

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102950; File No. SR-NYSENAT-2025-08]

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

April 29, 2025.

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 April 16, 2025, 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 to amend the list of third party systems and third party data feeds to which Users can connect, related fees and a reference to who can charge redistribution fees. 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 Connectivity Fee Schedule to amend the list of third party systems and third party data feeds to which Users⁴ can connect, related fees and a reference to who can charge redistribution fees.

Currently, Users are offered connectivity to the execution systems of third party markets and other service providers (“Third Party Systems”) and connectivity to data feeds from third party markets and other content service providers (“Third Party Data Feeds”) at the Mahwah, New Jersey data center (“MDC”).⁵ The Exchange proposes to amend the two lists to add new items, combine existing items, and amend related fees.

Proposed Changes

Changes to the List of Third Party Systems

The Exchange proposes to make the following changes to the list of Third Party Systems:

⁴ For purposes of the Exchange’s colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 at n.9 (June 6, 2018) (SR-NYSENAT-2018-07). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE Texas, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2025-13, SR-NYSEAMER-2025-22, SR-NYSEARCA-2025-30, and SR-NYSETEX-2025-04.

⁵ Through its Fixed Income and Data Services (“FIDS”) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE.

- Add Blue Ocean ATS (BOATS), Canadian Imperial Bank of Commerce (CIBC), Long Term Stock Exchange,⁶ MEMX,⁷ Pragma, and Small Exchange (collectively, the “Proposed Third Party Systems”).
- To reflect Cboe Canada’s integration,⁸ combine Cboe MATCHNow into Cboe Canada.

To make these changes, the list of available Third Party Systems would be amended as follows (proposed deletions bracketed, proposed additions underlined):

Third Party Systems
B3 Bovespa
<u>Blue Ocean ATS (BOATS)</u>
Boston Options Exchange (BOX)
<u>Canadian Imperial Bank of Commerce (CIBC)</u>
Cboe Canada
[Cboe MATCHNow]
Cboe US
Chicago Mercantile Exchange (CME Group)
Investors Exchange (IEX)
<u>Long Term Stock Exchange</u>
<u>MEMX</u>
MIAX
Nasdaq Canada (CXC, CXD, CX2)
Nasdaq US Stock Market
NYFIX Marketplace
Omega

⁶ See Securities Exchange Act Release No. 85828 (May 10, 2019), 84 FR 21841 (May 15, 2019) (In the Matter of the Application of Long Term Stock Exchange, Inc.; for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission).

⁷ See Securities Exchange Act Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020) (In the Matter of the Application of MEMX LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission).

⁸ See “Cboe Canada Announces Planned Unification of its Canadian Operations” (December 18, 2023) (available at <https://ir.cboe.com/news/news-details/2023/CBOE-CANADA-ANNOUNCES-PLANNED-UNIFICATION-OF-ITS-CANADIAN-OPERATIONS/default.aspx>).

Third Party Systems
OTC Markets Group
<u>Pragma</u>
<u>Small Exchange</u>
TMX Group

The Exchange does not propose to change the monthly recurring fee Users pay for access to each Third Party System. Although the proposed changes to the list of Third Party Systems would combine the names of several current Third Party Systems, no User would be charged more as a consequence of the combination. A User would continue to be able to choose which systems it wants from any Third Party System. It would not have to receive any systems, or pay for any bandwidth, that it did not choose.⁹

Changes to Connectivity to Third Party Data Feeds

The Exchange expects that the connectivity partner of BOATS will charge a redistribution fee, which will be passed through to the User. Accordingly, the Exchange proposes to add “and their partners” to the first sentence of the second paragraph under “Connectivity to Third Party Data Feeds,” which describes who can charge redistribution fees, so that it includes connectivity partners.

The Exchange proposes to make the following changes to the list of Third Party Data Feeds (together, the “Proposed Third Party Data Feeds”):

- Add the following Third Party Data Feeds with the following fees for monthly recurring connectivity:
 - Blue Ocean ATS (BOATS), for \$750 a month;

⁹ For example, if a User connected to Cboe Canada but did not access any other Cboe system, including Cboe MATCHNow, it would not pay for any additional system or have its monthly fee changed as a consequence of the proposed combination.

