

## OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 37

SECURITIES AND EXCHANGE COMMISSION  
 WASHINGTON, D.C. 20549  
 Form 19b-4

File No.\* SR - 2020 - \* 99

Amendment No. (req. for Amendments \*)

Filing by New York Stock Exchange LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial \* ☒ Amendment \* ☐ Withdrawal ☐

Section 19(b)(2) \* ☐ Section 19(b)(3)(A) \* ☒ Section 19(b)(3)(B) \* ☐

Rule

Pilot ☐ Extension of Time Period  
 for Commission Action \* ☐ Date Expires \*

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)  
☒ 19b-4(f)(2) ☐ 19b-4(f)(5)  
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Security-Based Swap Submission pursuant  
 to the Securities Exchange Act of 1934

Section 806(e)(1) \* ☐

Section 806(e)(2) \* ☐

Section 3C(b)(2) \* ☐

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



### Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposal to amend its Price List

### Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* David Last Name \* De Gregorio  
 Title \* Senior Counsel, NYSE Group Inc.  
 E-mail \* David.DeGregorio@theice.com  
 Telephone \* (212) 656-4166 Fax (212) 656-8101

### Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 12/01/2020

By Clare Saperstein

(Name \*)

Associate General Counsel

Clare Saperstein,

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> New York Stock Exchange LLC (“NYSE” or the “Exchange”) to (1) extend the Transition Period for member organizations to transition to the utilization of ports that connect to the Exchange using Pillar technology; (2) extend the Decommission Period that begins once the Transition Period ends; and (3) extend the effective date that the Exchange would prorate the monthly fee for ports activated on or after July 1, 2019.

The Exchange proposes to implement these changes to its Price List effective December 1, 2020.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

David De Gregorio  
Senior Counsel  
NYSE Group, Inc.  
(212) 656-4166

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

(a) Purpose

The purpose of this filing is to provide additional time for member organizations to transition from older to newer and more efficient Pillar technology. The Exchange is not proposing to adjust the amount of the port fees or the fees charged to offset the Exchange's continuing costs of supporting legacy ports, which will remain at the current level for all market participants.

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

Effective March 2, 2020, the Exchange (1) extended the end of the Transition Period from March 2020 to August 2020 for member organizations to transition to the utilization of ports that connect to the Exchange using Pillar technology; (2) shortened the Decommission Period from six months (April 2020-September 2020) to four months (September-December 2020); (3) extended the effective date that the Exchange would prorate the monthly fee for certain ports activated on or after July 1, 2019 from April 1, 2020 to September 1, 2020; and (4) revised the fees charged for legacy port connections during the Decommission Period.<sup>4</sup>

Effective August 1, 2020, the Exchange (1) extended the end of the Transition Period from August 2020 to October 2020; (2) extended the beginning of the Decommission Period from September 2020 to November 2020 and the end of the Decommission Period from December 2020 to February 2021; and (3) extended the effective date that the Exchange would prorate the monthly fee for ports activated on or after July 1, 2019 from September 1, 2020 to November 1, 2020.<sup>5</sup>

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<sup>3</sup> See Securities Exchange Act Release No. 86360 (July 11, 2019), 84 FR 34210 (July 17, 2019) (SR-NYSE-2019-39).

<sup>4</sup> See Securities Exchange Act Release No. 88373 (March 12, 2020), 85 FR 15533 (March 18, 2020) (SR-NYSE-2020-14).

<sup>5</sup> See Securities Exchange Act Release No. 89591 (August 18, 2020), 85 FR 52159 (August 24, 2020) (SR-NYSE-2020-14).

Effective October 1, 2020, the Exchange (1) extended the end of the Transition Period from October 2020 to December 2020; (2) extended the beginning of the Decommission Period from November 2020 to January 2021 and the end of the Decommission Period from February 2021 to April 2021; and (3) extended the effective date that the Exchange would prorate the monthly fee for ports activated on or after July 1, 2019 from November 1, 2020 to January 1, 2021.<sup>6</sup>

The Exchange proposes to:

- extend the end of the Transition Period from December 2020 to February 2021;
- extend the beginning of the Decommission Period from January 2021 to March 2021 and the end of the Decommission Period from April 2021 to June 2021; and
- extend the effective date that the Exchange would prorate the monthly fee for ports activated on or after July 1, 2019 from January 1, 2021 to March 1, 2021.

