithmic trading or smart order routing, operations controls programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management. See id. at 71027. One, two, or three categories of non-display use may apply to a data recipient. See id. Moreover, data recipients that receive the NYSE National Integrated Feed for non-display use would be required to complete and submit a non-display use declaration before they would be authorized to receive the feed. See id. In addition, if a data recipient's use of the NYSE National Integrated Feed data changes at any time after the data recipient submits a non-display use declaration, the data recipient must inform the Exchange of the change by completing and submitting an updated declaration reflecting the change of use at the time of the change. See id.

- \$5,000 per month category 1 non-display fee, which would apply when a data recipient’s non-display use of real-time market data is on its own behalf;
- \$5,000 per month category 2 non-display fee, which would apply when a data recipient’s non-display use of real-time data is on behalf of its clients;
- \$5,000 per platform per month category 3 non-display fee (capped at \$15,000), which would apply when a data recipient’s non-display use of real-time market data is for the purpose of internally matching buy and sell orders within an organization, including matching customer orders on a data recipient’s own behalf and on behalf of its clients;¹⁵
- \$1,000 per month non-display use declaration late fee, which would apply to any data recipient that is paying an access fee for the NYSE National Integrated Feed and that fails to complete and submit the annual non-display use declaration by December 31 of the year, and would apply beginning January 1 and for each month thereafter until the data recipient has completed and submitted the annual non-display use declaration;¹⁶ and
- \$200 per month multiple data feed fee, which would apply to any data recipient that takes a data feed for a market data product in more than two locations, and would apply to each location, beyond the first two locations, where the data recipient receives a data feed.¹⁷

¹⁵ According to the Exchange, category 3 non-display fees would apply to non-display use in trading platforms, such as, but not limited to, alternative trading systems (“ATs”), broker crossing networks, broker crossing systems not filed as ATs, dark pools, multilateral trading facilities, exchanges, and systematic internalization systems. See id.

¹⁶ See id.

¹⁷ See id.

The access fees, professional user fees, and non-display fees would not apply to Federal agencies¹⁸ that subscribe to the products listed on the proposed fee schedule that includes such fees.¹⁹

Finally, first-time subscribers²⁰ would be eligible for a free trial by contacting the Exchange and would not be charged the access fee, the non-display fee, any applicable professional and non-professional user fee, and the redistribution fee for one calendar month for each of the products listed on the proposed fee schedule.²¹ The free trial would be for the first full calendar month following the date a subscriber is approved to receive trial access to NYSE National market data.²² As proposed, the Exchange would provide the one-month free trial for a particular product to each subscriber only once.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,²³ at any time within 60 days of the date of

¹⁸ The term “Federal agencies” as used in the proposed fee schedule would include all Federal agencies subject to the Federal Acquisition Regulation (“FAR”), as well as any Federal agency not subject to FAR that has promulgated its own procurement rules. See id. All Federal agencies that subscribe to the NYSE National real-time proprietary market data products would continue to be required to execute the appropriate subscriber agreement, which includes, among other things, provisions against the redistribution of data. See id. at 70128.

¹⁹ The proposed fee schedule lists NYSE National BBO, NYSE National Trades, and NYSE National Integrated Feed, and specifies that there would be no fees for NYSE National BBO and NYSE National Trades.

²⁰ A first-time subscriber would be any firm that has not previously subscribed to a particular product listed on the proposed fee schedule. See Notice, supra note 4, at 70128.

²¹ See id.

²² See id.

²³ 15 U.S.C. 78s(b)(3)(C).

filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,²⁴ the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (“SRO”) 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. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change’s consistency with the Act and the rules thereunder.

The Exchange proposes to adopt fees for the NYSE National Integrated Feed and provides various arguments to support the proposal’s consistency with the Act. With respect to whether the proposed fees are reasonable, the Exchange states that exchanges in general function as platforms between consumers of market data and consumers of trading services, and that overall competition between exchanges will limit their overall profitability.²⁵ In connection with these arguments, the Exchange also attaches a report by Marc Rysman,²⁶ which finds that the introduction of the NYSE Integrated Feed in 2015 attracted more trading to NYSE by both subscribers and non-subscribers to the NYSE Integrated Feed,²⁷ and concludes that overall

²⁴ 15 U.S.C. 78s(b)(1).

²⁵ See Notice, supra note 4, at 71030.