- Cboe CFE Futures, for \$1,500 per month;
 - Long Term Stock Exchange, for \$2,600 per month¹⁰;
 - MEMX Equities, for \$2,000 per month¹¹;
 - MEMX Options, for \$2,000 per month¹²; and
 - Small Exchange, for \$1,000 per month.
- Reflecting Cboe Canada’s integration,¹³ combine Cboe MATCHNow into Cboe Canada and change the combined monthly recurring connectivity fee to \$2,000 per month.
 - Replace Miami International Securities Exchange/MIAX Pearl with the following five feeds:
 - MIAX Emerald, at a \$2,600 monthly recurring connectivity fee;
 - MIAX Options, at a \$2,600 monthly recurring connectivity fee;
 - MIAX Pearl Equities, at a \$2,600 monthly recurring connectivity fee;
 - MIAX Pearl Options, at a \$2,600 monthly recurring connectivity fee; and
 - MIAX Sapphire, at a \$2,600 monthly recurring connectivity fee.
 - Combine Nasdaq Stock Market with Nasdaq ISE under the name “Nasdaq Stock Market” and change the combined monthly recurring connectivity fee to \$3,000 per month.
 - Combine TMX Group and Montreal Exchange¹⁴ under the name of “TMX

¹⁰ See supra note 6.

¹¹ See supra note 7.

¹² See id.

¹³ See supra note 8.

¹⁴ The Montreal Exchange is a subsidiary of TMX Group. See <https://www.m-x.ca/en/about-us/mx/overview#:~:text=Today%2C%20a%20wholly%20owned%20subsidiary,retail%20and%20institutio>

Group” with a combined monthly recurring connectivity fee of \$2,500 per month.

In addition, the Exchange proposes to change the monthly recurring connectivity fee per Third Party Data Feed for 18 feeds.

To make these changes, the text under “Connectivity to Third Party Data Feeds” and list of available Third Party Data Feeds would be amended as follows (proposed deletions bracketed, proposed additions underlined):

Third Party Data Feed providers and their partners may charge redistribution fees.

When the Exchange receives a redistribution fee, it passes through the charge to the User, without change to the fee. The fee is labeled as a pass-through of a redistribution fee on the User’s invoice. The Exchange does not charge third party markets or content providers for connectivity to their own feeds.

Third Party Data Feed	Monthly Recurring Connectivity Fee per Third Party Data Feed
B3 Bovespa	\$3,[000] <u>900</u>
<u>Blue Ocean ATS (BOATS)</u>	<u>\$750</u>
Boston Options Exchange (BOX)	\$1,[000] <u>300</u>
Cboe BZX Exchange (CboeBZX) and Cboe BYX Exchange (CboeBYX)	[\$2,000] <u>1,500</u>
Cboe Canada	[\$1,200] <u>2,000</u>
<u>Cboe CFE Futures</u>	<u>\$1,500</u>
Cboe EDGX Exchange (CboeEDGX) and Cboe EDGA Exchange (CboeEDGA)	[\$2,000] <u>1,500</u>
Cboe Exchange (Cboe) and Cboe C2 Exchange (C2)	[\$2,000] <u>1,500</u>
[Cboe MATCHNow	\$1,000]
Chicago Mercantile Exchange (CME Group)	\$3,000
Financial Industry Regulatory Authority (FINRA)	[\$500] <u>650</u>

Third Party Data Feed	Monthly Recurring Connectivity Fee per Third Party Data Feed
Global OTC	\$[100] <u>150</u>
ICE Data Services Consolidated Feed $\leq$ 100 Mb	\$200
ICE Data Services Consolidated Feed > 100 Mb to $\leq$ 1 Gb	\$500
ICE Data Services Consolidated Feed > 1 Gb	\$1,000
ICE Data Services Consolidated Feed Shared Farm $\leq$ 100Mb	\$[200] <u>300</u>
ICE Data Services Consolidated Feed Shared Farm > 100 Mb to $\leq$ 1 Gb	\$[500] <u>750</u>
ICE Data Services Consolidated Feed Shared Farm > 1 Gb	\$[1] <u>2,000</u>
ICE Data Services PRD	\$[200] <u>300</u>
ICE Data Services PRD CEP	\$[400] <u>500</u>
Intercontinental Exchange (ICE)	\$1,[500] <u>950</u>
Investors Exchange (IEX)	\$1,[000] <u>300</u>
<u>Long Term Stock Exchange</u>	<u>\$2,600</u>
<u>MEMX Equities</u>	<u>\$2,000</u>
<u>MEMX Options</u>	<u>\$2,000</u>
<u>MIAX Emerald</u>	<u>\$2,600</u>
<u>MIAX Options</u>	<u>\$2,600</u>
<u>MIAX Pearl Equities</u>	<u>\$2,600</u>
[Miami International Securities Exchange/]MIAX [PEARL]Pearl Options	\$2,[000] <u>600</u>
<u>MIAX Sapphire</u>	<u>\$2,600</u>
[Montréal Exchange (MX)]	\$1,000]
Nasdaq Stock Market	\$[2] <u>3,000</u>
Nasdaq Global Index Data Service (GIDS)	\$100
Nasdaq UQDF & UTDF	\$[500] <u>650</u>
Nasdaq Canada (CXC, CXD, CX2)	\$1,[500] <u>950</u>
[Nasdaq ISE	\$1,000]
Omega	\$1,[000] <u>300</u>

