

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98002; File No. SR-NYSENAT-2023-12)

July 26, 2023

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

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on July 14, 2023, NYSE National, Inc. (“NYSE National” 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 Connectivity Fee Schedule (the “Fee Schedule”) to add the services available to third party telecommunications service providers in the two Mahwah data center meet me rooms. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Fee Schedule to add the services available to third party telecommunications service providers⁴ in the two Mahwah, New Jersey data center (“MDC”) meet me rooms (“MMRs”).⁵

Meet me rooms are standard within the data center industry. A meet me room is a location within a data center where circuits from outside of the data center “meet” and connect with the circuits within the data center, such as those of colocated customers. As a general description, telecommunications service provider’s circuits from outside a data center are brought into a meet me room, where those circuits connect to a telecommunications service provider’s equipment in a meet me room cabinet. From there, a cross connect will complete the connection to a customer’s equipment in the data center’s colocation hall. The data center customer uses the circuit supplied by the telecommunications service provider to connect to

⁴ In this filing, telecommunications service providers that choose to purchase MMR services at the MDC are referred to as “Telecoms.” Telecoms are licensed by the Federal Communications Commission (“FCC”) and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

⁵ Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange is an indirect subsidiary of ICE and is an affiliate of NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change. See SR-NYSEAMER-2023-36, SR-NYSEARCA-2023-47, SR-NYSECHX-2023-14, and SR-NYSENAT-2023-12.

locations outside of the data center, e.g., the customers' back offices.

Before 2013, the MDC did not have a MMR, and all connectivity into and out of the MDC was provided by ICE's predecessor, NYSE Euronext. In response to customer demand for more connectivity options, the MMRs opened to Telecoms in January 2013. The Telecoms have an expertise that the Exchange and FIDS do not have, and can provide their customers with a range of circuit options. More importantly, the Telecoms provide a service that the Exchange and FIDS cannot, because the Exchange and FIDS are not telecommunications service providers. In fact, the circuits that FIDS provides to customers are circuits that FIDS itself purchases as a customer from Telecoms.

In the ten years since the MMRs opened, 19 Telecoms established services in the MMRs, of which three exited the MMRs. As of June 30, 2023, the 16 Telecoms had 27 cabinets in the MMRs, providing each market participant that requests to receive co-location services directly from the Exchange ("User")⁶ with connectivity options.

It is clear that the MMRs are useful to Users. Although FIDS offers Users circuits,⁷ all but a few Users use circuits supplied by Telecoms instead: as of June 1, 2023, more than 95% of the circuits for which Users contracted were supplied by the Telecoms.⁸ Indeed, all but two of

⁶ Other than Telecoms, Users are the only FIDS customers with equipment physically located in the MDC.

⁷ The Exchange notes that the FIDS circuits do not have a distance or latency advantage over the Telecoms within the MDC. FIDS has normalized (a) the distance between the MMRs and colocation and (b) the distance from the MPOE rooms, where the FIDS circuits are, and the colocation hall. As a result, there is no difference in the distances or latency within the MDC. In addition, FIDS itself is a Telecom customer. It is not a Telecom, does not own circuits and must contract with Telecoms to provide its services. The fact that the FIDS circuits do not have an advantage is reflected by the fact that FIDS circuits represent a small portion of the MDC circuits.

⁸ To estimate the number of circuits, FIDS totaled the numbers of (a) carrier connection fees and (b) cross connects to FIDS circuits.

the Users that use FIDS circuits also connect to Telecom circuits in the MMRs.⁹

The Exchange seeks to amend the Fee Schedule to add the services offered to Telecoms and the related fees. Such fees include cabinet and power-related fees, cross-connect fees, and several other fees pertaining to the suite of services that the Exchange offers to Telecoms that operate in the MMR environment.

The MMR Structure

Every User requires a circuit into and out of the MDC in order to connect its equipment outside of the MDC to its equipment within the MDC. As noted above, most Users choose to utilize Telecom circuits for these purposes.

