

The Exchange notes that IDS competes with the Telecoms to provide circuits for Mahwah Customers, as well as other Telecoms, and that none of the Telecoms have been compelled to file their services or fees with the Commission. Requiring IDS to do so puts IDS at a competitive disadvantage vis-à-vis its competitors. Requiring the Exchange to file IDS services and fees is therefore a burden on competition.

The Exchange believes competition would be best served by allowing IDS to freely compete with the other providers of connectivity services into and out of the Mahwah Data Center, without the additional burden on IDS alone to file any proposed changes to services and fees with the Commission.

With respect to the proposed MMR Notes 1 and 2, the Exchange believes that, if triggered, the imposition of the purchase limits or waitlist provisions would not impose a burden on a Telecom's ability to compete that is not necessary or appropriate. The Exchange believes that it would be reasonable for it to put in place the Proposed Procedures to establish a method for allocating not just cabinets but also power on an equitable basis.

The Exchange would only follow the Proposed Procedures and place limits on Telecoms' ability to purchase new power and cabinets if either or both the proposed Power Threshold and Cabinet Threshold were met. Similarly, a waitlist would only be created if unallocated cabinet inventory or power capacity fell to zero, or if a Telecom requests, in writing, a number of cabinets or amount of power that, if provided, would cause the available inventory of cabinets and/or unallocated power capacity to be below zero.

Based on its experience with the MMR and purchasing trends over the last few years, the Exchange believes that in most cases one cabinet would be sufficient for a Telecom's needs while leaving a margin for potential growth. For the same reason, the Exchange believes that the amount of power that a Telecom would be allowed to buy under the proposed limitations, whether in the form of a cabinet or Additional Power, would be sufficient for a Telecom's needs while leaving a margin for potential growth.

The Exchange believes that the proposed MMR Notes would articulate rational, objective procedures, and would serve to reduce any potential for confusion on how cabinets and power would be allocated if a shortage in one or the other were to arise in the future, and would thereby make the Price List more transparent and reduce any potential ambiguity.

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

Within 45 days of the date of publication of this notice in the **Federal Register**, or such longer period *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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 email to rule-comments@sec.gov. Please include File Number SR-NYSE-2021-25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-NYSE-2021-25. 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 (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2021-25, and should be submitted on or before May 13, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91594; File No. SR-CboeBZX-2021-030]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

April 16, 2021.

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 April 12, 2021, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") 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 Exchange. 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

Cboe BZX Exchange, Inc. (the "Exchange" or "BZX" or "BZX Equities") is filing with the Securities and Exchange Commission

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

(“Commission”) a proposed rule change to amend its fee schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange’s Office of the Secretary, 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these 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 aspects of such statements.

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

1. Purpose

The Exchange proposes to amend its fee schedule as follows: (1) Decrease the standard liquidity adding rebate and non-displayed liquidity adding rebate, (2) modify the Add/Remove Volume Tiers, (3) modify Tier 2 of the Step-Up Tiers, and (4) eliminate the Cross-Asset Tape B Tier. The Exchange proposes to implement the proposed change to its fee schedule on April 1, 2021.⁴

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,⁵ no single registered equities exchange has more

than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a “Maker-Taker” model whereby it pays credits to members that add liquidity and assesses fees to those that remove liquidity. The Exchange’s fee schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, for securities at or above \$1.00, the Exchange provides a standard rebate of \$0.0020 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Standard Liquidity Rebate and Non-Displayed Liquidity Adding Rebate

As stated above, the Exchange currently provides a standard rebate of \$0.0020 per share for liquidity adding orders (*i.e.*, those yielding fee codes B,⁶ V,⁷ and Y⁸) in securities priced at or above \$1.00. Orders in securities priced below \$1.00 that add liquidity are provided a rebate of \$0.00009. The Exchange now proposes to decrease the current standard rebate of \$0.0020 per share to \$0.0018 per share for orders that add liquidity for securities priced at or above \$1.00. Orders that add liquidity in securities priced below \$1.00 would continue to be provided a rebate of \$0.00009. Although this proposed standard rebate for liquidity adding orders is lower than the current base rate for such orders, the proposed rebate is in line with similar rebates for liquidity adding orders in place on other exchanges.⁹

The Exchange also proposes to decrease the rebate applied to non-displayed, liquidity adding orders (*i.e.*,

orders yielding Fee Code HB,¹⁰ HV,¹¹ or HY¹²). The current rebate applied to non-displayed liquidity adding orders is \$0.00150 per share. Now, the Exchange proposes to decrease the rebate to \$0.00100 per share. Although this proposed rebate for non-displayed liquidity adding orders is lower than the current rate for such orders, the proposed rebate is in line with similar rebates for non-displayed liquidity adding orders in place on other exchanges.¹³

