

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88979; File No. SR-NYSEAMER-2020-40)

June 1, 2020

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE American Equities Price List and the NYSE American Options Fee Schedule Related to Co-location Services

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on May 18, 2020, NYSE American LLC (“NYSE American” 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 American Equities Price List and the NYSE American Options Fee Schedule (together, the “Price List and Fee Schedule”) related to co-location services with respect to connectivity to the ICE Data Global Index and to waive any change fees that a User would otherwise incur as a result of the proposed change. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Exchange proposes to amend the Price List and Fee Schedule related to co-location⁴ services offered by the Exchange with respect to connectivity to the ICE Data Global Index (“GIF”) and to waive any change fees that a User would otherwise incur as a result of the proposed change.

Proposed Change

The Exchange offers Users⁵ connectivity to data feeds from third party markets and other

⁴ The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (“Commission”) in 2010. See Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR-NYSEAmex-2010-80). The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (“ICE”). Through its ICE Data Services (“IDS”) business, ICE operates a data center in Mahwah, New Jersey (the “data center”), from which the Exchange provides co-location services to Users.

⁵ For purposes of the Exchange’s co-location services, a “User” means any market participant that requests to receive co-location services directly from the Exchange. See Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR-NYSEMKT-2015-67). As specified in the Price List and Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange’s affiliates the New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2020-46, SR-NYSEArca-2020-49, SR-NYSECHX-2020-17, and SR-NYSESTAT-2020-19.

content service providers (“Third Party Data Feeds”).⁶ The list of Third Party Data Feeds is set forth in the Price List and Fee Schedule, and includes connectivity to the GIF for a monthly connectivity fee of \$100.⁷

ICE, which publishes the GIF, announced to its customers that connect to the GIF that it will no longer offer the GIF as a stand-alone product. Accordingly, the Exchange proposes to cease offering connectivity to the GIF once it is no longer available. The Exchange has been informed by ICE that cessation is currently expected to occur before the end of 2020. The Exchange will announce the operative date through a customer notice.

Users are subject to a change fee if they request a change to one or more existing co-location services.⁸ The Exchange proposes to waive any change fees that a User would otherwise incur as a result of the proposed change.

In order to implement the proposed change, the Exchange proposes to make the following changes to the section entitled “Connectivity to Third Party Data Feeds”:

- In the first paragraph and in the table of Third Party Data Feeds, add an asterisk

⁶ See Securities Exchange Act Release No. 80309 (March 24, 2017), 82 FR 15725 (March 30, 2017) (SR-NYSEMKT-2016-63) (notice of filing of Partial Amendment No. 4 and order granting accelerated approval of a proposed rule change, as modified by Amendment Nos. 1 through 4, to amend the co-location services offered by the Exchange to add certain access and connectivity fees).

⁷ The Exchange has an indirect interest in the GIF because ICE is the Exchange’s ultimate parent. See *id.*, at 15733, and Securities Exchange Act Release No. 79672 (December 22, 2016), 81 FR 96080 (December 29, 2016) (SR-NYSEMKT-2016-63) (notice of filing of Amendments Nos. 2 and 3 to proposed rule change to amend the co-location services offered by the Exchange to add certain access and connectivity fees).

⁸ See Securities Exchange Act Release Nos. 67664 (August 15, 2012), 77 FR 50733 (August 22, 2012) (SR-NYSEMKT-2012-10) (order approving a proposed rule change amending the NYSE MKT Price List to provide for additional co-location services and establish related fees), and 67665 (August 15, 2012), 77 FR 50734 (August 22, 2012) (SR-NYSEMKT-2012-11) (order approving a proposed rule change amending the NYSE Amex Options Fee Schedule to provide for additional co-location services and establish related fees).

after “ICE Data Global Index.”

- Following the table of Third Party Data Feeds, add the following text:

* ICE will cease to offer the GIF as a stand-alone product, which the Exchange has been informed by ICE is currently expected to occur before the end of 2020. The Exchange will announce the operative date through a customer notice. Any change fees that a User would otherwise incur as a result of the proposed change will be waived.

The GIF includes the values of various indices and exchange traded product data.⁹ Based on information published by ICE Data Services, all the data in the GIF was already available on the ICE Data Services Consolidated Feed (“Consolidated Feed”).¹⁰ The Exchange offers connectivity to the Consolidated Feed, and does not propose to change the price for such connectivity. In addition, the Exchange’s connectivity to the GIF and the Consolidated Feed should have approximately the same latency.

Application and Impact of the Proposed Change

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Price List and Fee Schedule are applied uniformly to all Users.

Currently, there are seven Users that have connectivity to the GIF, and so would be affected by the change. If any of them wish to continue having connectivity to the information in

⁹ The Exchange understands that some of the indices may include Exchange or Affiliate SRO data as underlying components, but the GIF does not include those underlying components or other information directly from the Exchange and Affiliate SROs.