A Telecom completes a circuit by placing equipment in a MMR and installing carrier circuits between one or more points outside the MDC and the Telecom's MMR equipment.¹⁰ A User that has contracted with the Telecom then connects to the Telecom's MMR equipment using a cross connect from the User's co-located equipment. Once connected to the Telecom's equipment, the User can use the Telecom's circuit to transport data into and out of the MDC.

A Telecom may sell access to its circuits to a second Telecom, so that the second Telecom may use the first Telecom's circuit to access the MDC. In this way, the second Telecom can install its equipment in an MMR and sell the sublet circuits to its customers without incurring the cost of installing its own circuits to the MDC.¹¹

⁹ The Exchange believes that many Users that have FIDS circuits use the FIDS circuits for backup purposes.

¹⁰ A User may use a wireless connection, including a third party wireless connection, to the MDC. In such a case, the portion of the connection closest to the MDC is wired. Accordingly, the present description applies to wireless connections as well as those that are wired. A Telecom elects which MMR it will use, or if it will use both.

¹¹ FIDS does not have to consent to, and need not be informed of, a Telecom's sale of a circuit to another Telecom. In addition, neither FIDS nor the Exchange knows the

MMR Services

The Exchange proposes to add the following MMR services and fees to the end of the Fee Schedule, under the heading “D. Meet-Me-Room (‘MMR’) Services.” With the exception of cross connects, which may be paid for by the Telecom or by the Telecom’s customer, the proposed services and fees are specific to Telecoms.

Cabinet-Related Services

The Exchange proposes to add to the Fee Schedule the following services and fees relating to the cabinets that FIDS provides Telecoms to set up their servers in the MMRs (collectively, the “Cabinet-Related Services”).

Initial Fee per MMR Cabinet and MMR Monthly Fee for Cabinets: FIDS offers Telecoms dedicated cabinets in the MMRs to house their equipment. The cabinets come in sizes based on the number of kilowatts (“kW”) allocated, subject to a minimum of 4 kW and maximum of 8 kW per cabinet. Telecoms pay an initial fee for each cabinet and a monthly fee based on the number of kW allocated to all the Telecom’s cabinets.¹² To indicate how the fee is calculated, the Exchange proposes to add a note stating that the monthly fee is based on the total kW allocated to all of a Telecom’s cabinets.

The Exchange proposes to add the following fees and language to the Fee Schedule for the Cabinet-Related Services:

termination point of a Telecom’s circuit or the content of any data sent on a circuit.

¹² For example, a Telecom that had two cabinets with a total power allocation of 12 kW would have a monthly charge of \$1,200 per kW for the first eight kW and \$1,050 per kW for the next four kW (between 9 kW and 12 kw), for a total of \$13,800.

Initial Fee per MMR Cabinet	
Dedicated Cabinet of between 4 kW and 8 kW	\$5,000
MMR Monthly Fee for Cabinets Monthly fee is based on total kW's allocated to all of a Telecom's cabinets	
Number of kW's	Per kW Fee Monthly
4 - 8	\$1,200
9 - 20	\$1,050
21 – 40	\$950
41 +	\$900

Access and Service Fees

The Exchange proposes to add to the Fee Schedule the following services and fees relating to the access and services FIDS provides to Telecoms (collectively, the “Access and Service Fees”).

Data Center Fiber Cross Connect: FIDS offers fiber cross connects for an initial and monthly charge. Cross connects may run between a Telecom's cabinets, between its cabinet and the cabinet of another Telecom, or between its cabinet and its customer's equipment. Cross connects may be bundled (i.e., multiple cross connects within a single sheath) such that a single sheath can hold either one cross connect or six cross connects.

Importantly, a cross connect to MMR cabinets may be paid for by the Telecom or by the Telecom's customer, who may be a User or another Telecom. The same fee applies irrespective of which entity purchases the cross connect.

Carrier Connection Fee: Telecoms contract with their customers for circuits into and out of the MDC. A Telecom is charged a monthly fee for providing such circuits to Users, on a per connection basis. Unlike cross connects, which may be purchased by either the Telecom or its customer, the Carrier Connection Fee is always charged to the Telecom.