Add/Remove Volume Tiers

Pursuant to footnote 1 of the Fee Schedule, the Exchange currently offers Add Volume Tiers (tiers 1 through 5) that provide Members an opportunity to receive an enhanced rebate from the standard rebate for liquidity adding orders that yield fee codes B, V, and Y and meet certain required volume-based criteria. Specifically, the Add Volume Tiers are as follows:

- Tier 1 provides an enhanced rebate of \$0.0025 per share to a Member that has an ADAV¹⁴ of greater than or equal to 3,000,000.
- Tier 2 provides an enhanced rebate of \$0.0027 per share to a Member that has an ADAV as a percentage of TCV¹⁵ greater than or equal to 0.10%.
- Tier 3 provides an enhanced rebate of \$0.0029 per share to a Member that has an ADAV as a percentage of TCV greater than or equal to 0.25%.
- Tier 4 provides an enhanced rebate of \$0.0030 per share to a Member that has an ADAV as a percentage of TCV greater than or equal to 0.40%.
- Tier 5 provides an enhanced rebate of \$0.0031 per share to a Member that has an ADAV as a percentage of TCV greater than or equal to 0.85%.

Now, the Exchange proposes to modify the five Add Volume Tiers to provide the enhanced rebate if a Member meets certain ADAV as a percentage of TCV percentage thresholds or meets certain ADAV share volume. Specifically, the Exchange

¹⁰ Orders yielding Fee Code “HB” are non-displayed orders adding liquidity to BZX (Tape B).

¹¹ Orders yielding Fee Code “HV” are non-displayed orders adding liquidity to BZX (Tape A).

¹² Orders yielding Fee Code “HY” are non-displayed orders adding liquidity to BZX (Tape C).

¹³ *E.g.*, the Nasdaq rebate for non-displayed orders ranges from \$0.0000 to \$0.00220 for non-displayed liquidity adding orders. See <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

¹⁴ “ADAV” means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

¹⁵ “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

⁴ The Exchange initially filed the proposed fee changes April 1, 2021 (SR-CboeBZX-2021-026). On April 12, 2021, the Exchange withdrew that filing and submitted this proposal.

⁵ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (March 29, 2021), available at https://markets.cboe.com/us/equities/market_statistics/.

⁶ Orders yielding Fee Code “B” are displayed orders adding liquidity to BZX (Tape B).

⁷ Orders yielding Fee Code “V” are displayed orders adding liquidity to BZX (Tape A).

⁸ Orders yielding Fee Code “Y” are displayed orders adding liquidity to BZX (Tape C).

⁹ *E.g.*, the Nasdaq base rebate ranges from \$0.0015 to \$0.0020 for liquidity adding orders in securities priced at or above \$1.00. See <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

proposes to modify Tier 1 to require a certain ADAV as a percentage of TCV or an ADAV over a certain volume threshold. Although the proposed changes to Tier 1 result in more stringent criteria, Members still have an opportunity to receive the additional rebate if they meet the tier threshold. The Exchange also proposes to modify the Add Volume Tiers 2 through 5 to increase the existing ADAV as a percentage of TCV criteria and offer an alternative criteria which requires an ADAV over a certain volume threshold. The proposed changes to Tiers 2 through 5 are less stringent than the existing criteria and are designed to encourage Members to increase their liquidity adding volume on the Exchange. Specifically, the proposed Add Volume Tiers are as follows:

- To meet the proposed criteria in Tier 1, a Member must have an ADAV as a percentage of TCV equal to or greater than 0.08% or an ADAV of greater than or equal to 8,000,000.
- To meet the proposed criteria in Tier 2, a Member must have an ADAV as a percentage of TCV equal to or greater than 0.15% or an ADAV of greater than or equal to 15,000,000.
- To meet the proposed criteria in Tier 3, a Member must have an ADAV as a percentage of TCV equal to or greater than 0.35% or an ADAV of greater than or equal to 35,000,000.
- To meet the proposed criteria in Tier 4, a Member must have an ADAV as a percentage of TCV equal to or greater than 0.60% or an ADAV of greater than or equal to 60,000,000.
- To meet the proposed criteria in Tier 5, a Member must have an ADAV as a percentage of TCV equal to or greater than 1.00% or an ADAV of greater than or equal to 100,000,000.