The Exchange would continue to provide a cap on how much member organizations would be charged for ports during the proposed extra two months of the Transition Period so that they would not incur additional charges during the transition to Pillar communication protocols. Moreover, the Exchange would retain a four month period during which the few firms that do not transition during the proposed longer Transition Period would be charged fees to offset the Exchange's continuing costs of supporting legacy ports but proposes to extend the beginning and end dates for this period.

The Exchange proposes to implement these changes to its Price List effective December 1, 2020.

### Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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

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<sup>6</sup> See Securities Exchange Act Release No. 90180 (October 14, 2020), 85 FR 66612 (October 20, 2020) (SR-NYSE-2020-82).

companies.”<sup>7</sup>

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”<sup>8</sup> Indeed, equity trading is currently dispersed across 16 exchanges,<sup>9</sup> 31 alternative trading systems,<sup>10</sup> and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 16% of the market share of executed volume of equity trades (whether excluding or including auction volume).<sup>11</sup> The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, including ports, in response to fee changes. Accordingly, the Exchange’s fees, including port fees, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange is proposing these changes in the context of a competitive environment in which market participants can and do shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Because ports are used by member organizations to trade electronically on the Exchange, fees associated with ports are subject to these same competitive forces. The Exchange believes that the proposal represents a reasonable attempt to provide member organizations with additional time to effect an orderly transition to upgraded technology without incurring additional costs.

#### Proposed Rule Change

Member organizations enter orders and order instructions, and receive

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<sup>7</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS”).

<sup>8</sup> See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

<sup>9</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/). See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

<sup>10</sup> See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

<sup>11</sup> See Cboe Global Markets U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/).

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

#### Extension of the Date to Prorate Ports

The Exchange currently makes available ports that provide connectivity to the Exchange’s trading systems (i.e., ports for entry of orders and/or quotes (“order/quote entry ports”)) and charges \$550 per port per month. Designated Market Makers (“DMMs”) are not charged for the first 12 ports per month that connect to the Exchange.<sup>12</sup> The Exchange also currently makes ports available for drop copies and charges \$550 per port per month,<sup>13</sup> except that DMMs are not charged for drop copy ports that connect to the Exchange.

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

Effective January 1, 2021, the Exchange will prorate fees for order/quote entry and drop copy ports activated after July 1, 2019, to the number of trading days that a port is eligible for production trading with the Exchange, including any scheduled early closing days.

The Exchange proposes to extend the effective date for the prorating of order/quote entry and drop copy ports to March 1, 2021 to coincide with the end of the proposed extended Transition Period in February 2021, discussed below.

#### Extension of the Transition Period

Currently, during the billing months of July 2019 through December 2020 (the “Transition Period”), the total number of ports charged per member organization is capped at the total number of ports that the member organization activated as of the June 2019 invoice, which was the last full month prior to the introduction of the new gateways (the “Transition Cap”). Transition Cap pricing is available until the earlier of (1) the end of the Transition Period, i.e., December 2020, or (2)

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<sup>12</sup> DMMs completed the transition to Phase II ports last year.

<sup>13</sup> Only one fee per drop copy port applies, even if receiving drop copies from multiple order/quote entry ports.

the billing month during which a member organization fully transitions to using only ports that communicate using Pillar phase II protocols. If during the Transition Period, a member organization increases the number of Phase I ports above the Transition Cap, those ports would be charged at the current rates for order/quote entry ports and drop copy ports. Finally, if during the Transition Period a member organization has a total number of ports below the Transition Cap, the Exchange would charge a member organization for their actual number of ports.