¹⁰ See “Consolidated Data Feed Coverage List—Indices and Indicators” at <https://www.theice.com/market-data/connectivity-and-feeds/consolidated-feed/coverage-list>.

the GIF, they could connect to the Consolidated Feed, which none of them do presently. The monthly cost for connectivity to the Consolidated Feed depends on the size of the bandwidth utilized. If a User opts to connect to the Consolidated Feed to connect to the information in the GIF, the monthly connectivity cost charged by the Exchange would be \$200.

ICE has informed the Exchange that currently there are various third parties that offer Users connectivity to the Consolidated Feed. To use such third party connectivity to the Consolidated Feed, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

Competitive Environment

The Exchange operates in a highly competitive market in which exchanges and other vendors (e.g., Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. 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.”¹¹

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users

¹¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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,¹² in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹³ 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. In addition, it is designed 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 mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change is Reasonable and Equitable

The Exchange believes that the proposed rule change is reasonable and equitable for the following reasons.

The Exchange believes that it is reasonable and an equitable allocation of its fees and credits to add a note to its Price List and Fee Schedule stating that ICE will cease to offer the GIF as a stand-alone product, as the Exchange will no longer be able to offer the service once that occurs.

If a User wishes connectivity to the information in the GIF, the Users could connect to the Consolidated Feed through IDS or from a third party provider. A User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

access the Consolidated Feed, through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that it is reasonable and equitable that it waive any change fees that a User would otherwise incur as a result of the proposed change, as Users would have no choice but to terminate connectivity to the GIF. The fee waiver would help to alleviate any burden related to the change.

The Proposed Rule Change Would Protect Investors and the Public Interest

The Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest for the following reasons.

It would be against the protection of investors and the public interest if the Exchange were to continue to offer something that it cannot provide because the relevant feed has been discontinued. Adding the proposed note to its Price List and Fee Schedule would reduce any potential ambiguity and provide clarification concerning the availability and the costs of connectivity to Third Party Data Feeds available to Users, because it would highlight that the GIF will become obsolete, provide a timeline for the change, and state that any change fees that a User would otherwise incur as a result of the proposed change would be waived.

The Proposed Change is Not Unfairly Discriminatory

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As a consequence of ICE's ceasing to

offer the GIF as a stand-alone product, the Exchange will not be able to provide any Users with connectivity to the GIF.

If a User wishes connectivity to the information in the GIF, the Users could connect to the Consolidated Feed through the Exchange. If any of the seven Users that have connectivity to the GIF opt to connect to the Consolidated Feed, the monthly connectivity cost charged by the Exchange would be \$200.

ICE has informed the Exchange that currently there are various third parties that offer Users connectivity to the Consolidated Feed. To use such third party connectivity to the Consolidated Feed, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed, through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these 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,¹⁴ the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on

¹⁴ 15 U.S.C. 78f(b)(8).

intramarket competition that is not necessary or appropriate. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally: as a consequence of ICE's ceasing to offer the GIF as a stand-alone product, the Exchange will not be able to provide any Users with connectivity to the GIF. The Exchange proposes to waive any change fees that a User would otherwise incur as a result of the proposed change.

Adding the proposed note to the Price List and Fee Schedule would reduce any potential ambiguity and provide clarification concerning the availability and the costs of connectivity to Third Party Data Feeds available to Users, because it would highlight that the GIF will become obsolete, provide a timeline for the change, and state that any change fees that a User would otherwise incur as a result of the proposed change would be waived.

If a User wishes connectivity to the information in the GIF, the Users could connect to the Consolidated Feed through the Exchange. If any of the seven Users that have connectivity to the GIF opt to connect to the Consolidated Feed, the monthly connectivity cost charged by the Exchange would be \$200.

ICE has informed the Exchange that currently there are various third parties that offer Users connectivity to the Consolidated Feed. To use such third party connectivity to the Consolidated Feed, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed, through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

Use of any co-location service is completely voluntary, and each market participant is able to determine whether to use co-location services based on the requirements of its business

operations.

Intermarket Competition

The Exchange does not believe that the proposed fee would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange operates in a highly competitive market in which exchanges and other vendors (i.e., Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants.

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.”¹⁵

The Exchange believes that the proposed change is necessary and appropriate. Adding the proposed note to the Price List and Fee Schedule would reduce any potential ambiguity and provide clarification concerning the availability and the costs of connectivity to Third Party Data Feeds available to Users, because it would highlight that the GIF will become obsolete and provide a timeline for the change.

For the reasons described above, the Exchange believes that the proposed rule change

¹⁵ See 70 FR 37496, supra note 11.

reflects this competitive environment.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁸ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that such waiver would be consistent with the protection of investors and the public interest because it would allow the Exchange to waive the change fee sooner. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would permit the Exchange, without

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

undue delay, to cease offering the GIF when it becomes unavailable, provide notice to customers and waive the change fee. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.²⁰

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)²¹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2020-40 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.

²⁰ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSEAMER-2020-40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that

you wish to make available publicly. All submissions should refer to File Number SR-NYSEAMER-2020-40 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.²²

J. Matthew DeLesDernier
Assistant Secretary

²² 17 CFR 200.30-3(a)(12).