

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

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Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91216; File No. SR-NYSEArca-2021-13]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend the Schedule of Wireless Connectivity Fees and Charges To Add Circuits for Connectivity Into and Out of the Data Center in Mahwah, New Jersey

February 26, 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 February 12, 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 Connectivity Fees and Charges (the “Fee Schedule”) to (1) add circuits for connectivity into and out of the data center in Mahwah, New Jersey (the “Mahwah Data Center”); (2) add services available to customers of the Mahwah Data Center that are not colocation Users; and (3) change the name of the Fee Schedule to “Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fee Schedule.” 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 amend the Fee Schedule to add services (“NCL Services”) and related fees available to customers of the Mahwah Data Center that are not colocation Users (“NCL Customers”),⁴ as well as circuits into and out of the Mahwah Data Center that are available to both colocation Users and NCL Customers. In addition, in a conforming change, because the Fee Schedule would no longer be limited to wireless services, the Exchange proposes to change the name of the Fee Schedule from “Wireless Connectivity Fee Schedule” to “Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fee Schedule.”⁵

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,⁶ apply to 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

⁴ For purposes of the Exchange’s colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR-NYSEArca-2015-82).

⁵ Each of the Exchange’s affiliates (New York Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc., and NYSE National, Inc.) (the “Affiliate SROs”) has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2021-14, SR-NYSEAMER-2021-10, SR-NYSECHX-2021-03, and SR-NYSEAT-2021-04.

⁶ 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-NYSEAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEArca-2020-15, SR-NYSECHX-2020-05, SR-NYSEAT-2020-08) (“Wireless Approval Order”).

expressed in the Wireless Approval Order, in the Court of Appeals for the District of Columbia Circuit.⁷ Pending resolution of such appeal, however, the Exchange is making this proposal 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.”

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

Mahwah Circuits

Customers can connect into and out of the Mahwah Data Center using either wireless connections or wired fiber optic circuits. Both IDS and numerous third-party telecommunications service providers offer wired circuits into and out of the Mahwah Data Center. The circuits that IDS offers are described below. Such IDS circuits are available to all colocation Users and NCL Customers, but such customers are not obligated to use them; rather, both colocation Users and NCL Customers may instead choose to contract directly with third-party telecom carriers for circuits into and out of the Mahwah Data Center.

The Exchange proposes to add to the Fee Schedule the circuit options offered by IDS to both colocation Users and NCL Customers to connect into and out of the Mahwah Data Center. Specifically, the Exchange proposes to amend the Fee Schedule to add two different types of circuits, each available in three different sizes, under the new heading “C. Mahwah Circuits.”

First, the Exchange proposes to amend the Fee Schedule to add “Optic Access” circuits, which are circuits that IDS operates and that customers can use to connect between the Mahwah Data Center and IDS access centers at the following six third-party owned data centers: (1) 111 Eighth Avenue, New York, NY; (2) 32 Avenue of the Americas, New York, NY; (3) 165 Halsey, Newark, NJ; (4) Secaucus, NJ (the “Secaucus Access Center”); (5) Carteret, NJ (the “Carteret Access Center”); and (6) Weehawken, NJ. Optic Access circuits are available in 1 Gb, 10 Gb, and 40 Gb sizes.

Second, the Exchange proposes to amend the Fee Schedule to add lower-latency Optic Low Latency circuits that IDS operates and that customers can use to connect between the Mahwah Data Center and IDS’s Secaucus Access Center or Carteret Access Center. Optic

⁷ *Intercontinental Exchange, Inc. v. SEC*, No. 20-1470 (D.C. Cir. 2020).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

Low Latency circuits are available in 1 Gb, 10 Gb, and 40 Gb sizes.