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

The purpose of Transition Period pricing is to cap port fees to allow member organizations additional time to implement technology changes necessary to connect to the Exchange using the Phase II ports without incurring additional Exchange fees. As of November 2020, only 67% of Phase I ports have been cancelled, a 1% increase over the 66% that had transitioned as of September 2020. Based on the Exchange's experience to date, the Exchange believes that an additional two months will be necessary to provide sufficient time for all member organizations, regardless of size, to be able to complete the necessary changes and transition fully to the Phase II ports.

#### Extension of the Decommission Period

Currently, member organizations that have not transitioned to Phase II ports and are still utilizing Phase I ports during the billing months of January 2021 through April 2021 (*i.e.*, the Decommission Period), would, in addition to the current port fees, be charged a Decommission Extension Fee of \$1,000 per port per month, increasing by \$1,000 per port for each month for any ports that communicate using Pillar phase I protocols. As per the Price List, ports using Pillar phase I protocols would no longer be available beginning May 1, 2021.

The Exchange proposes that the Decommission Period would begin in March 2021, after the end of the proposed longer Transition Period, and end four months later. As proposed, the Decommission Period would commence in March 2021 and end in June 2021. As a result, the Price List would also be amended to provide that ports using Pillar phase I protocols would no longer be available beginning July 1, 2021.

As noted above, the Exchange believes that extending the Transition Period would provide sufficient time for member organizations to fully transition to Phase II ports and eliminate their use of Phase I ports. To the extent that member

organizations do not complete the transition during the Transition Period, the Exchange will offer member organizations the ability to choose to continue using Phase I ports until July 2021.

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.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>15</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Changes are Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>16</sup>

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”<sup>17</sup> Indeed, equity trading is currently dispersed across 16 exchanges,<sup>18</sup> 31 alternative trading systems,<sup>19</sup> and

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<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(4) & (5).

<sup>16</sup> See Regulation NMS, 70 FR at 37499.

<sup>17</sup> See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

<sup>18</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/). See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

<sup>19</sup> See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of

numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 16% of the market share of executed volume of equity trades (whether excluding or including auction volume).<sup>20</sup> The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, including ports, in response to fee changes. Accordingly, the Exchange's fees, including port fees, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

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

Given this competitive environment, the proposal represents a fair and reasonable attempt to provide member organizations with additional time to make an orderly transition to upgraded technology without increasing their costs. As noted, as of November 2020, 33% of legacy ports have not been cancelled. If a member organization is unable to complete this transition within the additional time of the extended Transition Period, the pricing is designed so that only those few member organizations that may not transition within that time period would pay for the Exchange to continue to support their Phase I ports.

#### The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants. The Exchange is not proposing to adjust the amount of the port fees or the fees charged fees to offset the Exchange's continuing costs of supporting legacy ports, which will remain at the current level for all market participants. Rather, the proposal would provide additional time for member organizations to transition from older to newer and more efficient Pillar technology and would charge the same fee for those few member organizations that choose not to transition to Phase II ports during the extended Transition Period.

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alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atstlist.htm>.

<sup>20</sup>

See Cboe Global Markets U.S. Equities Market Volume Summary, available at [https://markets.cboe.com/us/equities/market\\_share/](https://markets.cboe.com/us/equities/market_share/).

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

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

#### 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, which will remain unchanged.

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

Similarly, the Decommission Extension Fee would apply equally to all member organizations that choose to connect to the Exchange through the use of such ports during the proposed Decommission Period. If a member organizations 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 proposed Transition Period. While the Exchange cannot predict with certainty whether any firms would be subject to the Decommission Fee, and if so, which ones, the Exchange anticipates that it would be a limited set of member organizations that would incur such fees.

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 February 1, 2021. As noted, to the extent a member organization continues to use ports activated before July 1, 2019 to connect to the Exchange during March 2021 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 July 1, 2021.

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

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

#### 4. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>21</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would provide additional time for member organizations to transition from older to newer and more efficient Pillar technology with no fee increase and offset the Exchange's continuing costs of supporting the Phase I ports for the few firms that do not transition to the new ports during the longer transition period without any change to the fees currently charged by the Exchange for the use of ports to connect to the Exchange's trading systems.

