The proposed change does not affect competition among national securities exchanges or among members of the Exchange, but rather between IDS and its commercial competitors.

For the reasons described above, the Exchange believes that the proposed rule changes reflect this competitive environment.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or 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–NYSENAT–2020–03 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–NYSENAT–2020–03. 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–NYSENAT–2020–03, and should be submitted on or before March 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–03098 Filed 2–14–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88168; File No. SR–NYSE–2020–05]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Establish a Schedule of Wireless Connectivity Fees and Charges With Wireless Connections

February 11, 2020.

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 January 30, 2020, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III 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 establish a schedule of Wireless Connectivity Fees and Charges (the ''Wireless Fee Schedule'') with wireless connections between the Mahwah, New Jersey data center and other data centers. 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 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 establish the Wireless Fee Schedule with wireless connections between the Mahwah, New Jersey data center and three data centers that are owned and operated by third parties unaffiliated with the Exchange: (1) Carteret, New Jersey, (2) Secaucus, New Jersey, and (3) Markham, Canada (collectively, the ''Third Party Data Centers''). Market participants that purchase such a wireless connection (a ''Wireless Connection'') are charged an initial and monthly fee. In addition, the Exchange proposes to include a General Note to the Wireless Fee Schedule.

The Exchange does not believe that the present proposed change is a change to the ''rules of an exchange''[4] required to be filed with the Commission under the Act. The definition of ''exchange'' under the Act includes ''the market facilities maintained by such

[34] 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.

[4] *See* 15 U.S.C. 78c(a)(27) (defining the term ''rules of an exchange'').

exchange.'' [5] Based on its review of the relevant facts and circumstances, and as discussed further below, the Exchange has concluded that the Wireless Connections are not facilities of the Exchange within the meaning of the Act, and therefore do not need to be included in its rules.

The Exchange is making the current proposal solely because the Staff of the Commission has advised the Exchange that it believes the Wireless Connections are facilities of the Exchange and so must be filed as part of its rules.[6] The Staff has not set forth the basis of its conclusion beyond verbally noting that the Wireless Connections are provided by an affiliate of the Exchange and a market participant could use a Wireless Connection to trade on, or receive the market data of, the Exchange.[7]

The Exchange expects the proposed change to be operative 60 days after the present filing becomes effective.

The Exchange and the ICE Affiliates

To understand the Exchange's conclusion that the Wireless Connections are not facilities of the Exchange within the meaning of the Act, it is important to understand the very real distinction between the Exchange and its corporate affiliates (the ''ICE Affiliates''). The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (''ICE''). Around the world, ICE operates seven regulated exchanges in addition to the Exchange and its four national securities exchange affiliates,[8] including futures markets, as well as six clearing houses. Among others, the ICE Affiliates are subject to the jurisdiction of regulators in the U.S., U.K., E.U., the Netherlands, Canada and Singapore.[9] In all, the ICE Affiliates include hundreds of ICE subsidiaries, including more than thirty that are significant legal entity subsidiaries as defined by Commission rule.[10]

Through its ICE Data Services (''IDS'') business,[11] ICE operates the ICE Global Network (''IGN''), a global connectivity network whose infrastructure provides access to over 150 global markets, including the Exchange and Affiliate SROs, and over 750 data sources. All the ICE Affiliates are ultimately controlled by ICE, as the indirect parent company, but generally they do not control each other. In the present case, it is IDS, not the Exchange, that provides the Wireless Connections to market participants. The Exchange does not control IDS.

Wireless Connections

If a market participant wants a connection between one of the Third Party Data Centers and the Mahwah data center, it may opt to purchase a Wireless Connection, for which it will be charged an initial and monthly fee.

Once requested, IDS establishes a Wireless Connection between the IDS equipment in the Third Party Data Center and IDS equipment in the Mahwah data center. IDS contracts with a non-ICE entity to provide the Wireless Connections between the Secaucus and Carteret Third Party Data Centers and the Mahwah data center, through a series of towers equipped with wireless equipment. IDS uses its own wireless network for the Wireless Connection between the Markham Third Party Data Center and the Mahwah data center. At either end of the Wireless Connection, the customer uses a cross connect or other cable to connect its own equipment to the IDS equipment.[12] In the Mahwah data center, the cross connect leads to the customer's server in co-location.

The Wireless Connection does not connect to the Exchange trading and execution systems, nor is it a system of communication from the customer's server in co-location to the trading and execution systems of the Exchange or the Affiliate SROs (collectively, the ''SRO Systems''). Rather, a Wireless Connection facilitates the customer's interaction with itself. Essentially, a Wireless Connection is an empty pipe that a customer can use to communicate between its equipment in co-location and its equipment in the Third Party Data Center.