The Exchange notes the Add Volume Tiers, as modified, continue to be available to all Members and provide Members an opportunity to receive an enhanced rebate. Moreover, the proposed changes are designed to encourage Members to increase displayed liquidity on the Exchange, which further contributes to a deeper, more liquid market and provides even more execution opportunities for active market participants.

Tier 2 of the Step-Up Tiers

The tiered pricing models set forth in footnote 2 of the fee schedule (Step-Up Tiers) provides Members an opportunity to qualify for an enhanced rebate on their orders that add liquidity where they increase their relative liquidity each month over a predetermined baseline. Tier 2 of the Step-Up Tiers provides an enhanced rebate of \$0.0033

per share to a Member that has a Step-Up Add TCV¹⁶ from April 2020 equal to or greater than 0.30%. The Exchange notes that step-up tiers are designed to encourage Members that provide displayed liquidity on the Exchange to increase their order flow, which would benefit all Members by providing greater execution opportunities on the Exchange.

Now, the Exchange proposes to reduce the rebate provided under Tier 2 of the Step-Up Tiers to \$0.0032 per share. While the Exchange is proposing no change to the criteria of Tier 2 of the Step-Up Tiers, the Exchange believes that the tier will continue to incentivize increased order flow to the Exchange, which may contribute to a deeper, more liquid market to the benefit of all market participants by creating a more robust and well-balanced market ecosystem. Step-Up Tier 2, as modified, continues to be available to all Members and provide Members an opportunity to receive an enhanced rebate, albeit a reduced rebate. The proposed rebate is in line with similar rebates for growth programs in place on other exchanges.¹⁷

Cross-Asset Tape B Tier

The Cross-Asset Tape B Tier is provided under footnote 12 of the Fee Schedule and provides an enhanced rebate to orders yielding fee code B. Specifically, the Cross-Asset Tape B Tier provides an enhanced rebate of \$0.0031 per share to a Member that has a Tape B Step-Up Add TCV¹⁸ from February 2015 equal to or greater than 0.06% and has an Options Market Maker Add OCV¹⁹ greater than or equal to 1.00%. The Cross-Asset Tape B Tier is designed to encourage members that provide displayed liquidity on the BZX Equities and BZX Options to increase their order flow, which would benefit all Members by providing greater execution opportunities on the Exchange.

¹⁶ "Step-Up Add TCV" means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV.

¹⁷ E.g., the Nasdaq Growth Program which offers members a rebate of \$0.0025 to members that meet certain execution volume and increase their add volume as a percentage of TCV by 20% versus the member's growth baseline. See <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

¹⁸ "Step-Up Add TCV" means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV.

¹⁹ "Options Market Maker Add OCV" for purposes of equities pricing means ADAV resulting from Market Maker orders as a percentage of OCV, using the definitions of ADAV, Market Maker and OCV as provided under the Exchange's fee schedule for BZX Options.

The Exchange now proposes to eliminate the Cross-Asset Tape B Tier as no Member has reached this tier in several months and the Exchange the Exchange no longer wishes to, nor is it required to, maintain such a tier.²⁰ Further, the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,²¹ in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),²² in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members, issuers and other persons using its facilities. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes that the proposed amendment to reduce the standard liquidity adding rebate and non-displayed liquidity adding rebate is reasonable, equitable and non-discriminatory because the proposed change represents a rebate decrease and such rebates are equally applicable to all Members of the Exchange. Additionally, the proposed rebates for liquidity adding orders are in-line with rebates offered at other exchanges for similar transactions.²³

The Exchange also believes the proposed changes to the Add Volume Tiers and Tier 2 of the Step-Up Tiers are reasonable because each tier, as modified, continues to be available to all Members and provide Members an opportunity to receive an enhanced rebate. The Exchange next notes that relative volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable, and non-discriminatory because they are open to all Members on an equal basis and provide additional discounts that are reasonably related to (i) the value to an

²⁰ The Exchange proposes to reserve Footnote 12.

²¹ 15 U.S.C. 78f.

²² 15 U.S.C. 78f(b)(4) and (5).

²³ *Supra* notes 7 and 11[*sic*].

exchange's market quality and (ii) associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. The Exchange also believes that the current enhanced rebates under the Add Volume Tiers and proposed rebate under Tier 2 of the Step-Up Tiers continue to be commensurate with the proposed and existing criteria, respectively. That is, the rebates reasonably reflect the difficulty in achieving the corresponding criteria as amended.

The Exchange believes that the changes to the Add Volume Tiers, will benefit all market participants by incentivizing continuous liquidity and, thus, deeper more liquid markets as well as increased execution opportunities. Particularly, the proposed changes to the Add Volume Tiers are designed to incentivize displayed liquidity, which further contributes to a deeper, more liquid market and provide even more execution opportunities for active market participants at improved prices. This overall increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency and improves market quality, for all investors.