²⁶ See Marc Rysman, Stock Exchanges as Platforms for Data and Trading (December 2, 2019) (“Rysman Paper”), available at <https://www.sec.gov/rules/sro/nysenat/2019/34-87797-ex3b.pdf>.

²⁷ The Exchange also states that, since May 2018, when NYSE National relaunched trading, the Exchange has observed a direct correlation between the steady increase of subscribers to the NYSE National Integrated Feed and the increase in the Exchange’s transaction market share volume over the same period. See Notice, supra note 4, at 71028. The Exchange states that, over an 18-month period since it commenced operations in May 2018, it has grown from 0% to nearly 2% market share of consolidated trading volume,

competition between exchanges will limit their overall profitability (not margins on any particular side of the platform).²⁸ According to the Exchange, given the conclusion in the Rysman Paper that exchanges are platforms for market data and transaction services, competition for order flow on the trading side of the platform acts to constrain the pricing of market data on the other side of the platform.²⁹

In addition, the Exchange argues that, due to the ready availability of substitutes and the low cost to move order flow to the substitute trading venues, an exchange setting market data fees that are not at competitive levels would expect to quickly lose business to alternative platforms with more attractive pricing.³⁰ The Exchange argues that subscribing to the NYSE National Integrated Feed is optional, that its customers may choose to discontinue using the feed once the proposed fees are effective, and that any customers who choose to discontinue using the feed may choose to shift order flow away from the Exchange.³¹ Similarly, the Exchange argues that its market data pricing is constrained by the availability of numerous substitute platforms offering competing proprietary market data products and trading services.³²

and the number of NYSE National Integrated Feed subscribers increased from 12 to 56.
See id. at 71028, 71031.

²⁸ See id. at 71030.

²⁹ See id. at 71031.

³⁰ See id.

³¹ See id. at 71029, 71031.

³² See id. at 71031.

Moreover, the Exchange argues that its market data is sold in a competitive market and attaches a report by Charles M. Jones,³³ which concludes that exchanges compete with each other in selling proprietary market data products, as well as with consolidated data feeds and with data provided by ATSS.³⁴ The Exchange also more specifically argues that NYSE National BBO (which includes best bid and offer information for NYSE National on a real-time basis), NYSE National Trades (which includes NYSE National last sale information on a real-time basis), and consolidated data feeds are substitutes for the NYSE National Integrated Feed and constrain the Exchange's ability to charge supracompetitive prices for the feed.³⁵

With respect to the other requirements under the Act, the Exchange argues that the proposed fees are equitably allocated and are not unfairly discriminatory because they would apply on an equal basis to all data recipients that choose to subscribe to the data in a manner that is subject to an applicable fee and because any differences among categories of users are justified.³⁶ Specifically, the Exchange argues that the professional and non-professional user fee structure has long been used by the Exchange to reduce the price of data to non-professional users and make it more broadly available, and that the non-display fee structure results in subscribers with greater uses of the data paying higher fees and subscribers with fewer uses of

³³ See Charles M. Jones, Understanding the Market for U.S. Equity Market Data (August 31, 2018) ("Jones Paper"), available at <https://www.sec.gov/rules/sro/nysenat/2019/34-87797-ex3a.pdf>.

³⁴ See Notice, supra note 4, at 71029. The Jones Paper also states that the market for order flow and the market for market data are closely linked, and that an exchange needs to consider the negative impact on its order flow if it raises the price of market data. See id.

³⁵ See id. at 71032.

³⁶ See id. at 71034-36.

the data paying lower fees.³⁷ For similar reasons, and because it claims numerous substitute market data products are available, the Exchange argues that the proposed fees do not impose an unnecessary or inappropriate burden on competition.³⁸

With respect to the redistribution fee, the Exchange argues that the proposed fee is reasonable, equitable, and not unfairly discriminatory because vendors that would be charged the proposed fee would profit by re-transmitting the Exchange's market data to their customers.³⁹ Similarly, with respect to category 3 non-display fees, which would be charged to each trading platform on which the customer uses non-display data (capped at three platforms), the Exchange argues that the proposal is reasonable, equitable, and not unfairly discriminatory because such use of data is directly in competition with the Exchange and the Exchange should be permitted to recoup some of its lost trading revenue by charging for the data that makes such competition possible.⁴⁰

Finally, with respect to the non-display use declaration late fee and the multiple data feed fee, the Exchange claims that these fees are reasonable, equitable, and not unfairly discriminatory because they would offset the Exchange's administrative burdens and costs associated with incorrect billing, late payments, and tracking data usage locations.⁴¹

The Commission received two comment letters that express concerns regarding the proposed rule change. One commenter states that the Exchange does not provide sufficient

³⁷ See id.