*Intramarket Competition.* The Exchange does not believe the proposed rule change would impose any burden on intramarket competition that is not necessary or appropriate because it would apply to all member organizations equally that connect to the Exchange. All member organizations, regardless of size, will be eligible for the transition pricing through the extended Transition Period ending February 2021 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 Decommission Fee on an equal basis if they do complete the transition to Phase II ports by the end of the new February 2021 date. As noted, the Exchange

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<sup>21</sup>

15 U.S.C. 78f(b)(8).

anticipates that a low percentage of member organizations would be subject to the proposed Decommission Fee, and the firms likely to be subject to such fee would be larger firms that could more easily absorb the cost of that fee. The Exchange further believes that by extending the Transition Period, 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.

As noted, the no single exchange has more than 16% of the market share of executed volume of equity trades (whether excluding or including auction volume).<sup>22</sup> The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, including ports, in response to fee changes. Accordingly, the Exchange's fees, including port fees, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

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

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

<sup>22</sup>

See Cboe Global Markets U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/).

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>23</sup> and subparagraph (f)(2) of Rule 19b-4<sup>24</sup> 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) of the Act to determine whether the proposed rule change should be approved or disapproved.<sup>25</sup>

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Publication in the Federal Register

Exhibit 5 – Amendment to the Exchange's Price List

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<sup>23</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>24</sup> 17 CFR 240.19b-4(f)(2).

<sup>25</sup> 15 U.S.C. 78s(b)(2)(B).

## EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NYSE-2020-99)

[Date]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Price List

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 1, 2020, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Price List to (1) extend the Transition Period for member organizations to transition to the utilization of ports that connect to the Exchange using Pillar technology; (2) extend the Decommission Period that begins once the Transition Period ends; and (3) extend the effective date that the Exchange would prorate the monthly fee for ports activated on or after July 1, 2019. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The purpose of this filing is to provide additional time for member organizations to transition from older to newer and more efficient Pillar technology. The Exchange is not proposing to adjust the amount of the port fees or the fees charged to offset the Exchange's continuing costs of supporting legacy ports, which will remain at the current level for all market participants.

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

2020.<sup>4</sup>

Effective March 2, 2020, the Exchange (1) extended the end of the Transition Period from March 2020 to August 2020 for member organizations to transition to the utilization of ports that connect to the Exchange using Pillar technology; (2) shortened the Decommission Period from six months (April 2020-September 2020) to four months (September-December 2020); (3) extended the effective date that the Exchange would prorate the monthly fee for certain ports activated on or after July 1, 2019 from April 1, 2020 to September 1, 2020; and (4) revised the fees charged for legacy port connections during the Decommission Period.<sup>5</sup>

Effective August 1, 2020, the Exchange (1) extended the end of the Transition Period from August 2020 to October 2020; (2) extended the beginning of the Decommission Period from September 2020 to November 2020 and the end of the Decommission Period from December 2020 to February 2021; and (3) extended the effective date that the Exchange would prorate the monthly fee for ports activated on or after July 1, 2019 from September 1, 2020 to November 1, 2020.<sup>6</sup>

Effective October 1, 2020, the Exchange (1) extended the end of the Transition Period from October 2020 to December 2020; (2) extended the beginning of the Decommission Period from November 2020 to January 2021 and the end of the Decommission Period from February 2021 to April 2021; and (3) extended the effective

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<sup>4</sup> See Securities Exchange Act Release No. 86360 (July 11, 2019), 84 FR 34210 (July 17, 2019) (SR-NYSE-2019-39).

<sup>5</sup> See Securities Exchange Act Release No. 88373 (March 12, 2020), 85 FR 15533 (March 18, 2020) (SR-NYSE-2020-14).

<sup>6</sup> See Securities Exchange Act Release No. 89591 (August 18, 2020), 85 FR 52159 (August 24, 2020) (SR-NYSE-2020-14).

date that the Exchange would prorate the monthly fee for ports activated on or after July 1, 2019 from November 1, 2020 to January 1, 2021.<sup>7</sup>

The Exchange proposes to:

- extend the end of the Transition Period from December 2020 to February 2021;
- extend the beginning of the Decommission Period from January 2021 to March 2021 and the end of the Decommission Period from April 2021 to June 2021; and
- extend the effective date that the Exchange would prorate the monthly fee for ports activated on or after July 1, 2019 from January 1, 2021 to March 1, 2021.