The Exchange proposes to add the following chart to the Fee Schedule to include these circuits, as follows:

| Type of service | Amount of charge |
|---------------------------------------|---|
| Optic Access Circuit—1 Gb | \$1,500 initial charge plus \$1,500 monthly charge. |
| Optic Access Circuit—10 Gb | \$5,000 initial charge plus \$2,500 monthly charge. |
| Optic Access Circuit—40 Gb | \$5,000 initial charge plus \$6,000 monthly charge. |
| Optic Low Latency Circuit—1 Gb | \$1,500 initial charge plus \$2,750 monthly charge. |
| Optic Low Latency Circuit—10 Gb | \$5,000 initial charge plus \$3,950 monthly charge. |
| Optic Low Latency Circuit—40 Gb | \$5,000 initial charge plus \$8,250 monthly charge. |

Non-Colocation Services

The Exchange proposes to amend the Fee Schedule to add several services available to NCL Customers as well as several notes, under the new heading “D. Non-Colocation (“NCL”) Services.” These are the services that IDS offers within the Mahwah Data Center that are not colocation services. The Exchange proposes to amend the Fee Schedule to add services that include ports to the IDS Network—a wide area network

available in the Mahwah Data Center and other access centers—and ports to a dedicated network to access the NMS feeds for which the Securities Industry Automation Corporation is engaged as the securities information processor (the “NMS Network”).⁸ The Fee Schedule would also specify the data products and data feeds to which an NCL Customer could connect via these ports. The Exchange also proposes to amend the Fee Schedule to enable NCL Customers to purchase cross connects

and to request services subject to an “Expedite Fee” or “Change Fee.”

1. IDS Network Ports

The Exchange proposes to amend the Fee Schedule to add services that IDS offers enabling NCL Customers to connect to the IDS Network in the Mahwah Data Center.

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

IDS NETWORK PORTS *

| Type of service | Description | Amount of charge |
|------------------------------------|------------------------------|---|
| NCL IDS Network Access—10 Gb | 10 Gb IDS Network port | \$10,000 initial charge plus \$15,250 monthly charge. |
| NCL IDS Network Access—40 Gb | 40 Gb IDS Network port | \$10,000 initial charge plus \$19,750 monthly charge. |

* See Note 1.

The Exchange also proposes to add to the Fee Schedule several notes regarding these services that are based on General Notes 4, 5, and 6 of the Exchange’s Price List regarding colocation.

Specifically, the Exchange proposes to add the heading “NCL Notes” after the tables in the proposed section of the Fee Schedule titled “D. Non-Colocation (“NCL”) Services.” Note 1 would establish that when an NCL Customer purchases access to the IDS Network, the NCL Customer would receive (a) the ability to access the trading and execution systems of the Exchange and Affiliate SROs (“Exchange Systems”) as well as of the Global OTC System (“Global OTC”), and (b) connectivity to any of the listed data products (“Included Data Products”) that it selects. References in the proposed Fee Schedule would refer customers to the applicable note.

Proposed Note 1 would be titled “Note 1: IDS Network” and would provide:

When an NCL Customer purchases access to the IDS Network, it receives the ability to

access the trading and execution systems of the NYSE, NYSE American, NYSE Arca, NYSE Chicago, and NYSE National (together, the Exchange Systems) as well as of Global OTC (the Global OTC System), subject, in each case, to authorization by the NYSE, NYSE American, NYSE Arca, NYSE Chicago, NYSE National, or Global OTC, as applicable. Each Exchange listed above offers access to its Exchange Systems to its members and Global OTC offers access to the Global OTC System to its subscribers, such that an NCL Customer does not have to purchase a service that includes access to the IDS Network to obtain access to Exchange Systems or the Global OTC System.

When an NCL Customer purchases access to the IDS Network, it receives connectivity to any of the Included Data Products that it selects, subject to any necessary technical provisioning requirements, authorization, and licensing by the provider of the Included Data Feed. Fees for the Included Data Products are charged by the provider of such Included Data Products. An NCL Customer can change the Included Data Products to which it receives connectivity at any time, subject to authorization from the provider of such Included Data Product. Because access to the IDS Network is not the exclusive method to connect to the Included Data Products, an NCL Customer does not have to

purchase a service that includes access to the IDS Network to connect to such Included Data Products. The Included Data Products are as follows:

NMS feeds
CTS
CQS
OPRA
NYSE
NYSE American
NYSE American Options
NYSE Arca
NYSE Arca Options
NYSE Best Quote and Trades (BQT)
NYSE Bonds
NYSE Chicago
NYSE National

