

time if they believe it to be valuable or may decline to purchase such data. As noted above, the Exchange previously adopted a similar discount program last year.<sup>28</sup>

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As discussed above, the Exchange's historical Short Volume Reports offering is subject to direct competition from several other options exchanges that offer similar data products. Moreover, purchase of historical Short Volume Reports is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange's efforts to compete more effectively. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of historical Short Volume Reports.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

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

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)

<sup>28</sup> See Securities Exchange Act Release No. 99181 (December 14, 2023), 88 FR 88176 (December 20, 2023) (SR-CboeBYX-2023-017).

of the Act<sup>29</sup> and paragraph (f) of Rule 19b-4<sup>30</sup> thereunder. At any time within 60 days of the filing of the 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 will institute proceedings 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CboeBYX-2024-022 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-CboeBYX-2024-022. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and

<sup>29</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>30</sup> 17 CFR 240.19b-4(f).

copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBYX-2024-022 and should be submitted on or before July 11, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024-13421 Filed 6-18-24; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-100327; File No. SR-NYSE-2024-13]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change Amending Rule 7.35 and Rule 7.35B**

June 13, 2024.

#### **I. Introduction**

On March 1, 2024, New York Stock Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend NYSE Rules 7.35 and 7.35B. The proposed rule change was published for comment in the **Federal Register** on March 18, 2024.<sup>3</sup> On April 4, 2024, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>4</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

#### **II. Description of the Proposal**

As described more fully below, the Exchange proposes to amend NYSE Rule 7.35 (General) and NYSE Rule 7.35B (DMM-Facilitated Closing

<sup>31</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 99719 (Mar. 12, 2024), 89 FR 19370 (Mar. 18, 2024) ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 100027, 89 FR 35288 (May 1, 2024).

Auctions) to: (i) align the definition of Imbalance Reference Price for a Closing Imbalance; (ii) replace the Regulatory Closing Imbalance with an enhanced Significant Closing Imbalance; and (iii) include Closing D Orders in the Total Imbalance calculation ten minutes before the scheduled end of Core Trading Hours.

#### A. Background

According to the Exchange, Imbalance information on the Exchange means better-priced orders on one side of the market compared to both better-priced and at-price orders on the other side of the market. The Exchange disseminates two types of Imbalance publications: Total Imbalance and Closing Imbalance. Total Imbalance information is disseminated for all Auctions, and Closing Imbalance information is disseminated for the Closing Auction only.

The Exchange states that, beginning ten minutes before the scheduled end of Core Trading Hours, the Exchange begins disseminating through its proprietary data feed Closing Auction Imbalance Information that is calculated based on the interest eligible to participate in the Closing Auction.<sup>5</sup> The Closing Auction Imbalance Information includes the Continuous Book Clearing Price, which is the price at which all better-priced orders eligible to trade in the Closing Auction on the Side of the Imbalance can be traded.<sup>6</sup> The Closing Auction Imbalance Information also includes an Imbalance Reference Price, which is the Exchange Last Sale Price bound by the Exchange BBO.<sup>7</sup>

Currently, according to the Exchange, beginning five minutes before the end of Core Trading Hours, Closing D Orders are included in the Closing Auction Imbalance Information at their undisplayed discretionary price.<sup>8</sup> The Closing Auction Imbalance Information is updated at least every second, unless there is no change to the information, and is disseminated until the Closing Auction begins.<sup>9</sup> In addition, if at the Closing Auction Imbalance Freeze Time (e.g., 3:50 p.m. Eastern Time)<sup>10</sup> the

Closing Imbalance<sup>11</sup> is 500 round lots or more, the Exchange will disseminate a Regulatory Closing Imbalance to both the securities information processor and proprietary data feeds.<sup>12</sup>