³⁸ See id. at 71036.

³⁹ See id. at 71032.

⁴⁰ See id. at 71033, 71035-36.

⁴¹ See id. at 71033-36.

information to establish that the proposed fees are consistent with the Act and Commission rules.⁴² This commenter states its belief that the Exchange's discussions regarding the reasonableness of the proposed fees (i.e., the comparison to similar fees charged by affiliated exchanges, the nature of the market for order flow, the availability of other data options, and the lack of a relation between the proposed fees and the costs of production) do not support a finding that the proposed fees are reasonable.⁴³ This commenter also states that the Exchange does not provide any information about the costs of production for the NYSE National Integrated Feed, how much revenue the Exchange projects to generate from the proposed fees, how the proposed fees would impact subscribers, the competition between subscribers and non-subscribers, and how the proposed fees would be equitably allocated and would not impose any undue burden on competition.⁴⁴ In addition, the commenter states that the Exchange does not provide any information about the latency difference between the NYSE National Integrated Feed and the consolidated data feed or other methods of getting comparable data.⁴⁵ Moreover, this commenter questions the Exchange's assertion that market participants have the ability to choose whether or not to connect to the NYSE National Integrated Feed and believes instead that many market participants must buy the feed.⁴⁶ The commenter also objects to what it describes as conflicting statements by the Exchange: that the NYSE National Integrated Feed is valuable to market

⁴² See Healthy Markets Letter, *supra* note 5.

⁴³ See *id.* at 5.

⁴⁴ See *id.* at 5-6.

⁴⁵ See *id.* at 6.

⁴⁶ See *id.* at 3-4. The commenter states that a market participant that does not purchase the NYSE National Integrated Feed would be at a competitive disadvantage to firms that have purchased it and questions how a non-purchasing broker could provide best execution to its customers. See *id.* at 4.

participants, but that the feed is also not essential for market participants because it can be sufficiently replaced by substitutes.⁴⁷

Another commenter also states that the Exchange fails to provide the necessary information to demonstrate that the proposed fees meet the requirements of the Act.⁴⁸ This commenter similarly argues that the NYSE National Integrated Feed is not subject to competitive forces because there are no available substitutes for the Exchange’s depth-of-book product.⁴⁹ The commenter also claims that depth-of-book information is “essential” for many broker-dealers to provide customers with the best and most competitive order routing capabilities and execution quality, and that the Exchange is the exclusive purveyor of that information.⁵⁰ With respect to competition by data vendors, the commenter argues that because any vendors must first purchase the data from the Exchange (subject to the Exchange’s terms and pricing) before being able to resell such data, these vendors cannot offer a competing product.⁵¹

In addition, this commenter disagrees that fees for the NYSE National Integrated Feed will be constrained by competition for order flow under the “platform theory” of competition.⁵² The commenter argues that the decision of where to trade occurs in milliseconds, while market data is purchased and charged monthly, independent of decisions on where to trade.⁵³ The

⁴⁷ See id. at 5.

⁴⁸ See SIFMA Letter, supra note 5, at 1.

⁴⁹ See id. at 2. Specifically, the commenter states that the Exchange cites alternatives to the NYSE National Integrated Feed that do not contain depth-of-book information, which the commenter claims are “inferior products.” See id.

⁵⁰ See id.

⁵¹ See id.

⁵² See id.

⁵³ See id.

commenter also states that not all purchasers of market data execute trades solely on exchanges, which limits the theoretical ability to constrain market data prices by routing order flow to other exchanges.⁵⁴ Moreover, the commenter cites a report by Lawrence R. Glosten to support its claim that exchanges have little incentive to reduce the prices for their own market data, because any theoretical increase in demand would be shared with other exchanges.⁵⁵ The commenter further states that the exchanges have yet to show an increase (or decrease) in trading volume after reducing (or increasing) a respective exchange's price of market data.⁵⁶

Lastly, this commenter argues that the Exchange fails to provide supporting information for its claim that the proposed fees for the NYSE National Integrated Feed are based on the purported increased value of such data as measured by the Exchange's expanded market share.⁵⁷ The commenter states that, during the same May 2018 to December 2019 time period that NYSE National's market share increased from 0% to 2.12%, the market shares of New York Stock Exchange LLC ("NYSE") and NYSE Arca, Inc. decreased, but neither exchange responded by reducing the cost of its market data.⁵⁸ The commenter thus asserts that the Exchange's proposal would "significantly increase the overall cost of market data for NYSE exchanges when the overall market share for NYSE exchanges increased by only 0.34% from May 2018 to December

⁵⁴ See id.