The Exchange would continue to provide a cap on how much member organizations would be charged for ports during the proposed extra two months of the Transition Period so that they would not incur additional charges during the transition to Pillar communication protocols. Moreover, the Exchange would retain a four month period during which the few firms that do not transition during the proposed longer Transition Period would be charged fees to offset the Exchange's continuing costs of supporting legacy ports but proposes to extend the beginning and end dates for this period.

The Exchange proposes to implement these changes to its Price List effective December 1, 2020.

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<sup>7</sup> See Securities Exchange Act Release No. 90180 (October 14, 2020), 85 FR 66612 (October 20, 2020) (SR-NYSE-2020-82).

### 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. 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.”<sup>8</sup>

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”<sup>9</sup> Indeed, equity trading is currently dispersed across 16 exchanges,<sup>10</sup> 31 alternative trading systems,<sup>11</sup> and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 16% of the market share of executed volume of equity trades (whether excluding or

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<sup>8</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) (“Regulation NMS”).

<sup>9</sup> See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

<sup>10</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/). See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

<sup>11</sup> See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

including auction volume).<sup>12</sup> The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, including ports, in response to fee changes. Accordingly, the Exchange's fees, including port fees, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange is proposing these changes in the context of a competitive environment in which market participants can and do shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Because ports are used by member organizations to trade electronically on the Exchange, fees associated with ports are subject to these same competitive forces. The Exchange believes that the proposal represents a reasonable attempt to provide member organizations with additional time to effect an orderly transition to upgraded technology without incurring additional costs.

#### Proposed Rule Change

Member organizations enter orders and order instructions, and receive information from the Exchange, by establishing a connection to a gateway that uses communication protocols that map to the order types and modifiers described in Exchange rules. These gateway connections, also known as logical port connections, are referred to as "ports" on the Exchange's Price List. Legacy ports connect with the Exchange via a Common Customer Gateway (known as "CCG") that accesses its equity

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<sup>12</sup> See Cboe Global Markets U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/).

trading systems (“Phase I ports”). Beginning July 1, 2019, the Exchange began making available ports using Pillar gateways to its member organizations (“Phase II ports”).

#### Extension of the Date to Prorate Ports

The Exchange currently makes available ports that provide connectivity to the Exchange’s trading systems (i.e., ports for entry of orders and/or quotes (“order/quote entry ports”)) and charges \$550 per port per month. Designated Market Makers (“DMMs”) are not charged for the first 12 ports per month that connect to the Exchange.<sup>13</sup> The Exchange also currently makes ports available for drop copies and charges \$550 per port per month,<sup>14</sup> except that DMMs are not charged for drop copy ports that connect to the Exchange.

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

Effective January 1, 2021, the Exchange will prorate fees for order/quote entry and drop copy ports activated after July 1, 2019, to the number of trading days that a port is eligible for production trading with the Exchange, including any scheduled early closing days.

The Exchange proposes to extend the effective date for the prorating of order/quote entry and drop copy ports to March 1, 2021 to coincide with the end of the

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<sup>13</sup> DMMs completed the transition to Phase II ports last year.

<sup>14</sup> Only one fee per drop copy port applies, even if receiving drop copies from multiple order/quote entry ports.

proposed extended Transition Period in February 2021, discussed below.

#### Extension of the Transition Period

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

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

The purpose of Transition Period pricing is to cap port fees to allow member organizations additional time to implement technology changes necessary to connect to the Exchange using the Phase II ports without incurring additional Exchange fees. As of

November 2020, only 67% of Phase I ports have been cancelled, a 1% increase over the 66% that had transitioned as of September 2020. Based on the Exchange's experience to date, the Exchange believes that an additional two months will be necessary to provide sufficient time for all member organizations, regardless of size, to be able to complete the necessary changes and transition fully to the Phase II ports.