#### B. Proposed Rule Change

##### 1. Significant Closing Imbalance

The Exchange currently publishes a Regulatory Closing Imbalance at the Closing Auction Imbalance Freeze Time if the Closing Imbalance is 500 round lots or more. The Exchange proposes to retire the Regulatory Closing Imbalance based on a static round-lot trigger and instead publish a Significant Closing Imbalance based on a dynamic formula that would consider the notional size of the imbalance and the recent closing activity of the relevant security. As proposed, unless determined otherwise by the Exchange and announced by Trader Update, a Closing Imbalance would be considered "Significant" if:

- the Closing Imbalance is equal to or greater than 30 percent of the 20-day Average Closing Size for NYSE-listed securities in the S&P 500<sup>®</sup> Index; 50 percent of the 20-day Average Closing Size for securities in the S&P 400<sup>®</sup> Index and the S&P 600<sup>®</sup> Index; or 70 percent of the 20-day Average Closing Size for all other securities,<sup>13</sup> and
- the notional value of the Closing Imbalance, calculated as the product of the imbalance quantity and the reference price, is equal to or greater than \$200,000 for S&P and all other securities.<sup>14</sup>

For purposes of calculating the proposed Significant Closing Imbalance, Average Closing Size would be calculated for each symbol based on the most recent 20 trading days where the security closed on a last sale eligible trade. For securities with less than the specified trading data, including but not limited to IPOs, direct listings, and transfers, the Closing Imbalance would be considered Significant if the notional value of the Closing Imbalance, calculated as the product of the imbalance quantity and the reference price, is equal to or greater than \$200,000 for S&P and all other securities or an alternative specified dollar amount as determined by the Exchange

minutes before the scheduled end of Core Trading Hours).

<sup>11</sup> As defined in NYSE Rule 7.35(a)(4)(A)(ii), a "Closing Imbalance" means the Imbalance of MOC and LOC Orders to buy and MOC and LOC Orders to sell. NYSE Rule 7.35(a)(4)(A)(ii) further defines a "Regulatory Closing Imbalance" as a Closing Imbalance disseminated at or after the Closing Auction Imbalance Freeze Time.

<sup>12</sup> See NYSE Rule 7.35B(d)(1).

<sup>13</sup> See Proposed NYSE Rule 7.35B(d)(1)(A).

<sup>14</sup> See *id.* at (B).

and announced by Trader Update. Only trading days with an NYSE close would be considered for purposes of the Significant Closing Imbalance calculation.<sup>15</sup>

The Exchange states that it believes that publishing imbalance information where the imbalance is of a size that equals or exceeds a large percentage of a security's average closing size over the most recent 20 trading days and is of a high notional value imparts more valuable information to the marketplace about potential trading anomalies or opportunities than an imbalance publication based solely on an imbalance size of 500 round lots or more.<sup>16</sup> As a result, the Exchange states, it believes that publication of Significant Closing Imbalance information as proposed could facilitate entry of offsetting orders and the price discovery process on the Exchange, to the benefit of the marketplace and public investors.<sup>17</sup> In addition, the Exchange states that it believes that it would be appropriate to retain flexibility to determine the percentage amounts and notional value in the formula for what constitutes a Significant Closing Imbalance so that the Exchange may timely take into consideration market movements and the changing trading characteristics of different securities.<sup>18</sup>

##### 2. Imbalance Reference Price

Currently, the Closing Auction Imbalance Information includes the Continuous Book Clearing Price, which is the price at which all better-priced orders eligible to trade in the Closing Auction on the Side of the Imbalance can be traded.<sup>19</sup> The Closing Auction Imbalance Information also includes an Imbalance Reference Price, which is the Exchange Last Sale Price bound by the Exchange BBO.<sup>20</sup> The Imbalance Reference Price for a Closing Imbalance

<sup>15</sup> See *id.* at (C).

<sup>16</sup> See Notice, *supra* note 3, 89 FR at 19372.