Third Party Data Feed	Monthly Recurring Connectivity Fee per Third Party Data Feed
OTC Markets Group	\$1,[000] <u>300</u>
<u>Small Exchange</u>	<u>\$1,000</u>
TMX Group	\$2,500

Access to the Proposed Third Party Systems

The Exchange would provide access to the Proposed Third Party Systems as conveniences to Users.

As with the current Third Party Systems, Users would connect to the Proposed Third Party Systems over the internet protocol (“IP”) network, a local area network available in the MDC.

As with the current Third Party Systems, in order to obtain access to a Proposed Third Party System, the User would enter into an agreement with the relevant proposed third party, pursuant to which it would charge the User for access to the Proposed Third Party System. The Exchange would then enable unicast connectivity between the User and the Proposed Third Party System over the IP network.¹⁵ The Exchange would charge the User for the connectivity to the Proposed Third Party System. A User would only receive, and would only be charged for, access to the Proposed Third Party System for which it enters into agreements with the third party.

The Exchange has no affiliation with the providers of any of the Proposed Third Party Systems. Establishing a User’s access to a Proposed Third Party System would not give the Exchange any right to use the Proposed Third Party System. Connectivity to a Proposed Third

¹⁵ Information flows over existing network connections in two formats: “unicast” format, which is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange; and “multicast” format, which is a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast.

Party System would not provide access or order entry to the Exchange's execution system, and a User's connection to a Proposed Third Party System would not be through the Exchange's execution system.

The Exchange proposes to charge the same monthly recurring fee for connectivity to the Proposed Third Party Systems that it does for the current Third Party Systems. Specifically, when a User requested access to a Proposed Third Party System, it would identify the applicable third party and what bandwidth connection would be required. The fees for such bandwidth connection would vary based on the size of the connection, not on the particular Third Party System the User chooses. The Exchange is not proposing to change the pricing of any of these bandwidth connections; the Exchange is simply expanding the list of Third Party Systems that Users may access via these bandwidth connections.

Connectivity to the Proposed Third Party Data Feeds

The Exchange would provide connectivity to the Proposed Third Party Data Feeds as a convenience to Users.

As with the existing connections to Third Party Data Feeds, the Exchange would receive a Proposed Third Party Data Feed from the content service provider at the relevant source. The Exchange would then provide connectivity to that data to Users for a fee. Users would connect to the Proposed Third Party Data Feeds over the IP network. The Proposed Third Party Data Feeds would include trading and other information concerning the securities that are traded on the relevant third party systems.

As with the existing connections to Third Party Data Feeds, in order to connect to a Proposed Third Party Data Feed, a User would enter into a contract with the third party content service provider, pursuant to which it may charge the User for the data feed. The Exchange

would receive the Proposed Third Party Data Feed in remote locations and transport it over its fiber optic network to the MDC. After the content service provider and User entered into an agreement and the Exchange received authorization from the content service provider, the Exchange would retransmit the data to the User over the User's port. The Exchange would charge the User for connectivity to the Proposed Third Party Data Feed. A User would only receive, and would only be charged the fee for, connectivity to a Proposed Third Party Data Feed for which it entered into a contract.

The Exchange has no affiliation with the sellers of the Proposed Third Party Data Feeds and would have no right to use those feeds other than as a redistributor of the data. None of the Proposed Third Party Data Feeds would provide access or order entry to the Exchange's execution system. The Proposed Third Party Data Feeds would not provide access or order entry service to the execution systems of the third parties generating the feeds. The Exchange would receive the Proposed Third Party Data Feeds via arms-length agreements and would have no inherent advantage over any other distributor of such data.

Application and Impact of the Proposed Changes

The proposed rule 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 Connectivity Fee Schedule is applied uniformly to all Users.