#### Extension of the Decommission Period

Currently, member organizations that have not transitioned to Phase II ports and are still utilizing Phase I ports during the billing months of January 2021 through April 2021 (*i.e.*, the Decommission Period), would, in addition to the current port fees, be charged a Decommission Extension Fee of \$1,000 per port per month, increasing by \$1,000 per port for each month for any ports that communicate using Pillar phase I protocols. As per the Price List, ports using Pillar phase I protocols would no longer be available beginning May 1, 2021.

The Exchange proposes that the Decommission Period would begin in March 2021, after the end of the proposed longer Transition Period, and end four months later. As proposed, the Decommission Period would commence in March 2021 and end in June 2021. As a result, the Price List would also be amended to provide that ports using Pillar phase I protocols would no longer be available beginning July 1, 2021.

As noted above, the Exchange believes that extending the Transition Period would provide sufficient time for member organizations to fully transition to Phase II ports and eliminate their use of Phase I ports. To the extent that member organizations do not complete the transition during the Transition Period, the Exchange will offer member organizations the ability to choose to continue using Phase I ports until July

2021.

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,<sup>15</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>16</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

### The Proposed Changes are Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>17</sup>

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple

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<sup>15</sup> 15 U.S.C. 78f(b).

<sup>16</sup> 15 U.S.C. 78f(b)(4) & (5).

<sup>17</sup> See Regulation NMS, 70 FR at 37499.

trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”<sup>18</sup> Indeed, equity trading is currently dispersed across 16 exchanges,<sup>19</sup> 31 alternative trading systems,<sup>20</sup> and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 16% of the market share of executed volume of equity trades (whether excluding or including auction volume).<sup>21</sup> The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, including ports, in response to fee changes. Accordingly, the Exchange’s fees, including port fees, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

If a particular exchange charges excessive fees for connectivity, impacted members and non-members may opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that

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<sup>18</sup> See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

<sup>19</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/). See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangeshtml.html>.

<sup>20</sup> See FINRA ATS Transparency Data, *available at* <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

<sup>21</sup> See Cboe Global Markets U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/).

exchange's data indirectly. Accordingly, if the Exchange charges excessive fees, it would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.

Given this competitive environment, the proposal represents a fair and reasonable attempt to provide member organizations with additional time to make an orderly transition to upgraded technology without increasing their costs. As noted, as of November 2020, 33% of legacy ports have not been cancelled. If a member organization is unable to complete this transition within the additional time of the extended Transition Period, the pricing is designed so that only those few member organizations that may not transition within that time period would pay for the Exchange to continue to support their Phase I ports.

#### The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants. The Exchange is not proposing to adjust the amount of the port fees or the fees charged fees to offset the Exchange's continuing costs of supporting legacy ports, which will remain at the current level for all market participants. Rather, the proposal would provide additional time for member organizations to transition from older to newer and more efficient Pillar technology and would charge the same fee for those few member organizations that choose not to transition to Phase II ports during the extended Transition Period.

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

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

#### 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, which will remain unchanged.

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

Similarly, the Decommission Extension Fee would apply equally to all member organizations that choose to connect to the Exchange through the use of such ports during the proposed Decommission Period. If a member organizations 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 proposed Transition Period. While the Exchange cannot predict with certainty whether any firms would be subject to the Decommission Fee, and if so, which ones, the Exchange anticipates that it would be a limited set of member organizations that would incur such fees.

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 February 1, 2021. As noted, to the extent a member organization continues to use ports activated before July 1, 2019 to connect to the Exchange during March 2021 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 July 1, 2021.

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

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,<sup>22</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would provide additional time for member organizations to transition from older to newer and more efficient Pillar technology with no fee increase and offset the Exchange's continuing costs of supporting the Phase I ports for the few firms that do not transition to the new ports during the longer transition period without any change to the fees currently charged by the Exchange for the use of ports to connect to the Exchange's trading systems.