Customers have control over the data they send over their Wireless Connections. They may, but are not required to, use them to send trading orders to their equipment in co-location; relay Exchange market data, third party market data and public quote feeds from Securities Information Processors; send risk management, billing, or compliance information to their preferred location; or to carry any other market information or other data they wish to and from their equipment in the Third Party Data Centers and Mahwah data center. The Exchange does not, and cannot, know what data customers send over the Wireless Connections. The Exchange does not send or receive any data over the Wireless Connections.

Market participants that want a connection between a Third Party Data Center and the Mahwah data center have options. There are currently at least three other vendors that offer market participants wireless network connections between the Mahwah data center and the Carteret and Secaucus Third Party Data Centers using wireless equipment installed on towers and buildings near the Mahwah data center. Some market participants have their own proprietary wireless networks. A market participant may create a new proprietary wireless connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, other service providers and third party telecommunications providers.

The Wireless Connections Are Not Facilities of the Exchange

The Definition of ''Exchange''

The definition of ''exchange'' focuses on the exchange entity and what it does: [13]

The term ''exchange'' means any organization, association, or group of

[5] 15 U.S.C. 78c(a)(1). See 15 U.S.C. 78c(a)(2) (defining the term ''facility'' as applied to an exchange).

[6] Telephone conversation between Commission staff and representatives of the Exchange, December 12, 2019.

[7] *Id.* The Commission has previously stated that services were facilities of an exchange subject to the rule filing requirements without fully explaining its reasoning. In 2010, the Commission stated that exchanges had to file proposed rule changes with respect to co-location because ''[t]he Commission views co-location services as being a material aspect of the operation of the facilities of an exchange.'' The Commission did not specify why it reached that conclusion. *See* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (concept release on equity market structure), at note 76.

In addition, in 2014, the Commission instituted proceedings to determine whether to disapprove a proposed rule change by The NASDAQ Stock Market LLC (''Nasdaq'') on the basis that Nasdaq's ''provision of third-party market data feeds to co-located clients appears to be an integral feature of its co-location program, and co-location programs are subject to the rule filing process.'' Securities Exchange Act Release No. 72654 (July 22, 2014), 79 FR 43808 (July 28, 2014) (SR–NASDAQ–2014–034). In its order, the Commission did not explain why it believed that the provision of third party data was an integral feature of co-location, or if it believed that it was a facility of Nasdaq, although the Nasdaq filing analyzed each prong of the definition of facility in turn. *See* Securities Exchange Act Release No. 71990 (April 22, 2014), 79 FR 23389 (April 28, 2014) (SR–NASDAQ–2014–034).

[8] The Exchange's four national securities exchange affiliates are NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the ''Affiliate SROs'').

[9] Intercontinental Exchange, Inc. Annual Report on Form 10–K for the year ended December 31, 2018, Exhibit 21.1 (filed February 7, 2019), at 15–16.

[10] *Id.* at Exhibit 21.1.

[11] The IDS business operates through several different ICE Affiliates, including NYSE Technologies Connectivity, Inc., an indirect subsidiary of the NYSE.

[12] A cable connects the IDS and customer equipment in the Markham Third Party Data Center. Elsewhere, the customer buys a cross connect from IDS. The cross connects utilized in the Mahwah data center are filed with the Commission. *See* Securities Exchange Act Release No. 67666 (August 15, 2012), 77 FR 50742 (August 22, 2012) (SR–NYSE–2012–18).

[13] 15 U.S.C. 78c(a)(1).

persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

If the ''exchange'' definition included all of an exchange's affiliates, the ''Exchange'' would encompass a global network of futures markets, clearing houses, and data providers, and all of those entities worldwide would be subject to regulation by the Commission. That, however, is not what the definition in the Act provides.

The Exchange and the Affiliate SROs fall squarely within the Act's definition of an ''exchange'': They each provide a market place to bring together purchasers and sellers of securities and perform with respect to securities the functions commonly performed by a stock exchange.

That is not true for the non-exchange ICE Affiliates. Those ICE Affiliates do not provide such a marketplace or perform ''with respect to securities the functions commonly performed by a stock exchange,'' and therefore they are not an ''exchange'' or part of the ''Exchange'' for purposes of the Act. Accordingly, in conducting its analysis, the Exchange does not automatically collapse the ICE Affiliates into the Exchange. The Wireless Connections are also not part of the Exchange, as they are services, and as such cannot be part of an ''organization, association or group of persons'' with the Exchange.

In Rule 3b–16 the Commission further defined the term ''exchange'' under the Act, stating that: [14]

(a) An organization, association, or group of persons shall be considered to constitute, maintain, or provide ''a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange,'' as those terms are used in section 3(a)(1) of the Act . . . if such organization, association, or group of persons:

(1) Brings together the orders for securities of multiple buyers and sellers; and

(2) Uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade.

The non-exchange ICE Affiliates do not bring ''together orders for securities of multiple buyers and sellers,'' and so are not an ''exchange'' or part of the ''Exchange'' for purposes of Rule 3b–16.