Access to most of the Proposed Third Party Systems and connectivity to most of the Proposed Third Party Data Feeds were requested by Users, but the Exchange believes that it would gain at most a handful of new customers due to the proposed change. The Exchange does not expect that the remainder of the proposed rule change will result in new customers.

Competitive Environment

The Exchange operates in a highly competitive market in which other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation 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.”¹⁶

As explained below, the Exchange’s provision of access to the Proposed Third Party Systems (“Access”) and connectivity to the Proposed Third Party Data Feeds (“Connectivity”) may compete with access and connectivity provided by other third parties. Third-party vendors are not at any competitive disadvantage created by the Exchange.

The proposed change is not otherwise intended to address any other issues relating to colocation services or related fees, and the Exchange is not aware of any problems that Users 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,¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just

¹⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

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,¹⁹ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Proposed Rule Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable.

In considering the reasonableness of proposed services and fees, the Commission's market-based test considers "whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees."²⁰ If the Exchange meets that burden, "the Commission will find that its proposal is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or the rules thereunder."²¹ Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are

¹⁹ 15 U.S.C. 78f(b)(4).

²⁰ See Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR-NYSE-2020-05, SR-NYSEAMER-2020-05, SR-NYSEARCA-2020-08, SR-NYSECHX-2020-02, SR-NYSENAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEARCA-2020-15, SR-NYSECHX-2020-05, SR-NYSENAT-2020-08) ("Wireless Approval Order"), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) ("2008 ArcaBook Approval Order"). See NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

²¹ See Wireless Approval Order, supra note 20, at 67049, citing 2008 ArcaBook Approval Order, supra note 20, at 74781.

available and the Exchange has not placed present or future third party vendors at a competitive disadvantage created by the Exchange.

Substantially Similar Substitutes Are Available

The Exchange's proposed Access and Connectivity would compete with other methods by which both the Exchange and various third parties already provide, or could provide, Users with access to Third Party Systems and connectivity to Third Party Data Feeds. Third-party vendors are not at any competitive disadvantage created by the Exchange.

The Exchange believes that access to at least two of the Proposed Third Party Data Feeds are available to Users from one or more third parties in the MDC. The Exchange does not have visibility into whether additional third parties currently offer, or intend to offer, Users access to the Proposed Third Party Systems or connectivity to the Proposed Third Party Data Feeds, as such third parties are not required to make that information public. However, the market for access to the Proposed Third Party Systems and connectivity to the Proposed Third Party Data Feeds is competitive, and there is no reason to believe that other third party providers of access and connectivity would not provide it to Users if they considered it to be in their commercial interest. FIDS competes with other providers that offer such access and connectivity.

Such third parties compete, or, if additional third parties wish to offer access or connectivity, would compete, with the Exchange's Access and Connectivity and exert, or would exert, significant competitive forces on the Exchange in setting the terms of its proposal, including the level of the Exchange's proposed fees.²² If the Exchange were to set its proposed fees too high, Users could respond by instead selecting third parties' substantially similar access

²² See 2008 ArcaBook Approval Order, supra note 20, at 74789 and n.295 (recognizing that products need not be identical to be substitutable).

and connectivity.

Third Party Competitors Are Not at a Competitive Disadvantage Created by the Exchange

The Exchange does not believe that FIDS would have any competitive advantage over either existing third-party providers or any future providers of access to Proposed Third Party Systems or connectivity to Proposed Third Party Data Feeds. If a third party offers such access or connectivity to Users, a User may utilize a cross connect, a third party telecommunication network, the MDC network, or a combination thereof to access such access or connectivity through a connection to another User inside the MDC or a third party vendor outside the MDC.²³ The Exchange's proposed service for Access and Connectivity does not have any special access to or advantage within the MDC, as all distances in the MDC are normalized.

Moreover, the Exchange does not believe that FIDS would have any competitive advantage because it would charge for connectivity only, not the Proposed Third Party System or Proposed Third Party Data Feed itself. All Users that connect to a Proposed Third Party System or Proposed Third Party Data Feed, whether they elect to connect using the Exchange's proposed service or that of the Exchange's competitors, would have to pay a third party for the Proposed Third Party System or Proposed Third Party Data Feed.

To be clear, third party competitors would not be required to obtain the Proposed Third Party Systems or Proposed Third Party Data Feeds from FIDS; rather, they could obtain them from other third parties and transport them into the MDC, via telecom equipment, in order to redistribute them to other Users. Whether they are Users or third party vendors outside the MDC,

²³ A Hosted Customer may use its connection to a Hosting User for such access or connectivity. A User may host another entity in its space within the MDC. Such Users are called "Hosting Users," and their customers are referred to as "Hosted Customers." In contrast to Users, the Hosted Customers do not have a direct contractual relationship with the Exchange vis-à-vis co-location services. See Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR-NYSENAT-2018-07).

actual or future competitors of the Exchange would not have to pay the Exchange for the Proposed Third Party System or Proposed Third Party Data Feed itself.