<sup>17</sup> See *id.*

<sup>18</sup> See *id.* The Exchange notes that the options markets operated by the Exchange's affiliates have similar flexibility in their rules to specify different parameters based on a Trader Update. See, e.g., NYSE Arca, Inc., Rules 6.62P–O(a)(3)(C) (specifying the thresholds applicable to limit order price protection) & 6.64P–O(c) (specifying interval when Auction Imbalance Information is updated).

<sup>19</sup> See NYSE Rule 7.35(a)(4)(C). In the case of a buy Imbalance, the Continuous Book Clearing Price would be the highest potential Closing Auction Price and in the case of a sell Imbalance, the Continuous Book Clearing Price would be the lowest potential Closing Auction Price.

<sup>20</sup> See NYSE Rule 7.35B(e)(3).

<sup>5</sup> See NYSE Rule 7.35B(e)(1)(A). DMM Orders, as defined in NYSE Rule 7.35(a)(9)(B), that have been entered by the DMM in advance of a Closing Auction are currently included in the Closing Auction Imbalance Information.

<sup>6</sup> See NYSE Rule 7.35(a)(4)(C). In the case of a buy Imbalance, the Continuous Book Clearing Price would be the highest potential Closing Auction Price and in the case of a sell Imbalance, the Continuous Book Clearing Price would be the lowest potential Closing Auction Price.

<sup>7</sup> See NYSE Rule 7.35B(e)(3).

<sup>8</sup> See NYSE Rule 7.35(b)(1)(C)(ii).

<sup>9</sup> See NYSE Rule 7.35(c)(1) and (2).

<sup>10</sup> See NYSE Rule 7.35(a)(8) (defining the "Closing Auction Imbalance Freeze Time" to be 10

is currently the Exchange Last Sale Price.<sup>21</sup>

The Exchange proposes to align the definition of Imbalance Reference Price for a Closing Imbalance in NYSE Rule 7.35B(d) with the current definition of Imbalance Reference Price for the Closing Auction Imbalance Information in NYSE Rule 7.35B(e)(3). As proposed, the Imbalance Reference Price for a Closing Imbalance would be equal to

- the BB if the Exchange Last Sale Price is lower than the BB;
- the BO if the Exchange Last Sale Price is higher than the BO; or
- the Exchange Last Sale Price if it is at or between the BBO or if the security was halted or not opened by the Closing Auction Imbalance Freeze Time.<sup>22</sup>

The Exchange states that it believes that the proposal will enhance the value of the imbalance publication by providing a more accurate depiction of the market interest available in a security because bounding the Imbalance Reference Price by the BBO keeps the price in line with actual trading in that security.<sup>23</sup>

### 3. Closing D Orders

Finally, the Exchange proposes to include Closing D Orders earlier in the imbalance information provided to the marketplace. The Exchange disseminates two types of Imbalance publications: Total Imbalance and Closing Imbalance. Total Imbalance information is disseminated for all Auctions, and Closing Imbalance information is disseminated for the Closing Auction only.

NYSE Rule 7.35(a)(4)(A)(i) provides that “Total Imbalance” means for the Core Open and Trading Halt Auctions, the Imbalance of all orders eligible to participate in an Auction and for the Closing Auction, the Imbalance of MOC, LOC, and Closing IO Orders, and beginning five minutes before the scheduled end of Core Trading Hours, Closing D Orders.

In addition, for the Closing Auction, the Exchange provides information on the “Paired Quantity,” which is the volume of better-priced and at-priced buy shares that can be paired with better-priced and at-priced sell shares at the Imbalance Reference Price, and “Unpaired Quantity,” meaning the volume of better-priced and at-priced

buy shares that cannot be paired with both at-priced and better-priced sell shares at the Imbalance Reference Price. Paired and Unpaired Quantity as defined in NYSE Rule 7.35(a)(4)(B)(ii) to include MOC, LOC, and Closing IO Orders, and beginning five minutes before the scheduled end of Core Trading Hours, Closing D Orders.