The relevant question, then, is whether the Wireless Connections are ''facilities'' of the Exchange.

The Definition of ''Facility''

The Act defines a ''facility'' [15] as follows:

The term ''facility'' when used with respect to an exchange includes [1] its premises, [2] tangible or intangible property whether on the premises or not, [3] any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and [4] any right of the exchange to the use of any property or service.

In 2015 the Commission noted that whether something is a ''facility'' is not always black and white, as ''any determination as to whether a service or other product is a facility of an exchange requires an analysis of the particular facts and circumstances.'' [16] Accordingly, the Exchange understands that the specific facts and circumstances of the Wireless Connections must be assessed before a determination can be made regarding whether or not they are facilities of the Exchange.[17]

The first prong of the definition is that ''facility,'' when used with respect to an exchange, includes ''its premises.'' That prong is not applicable in this case, because the Wireless Connections are not premises of the Exchange. The term ''premises'' is generally defined as referring to an entity's building, land, and appurtenances.[18] The wireless network that runs between IDS equipment in the Mahwah data center and IDS equipment in Third Party Data Centers, much of which is actually owned, operated and maintained by a non-ICE entity,[19] does not connect to the Exchange trading and execution systems and is not the premises of the Exchange. The portion of the Mahwah data center where the ''exchange'' functions are performed—*i.e.* the SRO Systems that bring together purchasers and sellers of securities and perform with respect to securities the functions commonly performed by a stock exchange—could be construed as the ''premises'' of the Exchange, but the same is not true for a wireless network that is almost completely outside of the Mahwah data center.

The second prong of the definition of ''facility'' provides that a facility includes the exchange's ''tangible or intangible property whether on the premises or not.'' The Wireless Connections are not the property of the Exchange: They are services. The underlying wireless network is owned by ICE Affiliates and a non-ICE entity. As noted, the Act does not automatically collapse affiliates into the definition of an ''exchange.'' A review of the facts set forth above shows that there is a real distinction between the Exchange and its ICE Affiliates with respect to the Wireless Connections, and so something owned by an ICE Affiliate is not owned by the Exchange.

The third prong of the definition of ''facility'' provides that a facility includes any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange).[20]

This prong does not capture the Wireless Connections because the Exchange does not have the right to use the Wireless Connections to effect or report a transaction on the Exchange.

[14] 17 CFR 240.3b–16(a).

[15] 15 U.S.C. 78c(a)(2).

[16] Securities Exchange Act Release No. 76127 (October 9, 2015), 80 FR 62584 (October 16, 2015) (SR–NYSE–2015–36), at note 9 (order approving proposed rule change amending Section 907.00 of the Listed Company Manual). *See also* 79 FR 23389, *supra* note 7, at note 4 (noting that that the definition of the term ''facility'' has not changed since it was originally adopted) and 23389 (stating that the SEC ''has not separately interpreted the definition of 'facility' '').

[17] As with the definition of ''exchange,'' the ICE Affiliates do not automatically fall within the definition of a ''facility.'' The definition focuses on ownership and the right to use properties and services, not corporate relationships. Indeed, if the term ''exchange'' in the definition of a facility included ''an exchange and its affiliates,'' then the rest of the functional prongs of the facility definition would be meaningless. Fundamental rules of statutory construction dictate that statutes be interpreted to give effect to each of their provisions, so as not to render sections of the statute superfluous.

[18] *See, e.g.,* definition of ''premises'' in Miriam-Webster Dictionary, at *https://www.merriam-webster.com/dictionary/premises,* and Cambridge English Dictionary, at *https://dictionary.cambridge.org/us/dictionary/english/premises.*

[19] A non-ICE entity owns, operates and maintains the wireless network between the Mahwah data center and the Carteret and Secaucus Third Party Data Centers pursuant to an agreement between the non-ICE entity and an ICE Affiliate.

[20] 15 U.S.C. 78c(a)(2).

ICE Affiliates and a non-ICE entity own and maintain the wireless network underlying the Wireless Connections, and ICE Affiliates, not the Exchange, offer and provide the Wireless Connections to customers. The Exchange does not know whether or when a market participant has entered into an agreement for a Wireless Connection and has no right to approve or disapprove of the provision of a Wireless Connection, in the same way that the Exchange would have no right to approve or disapprove of the provision of connectivity to a market participant in co-location or elsewhere by any other provider. The Exchange does not put content onto the Wireless Connections. When a customer terminates a Wireless Connection, the Exchange does not consent to the termination.

The Wireless Connections do not connect to the Exchange trading and execution systems. As such, the Wireless Connections are not provided for ''the purpose of effecting or reporting a transaction on'' the Exchange. Rather, a Wireless Connection facilitates the customer's interaction with itself. Each Wireless Connection connects the IDS equipment in the Third Party Data Center and IDS equipment in the Mahwah data center. At either end of the Wireless Connection, the customer uses a cross connect or other cable to connect its own equipment to the IDS equipment. In the Mahwah data center, the cross connect leads to the customer's server in co-location, not the Exchange trading and execution systems.