⁵⁵ See id. (citing Lawrence R. Glosten, Economics of the Stock Exchange Business: Proprietary Market Data (January 2020), available at <https://www.sec.gov/comments/4-729/4729-6678493-203560.pdf>).

⁵⁶ See id.

⁵⁷ See id.

⁵⁸ See id. The commenter also states that the market share of NYSE Chicago, Inc. decreased during this period. See id. Moreover, the commenter states that the market share of NYSE American LLC ("NYSE American") increased during this period and that NYSE American similarly charges various fees for its market data products. See id.

2019.”⁵⁹ The commenter believes that the Exchange has offered no evidence to show that competition for order flow constrains the price for market data and that the Exchange should provide additional information on the cost of its market data to support its proposal.⁶⁰

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange’s present proposal, they are required to provide a statement supporting the proposal’s basis under the Act and the rules and regulations thereunder applicable to the exchange.⁶¹ The instructions to Form 19b-4, on which exchanges file their proposed rule changes, specify that such statement “should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.”⁶²

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), require the rules of an exchange to: (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange’s facilities;⁶³ (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;⁶⁴ and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.⁶⁵

⁵⁹ Id. at 3 (footnote omitted).

⁶⁰ See id.

⁶¹ See 17 CFR 240.19b-4 (Item 3 entitled “Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change”).

⁶² See id.

⁶³ 15 U.S.C. 78f(b)(4).

⁶⁴ 15 U.S.C. 78f(b)(5).

⁶⁵ 15 U.S.C. 78f(b)(8).

In temporarily suspending the Exchange’s proposed rule change, the Commission intends to further consider whether the proposal to establish fees for the NYSE National Integrated Feed is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange’s rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.⁶⁶

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.⁶⁷

IV. Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C)⁶⁸ and 19(b)(2)(B) of the Act⁶⁹ to determine whether the Exchange’s proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to

⁶⁶ See 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

⁶⁷ For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶⁸ 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

⁶⁹ 15 U.S.C. 78s(b)(2)(B).

any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,⁷⁰ the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how its proposed fees are consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange “provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities”;⁷¹
- Whether the Exchange has demonstrated how its proposed fees are consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be “designed to permit unfair discrimination between customers, issuers, brokers, or dealers”;⁷² and
- Whether the Exchange has demonstrated how its proposed fees are consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities

⁷⁰ Id. Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. See id. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. See id.

⁷¹ 15 U.S.C. 78f(b)(4).

⁷² 15 U.S.C. 78f(b)(5).

exchange “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].”⁷³

As discussed in Section III above, the Exchange made various arguments in support of its proposal and the Commission received two comment letters that expressed concerns regarding the proposal, including in particular that the Exchange did not provide sufficient information to establish that the proposed fees are consistent with the Act and the rules thereunder.

Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.”⁷⁴ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,⁷⁵ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.⁷⁶

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and

⁷³ 15 U.S.C. 78f(b)(8).

⁷⁴ 17 CFR 201.700(b)(3).

⁷⁵ See id.

⁷⁶ See id.

equitably allocated, not be unfairly discriminatory, and not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.⁷⁷

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Rebuttal comments should be submitted by **[INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.⁷⁸

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

⁷⁷ See 15 U.S.C. 78f(b)(4), (5), and (8).

⁷⁸ 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

- 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 No. SR-NYSENAT-2019-31 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 No. SR-NYSENAT-2019-31. The 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 such 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 publicly available. All submissions should refer to File No. SR-NYSENAT-2019-31 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Rebuttal comments should be submitted

by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(3)(C) of the Act,⁷⁹ that File No. SR-NYSENAT-2019-31, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸⁰

J. Matthew DeLesDernier,

Assistant Secretary.

⁷⁹ 15 U.S.C. 78s(b)(3)(C).

⁸⁰ 17 CFR 200.30-3(a)(57) and (58).