Nor does the Exchange believe that FIDS has a competitive advantage over any third-party competitors offering access to the Proposed Third Party Systems or connectivity to the Proposed Third Party Data Feeds by virtue of the fact that ICE owns and operates the MDC's meet-me-rooms. Users purchasing Access or Connectivity – like Users of any other colocation service – would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party telecommunications service providers that have installed their equipment in the MDC's two meet-me-rooms ("Telecoms").²⁴ Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level²⁵ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms 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 many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level

²⁴ Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

²⁵ See Securities Exchange Act Release No. 98002 (July 26, 2023), 88 FR 50232 (August 1, 2023) (SR-NYSENat-2023-12) ("MMR Notice").

attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.²⁶ Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering access to the Proposed Third Party Systems or connectivity to the Proposed Third Party Data Feeds. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because the Exchange believes that a substantially similar substitute for at least two of the Proposed Third Party Systems and at least two of the Proposed Third Party Data Feeds is available, and the Exchange has not placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the Exchange's connectivity to Proposed Third Party Systems and Proposed Third Party Data Feeds are reasonable.²⁷ If the Exchange were to set its prices for access to Proposed Third Party

²⁶ See id. at 50235. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

²⁷ See Wireless Approval Order, supra note 20. There is no fee change proposed for the Proposed Third Party Systems.

Systems or Proposed Third Party Data Feeds at a level that Users found to be too high, Users could easily choose to connect to Proposed Third Party Systems or Proposed Third Party Data Feeds through competing connections, as detailed above.

Additional Considerations

The Exchange believes that it is reasonable to add “and their partners” to the second paragraph under “Connectivity to Third Party Data Feeds” (“Proposed Pass-Through Edit”) as that would add clarity as to who may charge redistribution fees, making the paragraph more precise.

The Exchange believes that it is reasonable to make the proposed changes, as connectivity to the Proposed Third Party Systems and access to the Proposed Third Party Data Feeds was generally requested by Users.

The Exchange does not propose to change the monthly recurring fee Users pay for access to each Third Party System. Although the proposed changes to the list of Third Party Systems would combine the names of several current Third Party Systems, no User would be charged more as a consequence of the combinations. A User would continue to be able to choose which systems it wants from any Third Party System. It would not have to receive any systems, or pay for any bandwidth, that it did not choose.

The Exchange believes that the fees for connectivity to the Proposed Third Party Data Feeds are reasonable.

- The combination of Cboe MATCHNow into Cboe Canada reflects the integration of Cboe Canada.²⁸ The combined fee is less than the sum of the current fees for those feeds.

²⁸ See supra note 8.

- The proposed fee for the combination of the Nasdaq Stock Market and Nasdaq ISE is equal to the sum of the current fees for those feeds.
- The proposed fee for the combination of the TMX Group and Montreal Exchange is less than the sum of the current fees for those feeds.
- By breaking out the MIAX options into five Proposed Third Party Data Feeds, Users may connect to only the market or markets that they wish. Unlike other Proposed Third Party Data Feeds, MIAX requires dedicated connectivity by individual data feed, and so separating them into five Proposed Third Party Data Feeds follows MIAX's own connectivity model.

The Proposed Rule Change Is Equitable

The Exchange believes that the proposed rule change is equitable.

The Exchange believes that the Proposed Pass-Through Edit is equitable as it would add clarity as to who may charge redistribution fees, making the paragraph more precise and thereby ensuring the accuracy of, and adding clarity and transparency to, the Connectivity Fee Schedule. Without this proposed rule change, Users would have fewer options for connectivity to the Proposed Third Party Systems and Proposed Third Party Data Feeds. By offering Access and Connectivity, the Exchange gives each User additional options for addressing its needs, responding to User demand for options. Providing additional services helps each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of connectivity that best suits its needs. Users that do not opt to utilize the Exchange's Access or Connectivity should still be able to access Proposed Third Party Systems or connect to Proposed Third Party Data Feeds using third party connections.

The Exchange believes that the proposed change is equitable because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users.