The Exchange also believes that the proposed amendments to the Add Volume Tiers and Tier 2 of the Step-Up Tiers represent an equitable allocation of rebates and are not unfairly discriminatory because all Members are eligible for the Add Volume Tiers and Tier 2 of the Step-Up Tiers and would have the opportunity to meet the tiers' criteria and would receive the proposed rebate if such criteria is met. The Exchange also notes that proposed tiers/rebate will not adversely impact any Member's ability to qualify for other reduced fee or enhanced rebate tiers. Should a Member not meet the proposed criteria under any of the proposed tiers, the Member will merely not receive that corresponding enhanced rebate.

The Exchange also believes the proposed amendment to remove the Cross-Asset Tape B Tier is reasonable because no Member has achieved this tier in several months. Furthermore, the Exchange is not required to maintain this tier and Members still have a number of other opportunities and a variety of ways to receive enhanced rebates, including the proposed enhanced standard rebates for displayed orders adding liquidity. The Exchange believes the proposal to eliminate the Cross-Asset Tape B Tier is also equitable

and not unfairly discriminatory because it applies to all Members.

As noted above, the Exchange operates in a highly competitive market. The Exchange is only one of 16 equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several maker-taker exchanges. Competing equity exchanges offer similar rates and tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

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

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all liquidity adding orders equally, and thus applies to all Members equally. Additionally, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purpose of the Act.

As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 16% of the market share.²⁴ Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, 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."²⁵ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'"²⁶ Accordingly, the Exchange does not believe its proposed fee changes imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) ²⁷ of the Act and paragraph (f) of Rule 19b-4 ²⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

²⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁶ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f)(2).

²⁴ *Supra* note 3[sic].

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 email to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2021-030 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-CboeBZX-2021-030. 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 (<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-CboeBZX-2021-030, and should be submitted on or before May 13, 2021.

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

J. Lynn Taylor,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91600; File No. SR-NYSEArca-2021-24]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend the Schedule of Wireless, Circuits, and Non-Colocation Connectivity Services Available at the Mahwah Data Center

April 16, 2021.

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 9, 2021, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 schedule of wireless, circuits, and non-colocation connectivity services available at the Mahwah data center (the "Fee Schedule") to add services available to customers in the meet me rooms in the Mahwah data center and procedures for the allocation of cabinets and power to such customers. The proposed 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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to add services available to customers in the two meet me rooms on the north and south sides of the Mahwah data center ("MMRs") and procedures for the allocation of cabinets and power to MMR customers.

The Exchange makes the current proposal solely as a result of its determination that the Commission's recent interpretations of the Act's definitions of the terms "exchange" and "facility," as expressed in the Wireless Approval Order,⁴ apply to the connectivity services described herein that are offered by entities other than the Exchange. The Exchange disagrees with the Commission's interpretations, denies the services covered herein (and in the Wireless Approval Order) are offerings of an "exchange" or a "facility" thereof, and has sought review of the Commission's interpretations, as expressed in the Wireless Approval Order, in the Court of Appeals for the District of Columbia Circuit.⁵ Pending resolution of such appeal, however, the Exchange is making this proposed rule change in recognition that the Commission's current interpretation brings certain offerings of the Exchange's affiliates into the scope of the terms "exchange" or "facility."

Background

Through its ICE Data Services ("IDS") business, Intercontinental Exchange, Inc. ("ICE")⁶ operates a data center in Mahwah, New Jersey (the "Mahwah Data Center"), from which the Exchange provides co-location services to any market participant that requests to receive co-location services directly from the Exchange ("Users").⁷ Services

⁴ See Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044 (October 21, 2020) (SR-NYSE-2020-05, SR-NYSEAMER-2020-05, SR-NYSEArca-2020-08, SR-NYSECHX-2020-02, SR-NYSEENAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEArca-2020-15, SR-NYSECHX-2020-05, SR-NYSEENAT-2020-08) ("Wireless Approval Order").

⁵ *Intercontinental Exchange, Inc. v. SEC*, No. 20-1470 (D.C. Cir. 2020).

⁶ The Exchange is an indirect subsidiary of ICE and is an affiliate of New York Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc., and NYSE National, 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-2021-25, SR-NYSEAMER-2021-21, SR-NYSECHX-2021-07, and SR-NYSEENAT-2021-09.

⁷ The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

²⁹ 17 CFR 200.30-3(a)(12).