Conduit Sleeve Fee: A Telecom’s circuits into and out of the MDC run through FIDS conduits. There are currently three FIDS conduit paths leading into the MDC. A Telecom determines which conduit or conduits it will use to carry its circuits, which are carried in individual conduit sleeves. The Telecom is charged an initial charge for the installation of circuits in the FIDS conduit, which covers up to five hours of work, and a monthly fee per conduit sleeve for using the FIDS conduit.¹³

Connection to Time Protocol Feed: FIDS offers Telecoms the option to purchase connectivity to the Precision Time Protocol, with monthly and initial charges. Telecoms may make use of time feeds to receive time and to synchronize clocks between computer systems or throughout a computer network, and time feeds may assist Telecoms in other functions, including record keeping or measuring response times.

Expedite Fee: FIDS offers Telecoms the option to expedite the completion of MMR services purchased or ordered by the Telecoms, for which the Exchange charges an “Expedite Fee.”

The Exchange proposes to add the following fees and language to the Fee Schedule:

Type of Service	Description	Amount of Charge
Data Center Fiber Cross Connect	Furnish and install 1 cross connect	\$500 initial charge plus \$600 monthly charge
	Furnish and install bundle of 6 cross connects	\$500 initial charge plus \$1,800 monthly charge
Conduit Sleeve Fee	Install (5 hrs) and maintain conduit sleeve supporting Telecom circuit into data center	\$1,000 initial charge plus \$2,000 monthly charge per conduit sleeve

¹³ The number of conduit sleeves a Telecom uses is dependent on the equipment and technology it uses and the size of the circuits it sells to its customers, who may be Users or other Telecoms. Most Telecoms use one conduit sleeve or none at all.

Type of Service	Description	Amount of Charge
Carrier Connection Fee	Maintain Telecom’s connections to its non-Telecom data center customers	\$1,150 monthly charge per connection
Connection to Time Protocol Feed	Precision Time Protocol	\$1,000 initial charge plus \$250 monthly charge
Expedite Fee	Expedited installation/completion of MMR service	\$4,000 per request

Service-Related Fees

The Exchange proposes to add the following services and fees relating to services FIDS provides to Telecoms (collectively, the “Service-Related Fees”) to the Fee Schedule.

Change Fee: FIDS charges a Telecom a “Change Fee” if the Telecom requests a change to one or more existing MMR services that FIDS has already established or completed for the Telecom. The Change Fee is charged per order. If a Telecom orders two or more services at one time (for example, through submitting an order form requesting multiple services) the Telecom is charged a one-time Change Fee, which would cover the multiple services.

Hot Hands Service: FIDS offers Telecoms a “Hot Hands Service,” which allows Telecoms to use on-site data center personnel to maintain Telecom equipment, support network troubleshooting, rack and stack a server in a Telecom’s cabinet, power recycling, and install and document the fitting of cable in a Telecom’s cabinet(s). The Hot Hands fee is charged per half hour.

Shipping and Receiving: FIDS offers shipping and receiving services to Telecoms, with a per shipment fee for the receipt of one shipment of goods at the MDC from the Telecom or supplier.

Visitor Security Escort: Telecom representatives are required to be accompanied by a visitor security escort during visits to the MDC. A fee per visit is charged.

To reflect the above FIDS services and fees, the Exchange proposes to add the following to the Fee Schedule:

Type of Service	Description	Amount of Charge
Change Fee	Change to a service that has already been installed/completed for a Telecom	\$950 per request
Hot Hands Service	Allows Telecom to use on-site data center personnel to maintain Telecom equipment, support network troubleshooting, rack and stack, power recycling, and install and document cable	\$100 per half hour
Shipping and Receiving	Receipt of one shipment of goods at data center on behalf of Telecom (includes coordination of shipping and receiving)	\$100 per shipment
Visitor Security Escort	All Telecom representatives are required to be accompanied by a visitor security escort during visits to the data center	\$75 per visit

Application and Impact of the Proposed Changes

The proposed change would apply equally to all telecommunications service providers that choose to purchase MMR services (i.e., Telecoms). With the exception of cross connects, which may be paid for by a Telecom or by the Telecom’s customer, the proposed services and fees are specific to Telecoms.