Furthermore, the Exchange believes that the services and fees proposed herein are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (i.e., the same products and services are available to all Users). All Users that voluntarily select the Exchange's Access or Connectivity would be charged the same amount for the same services. Users who opt not to use the Access or Connectivity would not be charged. In this way, the proposed rule change equitably allocates the proposed fees only to Users who choose to use Exchange's Access or Connectivity.

The Proposed Change Is Not Unfairly Discriminatory

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

The Exchange believes that the Proposed Pass-Through Edit is not unfairly discriminatory as it would add clarity as to who may charge redistribution fees, making the paragraph more precise and thereby ensuring the accuracy of, and adding clarity and transparency to, the Connectivity Fee Schedule to all market participants.

Without this proposed rule change, Users would have fewer options for access to Proposed Third Party Systems or connectivity to Proposed Third Party Data Feeds. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the access they use to connect to Proposed Third Party Systems or connectivity to Proposed Third Party Data Feeds, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations.

Users that do not opt to utilize the Exchange's proposed Access or Connectivity would still be able to access the Proposed Third Party Systems or connect to Proposed Third Party Data Feeds using third party systems.

The Exchange believes that the proposed change is not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (i.e., the same products and services are available to all Users). All Users that voluntarily select the Exchange's Access or Connectivity would be charged the same amount for the same services.

For all 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,²⁹ 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. The proposed change would not affect competition among national securities exchanges or among members of the Exchange, but rather between FIDS and its commercial competitors. By offering Access and Connectivity, the Exchange would give each User additional options for addressing its needs, responding to User demand for options. Providing additional services would help each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of connectivity that best suits its needs. Users that do not opt to utilize the Exchange's proposed

²⁹ 15 U.S.C. 78f(b)(8).

Access or Connectivity should still be able to access Proposed Third Party Systems and connect to Proposed Third Party Data Feeds using third party connections.

The Exchange does not believe that FIDS would have any competitive advantage over either existing third-party providers or any future providers of access to Proposed Third Party Systems or connectivity to Proposed Third Party Data Feeds. If a third party offers such access or connectivity to Users, a User may utilize a cross connect, a third party telecommunication network, the MDC network, or a combination thereof to access such access or connectivity through a connection to another User inside the MDC or a third party vendor outside the MDC. The Exchange's proposed service for Access and Connectivity does not have any special access to or advantage within the MDC. All distances in the MDC are normalized.

Moreover, the Exchange does not believe that FIDS would have any competitive advantage because it would charge for connectivity only, not the Third Party System or Third Party Data Feed itself. All Users that connect to a Proposed Third Party System or Proposed Third Party Data Feed, whether they elect to connect using the Exchange's proposed service or that of the Exchange's competitors, would have to pay a third party for the Proposed Third Party System or Proposed Third Party Data Feed.

To be clear, third party competitors would not be required to obtain the Proposed Third Party Systems or Proposed Third Party Data Feeds from FIDS; rather, they could obtain them from other third parties and transport them into the MDC, via telecom equipment, in order to redistribute them to other Users. Whether they are Users or third party vendors outside the MDC, actual or future competitors of the Exchange would not have to pay the Exchange for the Proposed Third Party System or Proposed Third Party Data Feed itself.

Nor does the Exchange believe that FIDS has a competitive advantage over any third-party competitors offering access to the Proposed Third Party Systems or connectivity to the Proposed Third Party Data Feeds by virtue of the fact that ICE owns and operates the MDC's meet-me-rooms. Users purchasing Access or Connectivity— like Users of any other colocation service — would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party Telecoms. Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level³⁰ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms 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 many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.³¹ Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering access to the Proposed Third Party Systems or connectivity to the Proposed Third Party Data Feeds. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

The Proposed Pass-Through Edit would not impose any burden on competition. It is not intended to address competitive issues but rather is concerned solely with adding clarity as to who may charge redistribution fees.

The changes would not put any market participants at a relative disadvantage compared to other market participants or penalize one or more categories of market participants in a manner that would impose an undue burden on competition.

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 Act³² and Rule 19b-4(f)(6) thereunder.³³ 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

³⁰ See MMR Notice, supra note 25.

³¹ See supra note 26.

³² 15 U.S.C. 78s(b)(3)(A)(iii).

³³ 17 CFR 240.19b-4(f)(6).

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.³⁴

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)³⁵ 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-NYSENAT-2025-08 on the subject line.

³⁴ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁵ 15 U.S.C. 78s(b)(2)(B).

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-NYSENAT-2025-08. 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 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-2025-08 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Sherry R. Haywood,

Assistant Secretary.

³⁶ 17 CFR 200.30-3(a)(12).