It is important to remember that the customers' equipment in the Mahwah data center is not provided by, part of, or a facility of, the Exchange. The Exchange provides the space in which customers' equipment is housed, and permits customers to use their equipment to communicate with the SRO Systems through services, such as connections to the local area networks, that are filed with the Commission.[21] The Exchange provides the space, but not the equipment. Accordingly, even if a customer were to use a Wireless Connection to send instructions to trade or to receive a report of a trade, the customer would not be sending instructions to the Exchange, but rather to its own equipment.

The Exchange believes the example in the parenthetical in the third prong of the definition of ''facility'' cannot be read as an independent prong of the definition. Such a reading would ignore that the parentheses and the word ''including'' clearly indicate that ''any system of communication to or from an exchange . . . maintained by or with the consent of the exchange'' is explaining the preceding text. By its terms, the parenthetical is providing a non-exclusive example of the type of property or service to which the prong refers, and does not remove the requirement that there must be a right to use the premises, property or service to effect or report a transaction on an exchange. It is making sure the reader understands that ''facility'' includes a ticker system that an exchange has the right to use, not creating a new fifth prong to the definition. In fact, if the ''right to use'' requirement were ignored, every communication provider that connected to an exchange, including any broker-dealer system and telecommunications network, would become a facility of that exchange so long as the exchange consented to the connection, whether or not the connection was used to trade or report a trade, and whether or not the exchange had any right at all to the use of the connection.

The fourth prong of the definition provides that a facility includes ''any right of the exchange to the use of any property or service.'' [22] As described above, the Exchange does not have the right to use the Wireless Connections. Instead, the customers of the Wireless Connections are customers who enter into an agreement with ICE Affiliates for connections over a wireless network, much of which is owned, operated and maintained by a non-ICE entity.

Accordingly, for all the reasons discussed above, the Wireless Connections provided by ICE Affiliates are not facilities of the Exchange.

The legal conclusion that the Wireless Connections are not facilities of the Exchange is strongly supported by the facts. The Wireless Connections are neither necessary for, nor integrally connected to, the operations of the Exchange. They are empty pipes that customers can use as they like. In this context, IDS simply acts as a vendor selling connectivity, just like the other vendors that offer wireless connections in the Carteret and Secaucus Third Party Data Centers and fiber connections to all the Third Party Data Centers. The fact that in this case it is ICE Affiliates that offer the Wireless Connections does not make the Wireless Connections facilities of the Exchange any more than are the connections offered by other parties.

Further, the Exchange believes that requiring it to file this proposed rule change is not necessary in order for the Commission to ensure that the Exchange is satisfying its requirements under the Act. Because, as described above, the Wireless Connections are not necessary for, nor connected to, the operations of the Exchange, and customers are not required to use the Wireless Connections, holding the Wireless Connections to the statutory standards in Section 6(b) serves no purpose.

Instead, the sole impact of the requirement that the Exchange file the Wireless Connections is to place an undue burden on competition on the ICE Affiliates that offer the connections, compared to their market competitors. This filing requirement, thus, itself is inconsistent with the requirement under Section 6(b)(8) of the Act that the rules of the exchange not ''impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [23] This burden on competition arises because IDS would be unable, for example, to offer a client or potential client a different bandwidth it requests, without the delay and uncertainty of a filing, but its competitors will. Similarly, if a competitor decides to undercut IDS' fees because IDS, unlike the competitor, has to make its fees public, IDS will not be able to respond quickly, if at all. Indeed, because its competitors are not required to make their services or fees public, and are not subject to a Commission determination of whether such services or fees are ''not unfairly discriminatory'' or equitably allocated, IDS is at a competitive disadvantage from the very start.

The Proposed Service and Fees

As noted above, the Exchange proposes to add to its rules a Wireless Fee Schedule setting forth the fees charged by IDS related to the Wireless Connections between the Mahwah data center and the Third Party Data Centers.

For each Wireless Connection, a customer would be charged a non-recurring initial charge and a monthly recurring charge (''MRC'') that would vary depending upon bandwidth and the location of the connection. The proposal would waive the first month's

[21] *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56) (order approving a proposed rule change amending the price list to reflect fees charged for co-location services). As described by the Commission, co-location is when a ''trading center . . . rents rack space to market participants that enables them to place their servers in close physical proximity to a trading center's matching engine.'' 75 FR 3594, *supra* note 7, at 3610 (noting that ''[c]o-location helps minimize network and other types of latencies between the matching engine of trading centers and the servers of market participants'').

[22] *Id.*

[23] 15 U.S.C. 78f(b)(8).