Under the proposed rule, a Telecom could select the MMR services that best suit its needs. The selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier

connections.

It is the Exchange's understanding that Telecoms do not have to purchase a large number of cabinets or amount of power in order to have a MMR presence. For example, as of June 1, 2023, nine of the 16 Telecoms had one cabinet and five Telecoms had two cabinets. Only two Telecoms had four cabinets. Similarly, half of the Telecoms had only 4 kW of power, and only two Telecoms reached 16 kW of power.

The proposed changes are not otherwise intended to address any other issues relating to services related to the MDC and/or related fees, and the Exchange is not aware of any problems that market participants 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,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ in particular, because it is 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁶ because it provides for the equitable allocation of reasonable dues, fees, and other

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78f(b)(4).

charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

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

Proposed MMR Fees

It is in the Exchange's interest to set MMR prices at a reasonable level so that Telecoms will maximize their use of the MDC. When the MMR fees are set at a reasonable level, the Exchange believes that Telecoms are more likely to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers¹⁷ to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees at a level attractive to Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

The Exchange's experience with the MMRs bears this out. Since the MMRs opened in 2013, 19 Telecoms established services in the MMRs, of which only three exited the MMRs. As

¹⁷ "Hosting" is a service offered by a User to another entity in the User's space within the MDC. The Exchange allows Users to act as Hosting Users for a monthly fee. See Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR-NYSE-2015-40). Hosting Users' customers are referred to as "Hosted Customers."

of June 1, 2023, the 16 Telecoms in the MMR supplied more than 95% of the circuits for which Users contracted.¹⁸

The Telecoms have an expertise that the Exchange and FIDS do not have, and can provide their customers with a range of circuit options. More importantly, the Telecoms provide a service that the Exchange and FIDS cannot, because the Exchange and FIDS are not telecommunications service providers. In fact, the circuits that FIDS provides to customers are circuits that FIDS itself purchases as a customer from Telecoms.

The proposed rule is reasonable because it would not force Telecoms to accept a “one-size-fits-all” suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models. That selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections.

If the Exchange were to set the MMR fees at an unreasonable level, it could expect the competitive environment among Telecoms in the MMRs to wither. Some Telecoms would likely exit the MDC market, while others would reduce the scope of their operations there, and some may never enter at all, as telecommunications service providers are not required to be in the MMRs. Fewer Telecoms in the MMRs would lead to less competition between the Telecoms for the sale of circuits to Users, which would likely cause the prices of circuits to rise. This, in turn, would increase Users’ overall costs of doing business in the MDC. Some customers might

¹⁸ To estimate the number of circuits, FIDS totaled the numbers of (a) carrier connection fees and (b) cross connects to FIDS circuits.

choose to exit the MDC altogether, while others might seek to reduce their footprint in colocation by decreasing the number of cabinets, ports, and power they use, or by reducing the number of third-party data feeds they connect to at the MDC. The Exchange thus has every incentive to set the MMR fees at a rate that is reasonable for Telecoms, and no incentive to charge any more than that.

The Exchange's belief that the MMR fees are reasonable is supported by the fact that the MMR fees are very low when compared to both (1) the revenues that Telecoms earn by selling circuits in financial data centers and (2) the total connectivity fees that market participants pay at the MDC.

First, using public information, the Exchange reviewed the MMR fees in the context of Telecoms' business opportunities and expense. Specifically, the Exchange reviewed the public filings and financial statements of the parent company of some of the 16 Telecoms that currently operate in the MMRs.¹⁹

The parent company's financial statements disclose that the "financial services" share of its "fiber site rental revenue" for the fourth quarter of 2021 was 9%. Based on this disclosure, the Exchange estimated the parent company's annual financial services-related fiber site rental revenue for 2021, and then compared that figure to the MMR fees that the parent's Telecoms paid that year, as a percentage of the parent's revenue.²⁰ The Exchange concluded that the MMR

¹⁹ The other Telecoms either are not obligated to make any information public or do not break out their financial information in a manner that would allow the Exchange to assess the impact of the MMR fees.