*Intramarket Competition.* The Exchange does not believe the proposed rule change would impose any burden on intramarket competition that is not necessary or

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<sup>22</sup> 15 U.S.C. 78f(b)(8).

appropriate because it would apply to all member organizations equally that connect to the Exchange. All member organizations, regardless of size, will be eligible for the transition pricing through the extended Transition Period ending February 2021 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 Decommission Fee on an equal basis if they do complete the transition to Phase II ports by the end of the new February 2021 date. As noted, the Exchange anticipates that a low percentage of member organizations would be subject to the proposed Decommission Fee, and the firms likely to be subject to such fee would be larger firms that could more easily absorb the cost of that fee. The Exchange further believes that by extending the Transition Period, 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.

As noted, the no single exchange has more than 16% of the market share of executed volume of equity trades (whether excluding or including auction volume).<sup>23</sup> The Exchange believes that the ever-shifting market share among the exchanges from

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<sup>23</sup> See Cboe Global Markets U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/).

month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, including ports, in response to fee changes. Accordingly, the Exchange's fees, including port fees, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

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

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)<sup>24</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>25</sup> thereunder, because it

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<sup>24</sup> 15 U.S.C. 78s(b)(3)(A).

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)<sup>26</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2020-99 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2020-99. This file

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<sup>25</sup> 17 CFR 240.19b-4(f)(2).

<sup>26</sup> 15 U.S.C. 78s(b)(2)(B).

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-2020-99 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.<sup>27</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>27</sup> 17 CFR 200.30-3(a)(12).

## EXHIBIT 5

Additions underlined  
Deletions [bracketed]

### New York Stock Exchange

#### Price List 2020

\* \* \* \* \*

**Last Updated:** [November]December [2]1, 2020

#### Transaction Fees<sup>\*</sup>

Regular Session Trading<sup>1</sup>

Transactions in stocks with a per share stock price of \$1.00 or more

\* \* \* \* \*

#### Equipment Fees

Schedule of Annual Charges, unless otherwise noted

\* \* \* \* \*

Port Fees (not applicable to ports used for RMG, which are not charged)

Ports for order/quote entry	<p>\$550 per port per month, except that DMMs shall not be charged for the first 12 ports per month that connect to the Exchange, and then \$550 per port per month thereafter.</p> <p>Effective [January]<u>March</u> 1, 2021, the monthly fee for an order/quote entry port activated after July 1, 2019</p>
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	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.
Ports for drop copies	<p>\$550 per port per month (only one fee per drop copy port shall apply, even if receiving drop copies from multiple order/quote entry ports), except that DMMs shall not be charged for ports that connect to the Exchange.</p> <p>Effective [January]<u>March 1, 2021</u>, the monthly fee for a drop copy port 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.</p>
Pillar Port Transition Fee Pricing (applicable to both order/quote entry and drop copy ports)	<p><b>Billing months of July 2019 through [December 2020]<u>February 2021</u> (“Transition Period”)</b></p> <p>During the Transition Period, the number of ports charged per member organization will be capped at the total number</p>

	<p>of such ports that the member organization has activated as of its June 2019 invoice (“Transition Cap”). The Transition Cap pricing will be available until the earlier of (1) the end of the Transition Period, or (2) the billing month during which a member organization has fully transitioned to using only ports that communicate using Pillar phase II protocols. If during the Transition Period, a member organization increases the number of ports using Pillar phase I protocols above the Transition Cap, those ports will be charged at the rates identified above. If during the Transition Period, a member organization has a total number of ports below the Transition Cap, the member organization will be charged for the actual number of ports.</p> <p><b>Billing months of [January]<u>March</u> 2021 through [April]<u>June</u> 2021  (“Decommission Period”)</b></p> <p>During the Decommission Period, in addition to the port fees described above, a member organization will be charged a Decommission Extension Fee of \$1000 per</p>
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	port per month, increasing by \$1000 per port for each month for any ports that communicate using Pillar phase I protocols. Ports that use Pillar phase I protocols will not be available beginning [May] <u>July</u> 1, 2021.
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**Market Data Fees**

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