MRC, to allow customers to test a new Wireless Connection for a month before incurring any MRCs, and the Exchange proposes to add text to the Wireless Fee Schedule accordingly. If a customer had an existing Wireless Connection and opted to upgrade or downgrade to a different size circuit connecting to the same Third Party Access Center, it would not be subject to the initial charge.

The Exchange proposes to establish the Wireless Fee Schedule with a section under the heading ''A. Wireless Connectivity'' setting forth the fees charged by IDS related to the Wireless Connections, as follows:

Type of service	Description	Amount of charge
Wireless Connection between Mahwah Data Center and Secaucus access center.	10 Mb Circuit	$10,000 per connection initial charge plus monthly charge per connection of $9,000.
Wireless Connection between Mahwah Data Center and Secaucus access center.	50 Mb Circuit	$10,000 per connection initial charge plus monthly charge per connection of $13,500.
Wireless Connection between Mahwah Data Center and Secaucus access center.	100 Mb Circuit	$10,000 per connection initial charge plus monthly charge per connection of $23,000.
Wireless Connection between Mahwah Data Center and Secaucus access center.	200 Mb Circuit	$10,000 per connection initial charge plus monthly charge per connection of $44,000.
Wireless Connection between Mahwah Data Center and Carteret access center.	10 Mb Circuit	$10,000 per connection initial charge plus monthly charge per connection of $10,000.
Wireless Connection between Mahwah Data Center and Carteret access center.	50 Mb Circuit	$10,000 per connection initial charge plus monthly charge per connection of $15,000.
Wireless Connection between Mahwah Data Center and Carteret access center.	100 Mb Circuit	$10,000 per connection initial charge plus monthly charge per connection of $25,000.
Wireless Connection between Mahwah Data Center and Carteret access center.	200 Mb Circuit	$10,000 per connection initial charge plus monthly charge per connection of $45,000.
Wireless Connections between (a) Mahwah Data Center and Carteret access center and (b) Mahwah Data Center and Secaucus Data Center.	50 Mb Circuits	$15,000 initial charge for both connections plus monthly charge for both connections of $22,000.
Wireless Connection between Mahwah Data Center and Markham access center.	1 Mb Circuit	$10,000 per connection initial charge plus monthly charge per connection of $6,000.
Wireless Connection between Mahwah Data Center and Markham access center.	5 Mb Circuit	$10,000 per connection initial charge plus monthly charge per connection of $15,500.
Wireless Connection between Mahwah Data Center and Markham access center.	10 Mb Circuit	$10,000 per connection initial charge plus monthly charge per connection of $23,000.

Proposed General Note

The Exchange and each of the Affiliate SROs are filing the Wireless Connections. Although each such market will have a Wireless Fee Schedule, a market participant that obtains a Wireless Connection will not be charged more than once for that service, irrespective of whether it is a member of one, some or none of the Exchange and the Affiliate SROs. Accordingly, the Exchange proposes that the Wireless Fee Schedule include a General Note that describes the billing practice for market participants, as follows:

A market participant that incurs fees from the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc. or NYSE National, Inc. (collectively, the ''Affiliate SROs'') for a particular service pursuant to this Fee Schedule shall not be subject to fees for the same service charged by the other Affiliate SROs.

The proposed General Note would be consistent with the first general note in the co-location section of the Exchange and Affiliate SROs' price lists and fee schedule,[24] as well as the Nasdaq Stock Market rules.[25]

Application and Impact of the Proposed Change

The proposed change would apply to all market participants equally. The proposed change would not apply differently to distinct types or sizes of market participants. Market participants that require other types or sizes of network connections between the Mahwah data center and the Third Party Data Centers could still request them. The purchase of the service is completely voluntary and the Wireless Fee Schedule will be applied uniformly to all market participants.

Competitive Environment

There are currently at least three other vendors that offer market participants wireless network connections between the Mahwah data center and the Secaucus and Carteret Third Party Access Centers using wireless equipment installed on towers and buildings near the Mahwah data center. In addition, some market participants have their own proprietary wireless networks. Based on the information available to it, the Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Connections, and at the same or similar cost. The Exchange believes the Wireless Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections between the two points, creating a new connectivity option for customers in Markham.

Market participants that want a connection between a Third Party Data Center and the Mahwah data center have additional options. A market participant may create a new proprietary wireless connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, other service providers and third party telecommunications providers.

Wireless connections involve beaming signals through the air between antennas that are within sight of one another. Because the signals travel a

[24] *See* Securities Exchange Act Release Nos. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59); 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67); 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80); 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07; and 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR–NYSECHX–2019–12).

[25] *See, e.g.,* The Nasdaq Stock Market General Equity and Options Rules, General 8, Section 1.

straight, unimpeded line, and because light waves travel faster through air than through glass (fiber optics), wireless messages have lower latency than messages travelling through fiber optics. At the same time, as a general rule wireless networks have less uptime than fiber networks. Wireless networks are directly and immediately affected by adverse weather conditions, which can cause message loss and outage periods. Wireless networks cannot be configured with redundancy in the same way that fiber networks can. As a result, an equipment or weather issue at any one location on the network will cause the entire network to have an outage. In addition, maintenance can take longer than it would with a fiber based network, as the relevant tower may be in a hard to reach location, or weather conditions may present safety issues, delaying technicians servicing equipment. Even under normal conditions, a wireless network will have a higher error rate than a fiber network of the same length.