2. NCL Connectivity to Third Party Systems, Data Feeds, Testing and Certification Feeds, and DTCC

The Exchange also proposes to amend the Fee Schedule to provide for the connectivity services that IDS offers for NCL Customers to Third Party Systems, Third Party Data Feeds, third party testing and certification feeds, and DTCC. The Exchange proposes to adopt substantially similar services and fees as

⁸ See Securities Exchange Act Release Nos. 88837 (May 7, 2020), 85 FR 28671 (May 13, 2020) (SR-NYSE-2019-46, SR-NYSEAMER-2019-34, SR-

NYSEArca-2019-61, SR-NYSENAT-2019-19) (“NMS Network Approval Order”) and 88972 (May

29, 2020), 85 FR 34472 (June 4, 2020) (“NYSE Chicago NMS Network Approval Order”).

set forth in the Exchange's Price List regarding colocation.⁹

Connectivity to Third Party Systems: The Exchange proposes to specify in the Fee Schedule services that IDS offers NCL Customers to access the trading and execution services of Third Party markets and other content service providers ("Third Party Systems") for a fee. NCL Customers connect to Third Party Systems over the IDS Network.

In order to obtain access to a Third Party System, an NCL Customer enters into an agreement with the relevant third-party content service provider, pursuant to which the third-party content service provider charges the NCL Customer for access to the Third Party System. When such services are

requested, IDS establishes a connection between the NCL Customer and the relevant third party content service provider over the IDS Network. IDS charges the NCL Customer for the connectivity to the Third Party System. An NCL Customer only receives, and is only charged by IDS for, connectivity to each Third Party System for which the customer enters into an agreement with the third-party content service provider.

Neither the Exchange nor IDS has an affiliation with the providers of the Third Party Systems. Establishing an NCL Customer's access to a Third Party System does not give either IDS or the Exchange any right to use the Third Party Systems. Connectivity to a Third

Party System does not provide access or order entry to the Exchange's execution system, and an NCL Customer's connection to a Third Party System is not through the Exchange's execution system.

IDS charges a monthly recurring fee for connectivity to a Third Party System, which the Exchange proposes to add to its Fee Schedule. Specifically, when an NCL Customer requests access to a Third Party System, IDS identifies the applicable third-party market or other content service provider and the bandwidth connection it requires.

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

CONNECTIVITY TO THIRD PARTY SYSTEMS OVER IDS NETWORK *

| Description | Amount of charge |
|-------------|--|
| 1Mb | \$200 per connection monthly charge. |
| 3Mb | \$400 per connection monthly charge. |
| 5Mb | \$500 per connection monthly charge. |
| 10Mb | \$800 per connection monthly charge. |
| 25Mb | \$1,200 per connection monthly charge. |
| 50Mb | \$1,800 per connection monthly charge. |
| 100Mb | \$2,500 per connection monthly charge. |
| 200Mb | \$3,000 per connection monthly charge. |
| 1Gb | \$3,500 per connection monthly charge. |

* See Note 2.

The Exchange proposes to add Note 2 to the section of the Fee Schedule titled "D. Non-Colocation ("NCL") Services." Proposed Note 2 would be titled "Note 2: Third Party Systems" and would provide:

When an NCL Customer purchases a connection that includes access to Third Party Systems, it receives access to Third Party Systems it selects subject to any technical provisioning requirements, authorization, and licensing from such Third Party System. Fees for the Third Party Systems are charged by the provider of such Third Party System. The Exchange is not the exclusive method to connect to Third Party Systems. The Third Party Systems are as follows:

Third Party Systems

Americas Trading Group (ATG)
 BM&F Bovespa
 Boston Options Exchange (BOX)
 Canadian Securities Exchange (CSE)
 Cboe BYX Exchange (CboeBYX), Cboe BZX Exchange (CboeBZX), Cboe EDGA Exchange (CboeEDGA), and Cboe EDGX Exchange (CboeEDGX)
 Cboe Exchange (Cboe) and Cboe C2 Exchange (C2)
 Chicago Mercantile Exchange (CME Group)
 Credit Suisse