Further, NYSE Rule 7.35(b) sets forth general rules for how different types of orders are ranked for purposes of how they are included in Auction Imbalance Information or for an Auction allocation. NYSE Rule 7.35(b)(1) provides that orders are ranked based on the price at which they would participate in an Auction. The price at which an order would be ranked would be used to determine whether it is a better-priced or an at-priced order. In this regard, beginning five minutes before the end of Core Trading Hours, the ranked price of a Closing D Order is the order’s undisplayed discretionary price. In addition, under NYSE Rule 7.35(b)(2), the working time of a Closing D Order would be the later of its entry time or five minutes before the end of Core Trading Hours.

The Exchange proposes to amend these rules. The Exchange states that it believes that earlier inclusion of this order type in the imbalance information published by the Exchange would enhance the information available to the marketplace leading into the Closing Auction.<sup>24</sup> The Exchange also states that it believes that including Closing D Orders in its publicly disseminated imbalance information earlier would provide more information to the marketplace about the volume and type of orders going into the Closing Auction as well as additional time for the market to respond to any auction imbalances.<sup>25</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>26</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>27</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to

promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change to include Closing D Orders in the Closing Auction Imbalance Information published by the Exchange beginning ten minutes before the scheduled end of Core Trading Hours, rather than the current five minutes, is reasonably designed to enhance the information available to the marketplace leading into the Closing Auction and to provide additional time for the market to respond to auction imbalances. The Commission also believes that the proposal to publish a Significant Closing Imbalance based on a dynamic formula—rather than the current Regulatory Closing Imbalance at the Closing Auction Imbalance Freeze Time if the Closing Imbalance is 500 round lots or more—is reasonably designed to provide meaningful information to market participants about interest in a security and to assist market participants in trading in the Closing Auction in that security. Moreover, allowing the Exchange the flexibility to determine the percentage amounts and notional value in the formula for what would constitute a Significant Closing Imbalance is reasonably designed to enable the Exchange to take market movements and the characteristics of different securities into consideration and to update the metrics if needed. Finally, the Commission believes that it is reasonable for the Exchange to determine the Imbalance Reference Price for the Closing Auction in a security in the same way the Exchange currently determines the Imbalance Reference Price for the Closing Auction Imbalance Information, because this change would enhance consistency in the Exchange’s rulebook and because bounding the Imbalance Reference Price by the BBO is reasonably designed to keep the Imbalance Reference Price in line with actual trading in that security.

Based on the foregoing, the Commission finds that the proposed rule change is consistent with the Act.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>28</sup> that the

<sup>21</sup> See NYSE Rule 7.35B(d). See NYSE Rule 7.35(a)(12)(B)(defining “Exchange Last Sale Price” to mean the most recent trade on the Exchange of a round lot or more in a security during Core Trading Hours on that trading day, and if none, the Official Closing Price from the prior trading day for that security).

<sup>22</sup> See Proposed NYSE Rule 7.35B(d).

<sup>23</sup> See Notice, *supra* note 3, 89 FR at 19372.

<sup>24</sup> See *id.*

<sup>25</sup> See *id.*, at 19372–73.

<sup>26</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-NYSE-2024-13) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024-13418 Filed 6-18-24; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-100328; File No. SR-NYSEARCA-2024-55]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule**

June 13, 2024.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on June 12, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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 the NYSE Arca Options Fee Schedule (“Fee Schedule”) to replace the Ratio Threshold Fee with an Excessive Bandwidth Utilization Fee. The Exchange proposes to implement the fee changes effective June 12, 2024.<sup>4</sup> 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.

**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 amend the Fee Schedule to replace the Ratio Threshold Fee with an Excessive Bandwidth Utilization Fee to reflect the Exchange’s migration to NYSE Pillar (“Pillar”). The Exchange proposes to implement the fee changes effective June 12, 2024.