²⁰ Because the Exchange is obligated to keep customer identities confidential, it is not disclosing the name of the parent company in this filing, but will provide it to the Commission confidentially upon request.

fees paid by those Telecoms represent just 0.9% of the parent’s financial services fiber site rental revenue.

Second, the Exchange sought to calculate the portion of market participants’ total connectivity spend at the MDC that is attributable to MMR fees. Using data from February 2023, the Exchange summed the following connectivity costs: (1) colocation fees paid by market participants to FIDS; (2) MMR fees paid by Telecoms to FIDS;²¹ and (3) a proxy²² for the circuit and wireless connectivity fees that market participants pay to Telecoms and FIDS. MMR revenue for the same period was then divided by the summation of the connectivity costs. The Exchange determined that the MMR fees represented less than 5 percent of the total connectivity spend.²³

In sum, the proposed MMR fees are a very small fraction of the overall fees that market participants pay for connectivity services at the MDC. This is further support for the Exchange’s position that the MMR fees proposed herein are reasonable.

Security of the MDC

The Exchange’s belief that the proposed rule change is reasonable takes into account the fact that no third party can establish a meet me room in the MDC, leaving FIDS the sole entity that can control a MMR. FIDS’s operation and maintenance of the MDC MMRs is both rational

²¹ The analysis assumes that Telecoms pass the MMR fees on to the Users.

²² The Exchange cannot know actual circuit fee revenue because Telecoms are not required to report what they charge their customers for circuits or to charge all customers the same amount. Accordingly, the Exchange used the fees for FIDS circuits as a proxy for the Telecom circuit fees. To estimate the “total circuit fee revenue,” the Exchange multiplied what one User would pay for a FIDS circuit by the number of carrier connections.

²³ That percentage varies slightly within the range of 4.28% to 5.30% based on the precise proxy that is used for part (3) of the calculation above, depending on the share of connections one assumes to be wired vs. wireless and the circuit fees.

and consistent with the normal commercial practice of data centers.²⁴ While the Exchange understands that most data centers offer meet me rooms, it is not aware of any data center operator, within or outside the U.S., that allows a third party to run a meet me room.

Safeguarding the security of the U.S. national market system—in this case, the MDC where the Exchange and the Affiliate SROs maintain trading engines and publish market data, and where the Securities Industry Automation Corporation (“SIAC”) publishes the National Market System (“NMS”) data feeds for which it is the exclusive securities information processor—is a key part of the operation of a free and open market and national market system and protecting investors and the public interest. The MMR structure furthers that goal.

Having FIDS control the MMRs limits third parties’ need to enter the MDC, minimizing security risks. Because it controls the MMRs, FIDS can establish and enforce usage policies designed to protect the MMRs’ security and treat the Telecoms equally and consistently. FIDS’s control also ensures that the Telecoms’ equipment and connections do not extend further into the MDC than the MMRs, and essentially makes the MMRs the demarcation or “hand-off” point for Telecom circuits coming into the MDC. If a third party established a meet me room in the MDC, FIDS could not ensure its control of any of these matters.

This structure reduces security risks because it allows the trading engines of the Exchange and the Affiliate SROs, SIAC’s NMS market data publishers, and the ICE Global Network, including the FIDS circuits, to be physically and logically segregated from vendors and other third party service providers, including Telecoms.

²⁴ In addition to the security aspects outlined herein, the Exchange notes that, because FIDS controls the MMRs, it can ensure that all cross connects between Telecoms and Users are normalized.

In addition, the MMR structure provides Users with the opportunity to use Telecom circuits to create systems that are potentially more redundant and resilient than if they relied on just one exclusive provider. For example, while the original exclusive NYSE Euronext connectivity option to the MDC was designed to be redundant and resilient,²⁵ today 16 additional Telecoms make circuits available to Users and help to maintain a securities market infrastructure that is stronger and more robust. The Exchange believes that the fact that most customers for FIDS circuits also purchase Telecom circuits shows the structural importance of the MMRs.