The proposed Wireless Connections traverse wireless connections through a series of towers equipped with wireless equipment, including, in the case of the Carteret and Secaucus connections, a pole on the grounds of the Mahwah data center. With the exception of the non-ICE entity that owns the wireless network used for the Wireless Connections to Secaucus and Carteret,[26] third parties do not have access to such pole. However, access to such pole is not required for third parties to establish wireless networks that can compete with the Wireless Connections to the Carteret and Secaucus Third Party Data Centers, as witnessed by the existing wireless connections offered by non-ICE entities currently serving market participants.

Proximity to a data center is not the only determinant of a wireless network's latency. Rather, the latency of a wireless network depends on several factors. Variables include the wireless equipment utilized; the route of, and number of towers or buildings in, the network; and the fiber equipment used at either end of the connection. Moreover, latency is not the only consideration that a market participant may have in selecting a wireless network. Other considerations may include the bandwidth of the offered connection; amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

2. Statutory Basis

Although the Exchange does not believe that the present proposed change is a change to the ''rules of an exchange'' [27] required to be filed with the Commission under the Act, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[28] in general, and furthers the objectives of Section 6(b)(5) of the Act,[29] 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 mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and does not unfairly discriminate between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[30] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Reasonable

The Exchange believes its proposal is reasonable.

There are currently at least three other vendors that offer market participants wireless network connections between the Mahwah data center and the Secaucus and Carteret Third Party Access Centers using wireless equipment installed on towers and buildings near the Mahwah data center. In addition, some market participants have their own proprietary wireless networks. Based on the information available to it, the Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Connections, and at the same or similar cost. The Exchange believes the Wireless Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections between the two points, creating a new connectivity option for customers in Markham.

The Wireless Connections provide market participants with one means of connectivity, but substitute products are available, as witnessed by the existing wireless connections offered by non-ICE entities currently serving market participants. A market participant may create a new proprietary wireless connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, other service providers and third party telecommunications providers.

Market participants' considerations in determining what connectivity to purchase may include latency; bandwidth size; amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

The Exchange believes that the proposed pricing for the Wireless Connections is reasonable because it allows market participants to select the connectivity options that best suit their needs. A market participant that opts to connect with a Wireless Network would be able to select the route and bandwidth that better suit its needs, thereby helping it tailor its operations to the requirements of its business operations. The fees also reflect the benefit received by customers in terms of lower latency over the fiber optics options.

Only market participants that voluntarily select to receive Wireless Connections are charged for them, and those services are available to all market participants. Furthermore, the Exchange believes that the services and fees proposed herein are reasonable because, in addition to the services being completely voluntary, they are available to all market participants on an equal basis (*i.e.,* the same products and services are available to all market participants). All market participants that voluntarily select Wireless Connections would be charged the same amount for the same services and would have their first month's MRC for Wireless Connections waived.

Overall, the Exchange believes that the proposed change is reasonable because the Wireless Connections described herein are offered as a convenience to market participants, but offering them requires the provision,

[26] *See* note 19, *supra.*

[27] *See* 15 U.S.C. 78c(a)(27) (defining the term ''rules of an exchange'').

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78f(b)(4).

maintenance and operation of the Mahwah data center, wireless networks and access centers in the Third Party Data Centers, including the installation and monitoring, support and maintenance of the services.

The Exchange believes that the proposed waiver of the first month's MRC is reasonable as it would allow customers to test a Wireless Connection for a month before incurring any monthly recurring fees and may act as an incentive to market participants to connect to a Wireless Connection. The Exchange believes that the proposed waiver of the initial charge if a customer has an existing Wireless Connection and opted to upgrade or downgrade to a different size circuit at the same Third Party Data Center is reasonable because the change in Wireless Connection would not require IDS to do any physical work to implement the connection.

The Exchange believes that its proposed General Note is reasonable because it would provide transparency regarding how the billing practice for Wireless Connections functions. The Exchange believes that a customer should not be charged more than once for a Wireless Connection. For example, to charge one customer twice for a Wireless Connection because that customer is a member of two Affiliate SROs, and so subject to the rules of both Affiliate SROs, when another customer that buys the same Wireless Connection only pays once, would not promote just and equitable principles of trade, and could result in the Exchanges and Affiliate SROs receiving the proceeds from multiple fees despite only providing a service once.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees among its market participants.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all market participants equally. As is currently the case, the purchase of any connectivity service is completely voluntary and the Wireless Fee Schedule will be applied uniformly to all customers.