The Exchange imposes certain fees to discourage excessive message traffic (that do not result in executions or otherwise improve market quality) that could unnecessarily tax the Exchange’s resources, bandwidth, and capacity, as no system has unlimited capacity.

With the Exchange’s migration to the Pillar trading platform, market participants can send both quote and order message traffic over a single connection. This functionality allows the Exchange to monitor the message traffic of each OTP Holder or OTP Firm (collectively, “OTP Holders”), which in turn impacts how the Exchange calculates (and assess fees for) each OTP Holder’s use of Exchange bandwidth and processing resources.

Currently, the Exchange assesses a Ratio Threshold Fee that is based on the number of orders entered as compared to the number of executions received in a calendar month.<sup>5</sup> To reflect the communication protocol available on Pillar, the Exchange proposes to replace the Ratio Threshold Fee with a “Monthly Excessive Bandwidth Utilization Fee” or “EBUF”.<sup>6</sup> Like the Ratio Threshold Fee, the proposed EBUF is designed to strike the right balance between deterring OTP Holders from submitting an excessive number of

messages (that do not result in executions or otherwise improve market quality) without discouraging OTP Holders from accessing the Exchange, except that it will include quotes. As proposed, the EBUF will only be assessed on OTP Holders that send more than 50 million messages per day on average during a calendar month.<sup>7</sup> For purposes of EBUF, “messages” include quotes, orders, order cancellations and modifications.<sup>8</sup>

The proposed EBUF would calculate an OTP Holder’s “Monthly Message to Execution Ratio” (*i.e.*, the number of messages sent versus the number of executions). The Exchange has determined that, on Pillar, setting a baseline threshold for this “Monthly Message to Execution Ratio” at 500,000 to 1 or greater should ensure the efficient use of the Exchange’s resources, bandwidth, and capacity by OTP Holders that are actively trading on the Exchange. Thus, as proposed, the Exchange will calculate the number of messages submitted by an OTP Holder, and the number of executions by the OTP Holder, and will only assess the EBUF if the Monthly Message to Execution Ratio exceeds 500,000 to 1. The proposed Fee will be assessed to further encourage efficient use of the Exchange’s resources as shown here:

| Monthly message to execution ratio     | Monthly charge |
|--|----------------|
| Between 500,000 and 749,999 to 1 ..... | \$5,000        |
| Between 750,000 and 999,999 to 1 ..... | 10,000         |
| 1,000,000 to 1 and greater ...         | 15,000         |

Like the Ratio Threshold Fee, the higher the Messages to Executions Ratio (*i.e.*, the more unexecuted message that Pillar ingests), the higher the proposed fee, which increase is designed to discourage (increasing levels of) excessive message traffic by OTP Holders. The Exchange notes that the proposed minimum thresholds for triggering the proposed EBUF are higher than the thresholds associated with the Ratio Threshold Fee (but the associated fees are substantially the same), which reflects the fact that both quotes and orders (and cancellations or modification thereof) are “messages” included in the calculation as well as the fact that Pillar can accommodate more message traffic than the Exchange’s pre-Pillar system.<sup>9</sup> The

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> For example, the current Ratio Threshold Fee has minimum “order to execution” ratio thresholds

Continued

<sup>29</sup> 17 CFR 200.30-3(a)(12).

<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.

<sup>4</sup> On May 1, 2024, the Exchange originally filed to amend the Fee Schedule (NYSEARCA-2024-38), and, on May 16, 2024, the Exchange withdrew that filing and submitted NYSEARCA-2024-41. On May 30, 2024, the Exchange withdrew NYSEARCA-2024-41 and submitted NYSEARCA-2024-48, which latter filing the Exchange withdrew on June 12, 2024.

<sup>5</sup> See Fee Schedule, Ratio Threshold Fee. See also Endnote 12 (regarding the ratio threshold fee).

<sup>6</sup> See proposed Fee Schedule, Monthly Excessive Bandwidth Utilization Fee.