The Proposed Change Is Equitable

The Exchange believes that the proposed change is equitable, for the following reasons.

The Exchange believes that the proposed rule change is equitable because it applies equally to all Telecoms. Any telecommunications service provider licensed by the FCC is eligible to be a Telecom operating in a MMR, irrespective of its size or type. All of the proposed services are available to all Telecoms on an equal basis at standardized pricing. A Telecom could change what services it receives at any time. Each Telecom could choose how it would like to structure and price its services for Users.

The proposed rule is also equitable because it would not force Telecoms to accept a “one-size-fits-all” suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models. That selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of

²⁵ See, e.g., oral testimony of Robert L.D. Colby, Deputy Director, Division of Market Regulation, Securities and Exchange Commission, before the House Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, Committee on Financial Services (February 12, 2003) (Testimony Concerning Recovery and Renewal: Protecting the Capital Markets Against Terrorism Post 9/11), at <https://www.sec.gov/news/testimony/021203tsrc.htm>.

April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections.

It is in the Exchange's interest to set MMR prices equitably so that Telecoms will maximize their use of the MDC. When the MMR fees are set equitably, the Exchange believes that Telecoms are more likely to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees equitably for Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory because it applies equally to all Telecoms. Any telecommunications service provider licensed by the FCC is eligible to be a Telecom operating in the MMRs of the MDC, irrespective of its size or type. All of the proposed services are available to all Telecoms on an equal basis at standardized pricing. A Telecom could change what services it receives at any time. Each Telecom could choose how it would like to structure and price its services for Users.

The proposed rule is also not unfairly discriminatory because it would not force Telecoms to accept a "one-size-fits-all" suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models. The selection

may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections.

It is in the Exchange's interest to set MMR prices equitably in a non-discriminatory way so that Telecoms will maximize their use of the MDC. When the MMR fees are set in a non-discriminatory fashion, the Exchange believes that Telecoms are more likely to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees in a way that does not unfairly discriminate against any Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

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

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

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.²⁶

The proposed change does not affect competition among national securities exchanges or among members of the Exchange, but rather encourages competition between Telecoms in the

²⁶ 15 U.S.C. 78f(b)(8).

MMRs. It is in the Exchange's interest to set MMR prices at a reasonable level so that Telecoms are attracted to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC. The Exchange directly benefits from such competition between Telecoms because it increases the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees at a level attractive to Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

The Exchange's experience with the MMRs bears this out. Since the MMRs opened in 2013, 19 Telecoms established services in the MMRs, of which only three exited the MMRs. As of June 1, 2023, the 16 Telecoms in the MMR supplied more than 95% of the circuits for which Users contracted were supplied by the Telecoms.²⁷

The proposed rule encourages competition between Telecoms because a Telecom may select the MMR services that best suit its needs. The selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections. The proposed rule would not force Telecoms to accept a "one-size-fits-all" suite of MMR services, but would instead permit them to tailor their

²⁷ To estimate the number of circuits, FIDS totaled the numbers of (a) carrier connection fees and (b) cross connects to FIDS circuits.

service selection and fees to meet their own individual business models.

In sum, the MMR structure creates incentives for Telecoms to compete against each other in providing their customers with connectivity services. These customers, which are both Users and other Telecoms, directly and indirectly participate in the national market system. As a result, the MMR structure fosters cooperation and coordination with persons facilitating transactions in securities.

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 Act²⁸ and Rule 19b-4(f)(6) thereunder.²⁹ 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.

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

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 17 CFR 240.19b-4(f)(6).

Commission shall institute proceedings under Section 19(b)(2)(B)³⁰ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSESTAT-2023-12 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-NYSESTAT-2023-12. 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

³⁰ 15 U.S.C. 78s(b)(2)(B).

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 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-NYSENAT-2023-12 and should be submitted on or before [INSERT DATE 21 AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

Sherry R. Haywood,
Assistant Secretary.

³¹ 17 CFR 200.30-3(a)(12).