Without this proposed rule change, market participants seeking connectivity to a Third Party Data Center would have fewer options. With it, because the Wireless Connections are offered at different bandwidths and price points, market participants have more choices with respect to the form and price of the connectivity they use, allowing a market participant that opts to connect with a wireless network to select the connectivity and bandwidth that better suit its needs, thereby helping it tailor its operations to the requirements of its business operations.

The Exchange believes that its proposed General Note is equitable because a customer would not be charged more than once for a Wireless Connection. For example, to charge one customer twice for a Wireless Connection because that customer is a member of two Affiliate SROs, and so subject to the rules of both Affiliate SROs, when another customer that buys the same Wireless Connection only pays once, would not promote just and equitable principles of trade, and could result in the Exchanges and Affiliate SROs receiving the proceeds from multiple fees despite only providing a service once. The Exchange believes that its proposed General Note is reasonable because it would provide transparency regarding how the billing practice for Wireless Connections functions.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all market participants equally. As is currently the case, the purchase of any connectivity service is completely voluntary and the Wireless Fee Schedule will be applied uniformly to all customers.

Without this proposed rule change, market participants seeking connectivity to a Third Party Data Center would have fewer options. With it, because the Wireless Connections are offered at different bandwidths and price points, market participants have more choices with respect to the form and price of the connectivity they use, allowing a market participant that opts to connect with a wireless network to select the connectivity and bandwidth that better suit its needs, thereby helping it tailor its operations to the requirements of its business operations.

There are currently at least three other vendors that offer market participants wireless network connections between the Mahwah data center and the Secaucus and Carteret Third Party Access Centers using wireless equipment installed on towers and buildings near the Mahwah data center. In addition, some market participants have their own proprietary wireless networks. Based on the information available to it, the Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Connections, and at the same or similar cost. The Exchange believes the Wireless Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections between the two points, creating a new connectivity option for customers in Markham.

Market participants that want a connection between a Third Party Data Center and the Mahwah data center have additional options. A market participant may create a new proprietary wireless connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, other service providers and third party telecommunications providers.

Market participants' considerations in determining what connectivity to purchase may include latency; bandwidth size; amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

The Exchange believes that its proposed General Note would not be unfairly discriminatory because a customer would not be charged more than once for a Wireless Connection. For example, to charge one customer twice for a Wireless Connection because that customer is a member of two Affiliate SROs, and so subject to the rules of both Affiliate SROs, when another customer that buys the same Wireless Connection only pays once, would not promote just and equitable principles of trade, and could result in the Exchanges and Affiliate SROs receiving the proceeds from multiple fees despite only providing a service once.

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 only burden on competition of the proposed change is on IDS and other commercial connectivity providers. Solely because IDS is wholly owned by the same parent company as the Exchange, IDS will be at a competitive disadvantage to its commercial competitors, and its commercial competitors, without a filing requirement, will be at a relative competitive advantage to IDS.

By permitting IDS to continue to offer the Wireless Connectivity, approval of the proposed changes would contribute to competition by allowing IDS to compete with other connectivity providers, and thus provides market participants another connectivity option. For this reason, the proposed rule changes 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.[31]

There are currently at least three other vendors that offer market participants wireless network connections between the Mahwah data center and the Secaucus and Carteret Third Party Access Centers using wireless equipment installed on towers and buildings near the Mahwah data center. In addition, some market participants have their own proprietary wireless networks. Based on the information available to it, the Exchange believes that the wireless connections offered by non-ICE entities provide connectivity at the same or similar speed as the Wireless Connections, and at the same or similar cost. The Exchange believes the Wireless Connections between the Mahwah data center and the Markham Third Party Data Center are the first public, commercially available wireless connections between the two points, creating a new connectivity option for customers in Markham. Importantly, the Exchange does not control the Third Party Data Centers and could not preclude other parties from creating new wireless or fiber connections to any of the Third Party Data Centers.

Market participants that want a connection between a Third Party Data Center and the Mahwah data center have additional options. A market participant may create a new proprietary wireless connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, other service providers and third party telecommunications providers. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

The proposed Wireless Connections traverse wireless connections through a series of towers equipped with wireless equipment, including, in the case of the Carteret and Secaucus connections, a pole on the grounds of the Mahwah data center. With the exception of the non-ICE entity that owns the wireless network used for the Wireless Connections to Secaucus and Carteret,[32] third parties do not have access to such pole, as the IDS wireless network has exclusive rights to operate wireless equipment on the Mahwah data center pole. IDS does not sell rights to third parties to operate wireless equipment on the pole, due to space limitations, security concerns, and the interference that would arise between equipment placed too closely together.

Access to the pole or roof is not required for other parties to establish wireless networks that can compete with the Wireless Connections, as witnessed by the existing wireless connections offered by non-ICE entities currently serving market participants. The latency of a wireless network depends on several factors, not just proximity to a data center. Variables include the wireless equipment utilized; the route of, and number of towers or buildings in, the network; and the fiber equipment used at either end of the connection. In addition, latency is not the only consideration that a market participant may have in selecting a wireless network. Market participants' considerations in determining what connectivity to purchase may include latency; bandwidth size; amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions.

The Exchange operates in a highly competitive market in which exchanges and other vendors offer connectivity options between data centers as a means to facilitate the trading and other market activities of market participants. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and 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.'' [33]

The proposed change does not affect competition among national securities exchanges or among members of the Exchange, but rather between IDS and its commercial competitors.

For the reasons described above, the Exchange believes that the proposed rule changes reflect this competitive environment.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or 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–2020–05 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–2020–05. 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

[31] 15 U.S.C. 78f(b)(8).

[32] *See* note 19, *supra.*

[33] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37499 (June 29, 2005).

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–2020–05, and should be submitted on or before March 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–03095 Filed 2–14–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88169; File No. SR–NYSEAMER–2020–05]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Rule Change To Establish a Schedule of Wireless Connectivity Fees and Charges With Wireless Connections

February 11, 2020.

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 January 30, 2020, NYSE American LLC (''NYSE American'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III 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 establish a schedule of Wireless Connectivity Fees and Charges (the ''Wireless Fee Schedule'') with wireless connections between the Mahwah, New Jersey data center and other data centers. 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 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 establish the Wireless Fee Schedule with wireless connections between the Mahwah, New Jersey data center and three data centers that are owned and operated by third parties unaffiliated with the Exchange: (1) Carteret, New Jersey, (2) Secaucus, New Jersey, and (3) Markham, Canada (collectively, the ''Third Party Data Centers''). Market participants that purchase such a wireless connection (a ''Wireless Connection'') are charged an initial and monthly fee. In addition, the Exchange proposes to include a General Note to the Wireless Fee Schedule.

The Exchange does not believe that the present proposed change is a change to the ''rules of an exchange''[4] required to be filed with the Commission under the Act. The definition of ''exchange'' under the Act includes ''the market facilities maintained by such exchange.''[5] Based on its review of the relevant facts and circumstances, and as discussed further below, the Exchange has concluded that the Wireless Connections are not facilities of the Exchange within the meaning of the Act, and therefore do not need to be included in its rules.

The Exchange is making the current proposal solely because the Staff of the Commission has advised the Exchange that it believes the Wireless Connections are facilities of the Exchange and so must be filed as part of its rules.[6] The Staff has not set forth the basis of its conclusion beyond verbally noting that the Wireless Connections are provided by an affiliate of the Exchange and a market participant could use a Wireless Connection to trade on, or receive the market data of, the Exchange.[7]

The Exchange expects the proposed change to be operative 60 days after the present filing becomes effective.

The Exchange and the ICE Affiliates

To understand the Exchange's conclusion that the Wireless Connections are not facilities of the Exchange within the meaning of the Act, it is important to understand the very real distinction between the Exchange and its corporate affiliates (the ''ICE Affiliates''). The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (''ICE''). Around the world, ICE operates seven regulated exchanges in addition to the Exchange and its four national securities exchange affiliates,[8] including futures markets, as

[34] 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.

[4] *See* 15 U.S.C. 78c(a)(27) (defining the term ''rules of an exchange'').

[5] 15 U.S.C. 78c(a)(1). See 15 U.S.C. 78c(a)(2) (defining the term ''facility'' as applied to an exchange).

[6] Telephone conversation between Commission staff and representatives of the Exchange, December 12, 2019.

[7] *Id.* The Commission has previously stated that services were facilities of an exchange subject to the rule filing requirements without fully explaining its reasoning. In 2010, the Commission stated that exchanges had to file proposed rule changes with respect to co-location because ''[t]he Commission views co-location services as being a material aspect of the operation of the facilities of an exchange.'' The Commission did not specify why it reached that conclusion. *See* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (concept release on equity market structure), at note 76.

In addition, in 2014, the Commission instituted proceedings to determine whether to disapprove a proposed rule change by The NASDAQ Stock Market LLC (''Nasdaq'') on the basis that Nasdaq's ''provision of third-party market data feeds to co-located clients appears to be an integral feature of its co-location program, and co-location programs are subject to the rule filing process.'' Securities Exchange Act Release No. 72654 (July 22, 2014), 79 FR 43808 (July 28, 2014) (SR–NASDAQ–2014–034). In its order, the Commission did not explain why it believed that the provision of third party data was an integral feature of co-location, or if it believed that it was a facility of Nasdaq, although the Nasdaq filing analyzed each prong of the definition of facility in turn. *See* Securities Exchange Act Release No. 71990 (April 22, 2014), 79 FR 23389 (April 28, 2014) (SR–NASDAQ–2014–034).

[8] The Exchange's four national securities exchange affiliates are the New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the ''Affiliate SROs'').