Euronext Optiq Cash and Derivatives Unicast (EUA)
 Euronext Optiq Cash and Derivatives Unicast (Production)
 Investors Exchange (IEX)
 ITG TriAct Matchnow
 Long Term Stock Exchange (LTSE)
 Members Exchange (MEMX)
 MIAX Options, MIAX PEARL Options, MIAX PEARL Equities, and MIAX Emerald
 Morgan Stanley
 Nasdaq
 NASDAQ Canada (CXC, CXD, CX2)
 NASDAQ ISE
 Neo Aequitas
 NYFIX Marketplace
 Omega
 OneChicago
 OTC Markets Group
 TD Ameritrade
 TMX Group

Connectivity to Third Party Data Feeds: The Exchange proposes to specify in the Fee Schedule connectivity services that IDS offers NCL Customers to connect to data feeds from third-party markets and other content service providers ("Third Party Data Feeds") for a fee. IDS receives Third Party Data Feeds from multiple national securities exchanges and other content service providers at the Mahwah Data Center.

IDS provides connectivity to that data to NCL Customers for a fee. NCL Customers connect to Third Party Data Feeds over the IDS Network.

In order to connect to a Third Party Data Feed, an NCL Customer enters into a contract with the relevant third-party market or other content service provider, pursuant to which the content service provider charges the NCL Customer for the Third Party Data Feed. IDS receives the Third Party Data Feed over its fiber optic network and, after the data provider and NCL Customer enter into an agreement and IDS receives authorization from the data provider, IDS retransmits the data to the NCL Customer over the NCL Customer's IDS Network port. IDS charges the NCL Customer for the connectivity to the Third Party Data Feed. An NCL Customer only receives, and is only charged for, connectivity to the Third Party Data Feeds for which it entered into contracts.

With the exception of the ICE Data Services, ICE, and Global OTC feeds, neither the Exchange nor IDS has any affiliation with the sellers of the Third Party Data Feeds. The Exchange and IDS

⁹ See Securities Exchange Act Release No. 80310 (March 24, 2017), 82 FR 15763 (March 30, 2017) (SR-NYSEArca-2016-89).

have no right to use the Third Party Data Feeds other than as a redistributor of the data. The Third Party Data Feeds do not provide access or order entry to the Exchange's execution system. With the exception of the ICE feed, the Third Party Data Feeds do not provide access or order entry to the execution systems of the third party generating the feed. IDS receives Third Party Data Feeds via arms-length agreements and has no inherent advantage over any other distributor of such data.

IDS charges a monthly recurring fee for connectivity to each Third Party Data Feed. The monthly recurring fee is

per Third Party Data Feed, with the exception that the monthly recurring fee for the ICE Data Services Consolidated Feeds (including the ICE Data Services Consolidated Feed Shared Farm feeds), Vela—SuperFeeds, and MSCI feeds vary by the bandwidth of the connection. Depending on its needs and bandwidth, an NCL Customer may opt to receive all or some of the Third Party Data Feeds.

Third Party Data Feed providers may charge redistribution fees. The Exchange proposes that, when IDS is charged a redistribution fee by the Third Party Data Feed provider, IDS would pass through the charge to the NCL

Customer, without change to the fee. The fee would be labeled as a pass-through of a redistribution fee on the NCL Customer's invoice.

The Exchange proposes that it would not charge NCL Customers that are third-party markets or content providers for connectivity to their own feeds, as it understands that such parties generally receive their own feeds for purposes of diagnostics and testing.

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

CONNECTIVITY TO THIRD PARTY DATA FEEDS OVER THE IDS NETWORK *

| Description | Monthly charge |
|--|----------------|
| BM&F Bovespa | \$3,000 |
| Boston Options Exchange (BOX) | 1,000 |
| Canadian Securities Exchange (CSE) | 1,000 |
| Cboe BZX Exchange (CboeBZX) and Cboe BYX Exchange (CboeBYX) | 2,000 |
| Cboe EDGX Exchange (CboeEDGX) and Cboe EDGA Exchange (CboeEDGA) | 2,000 |
| Cboe Exchange (Cboe) and Cboe C2 Exchange (C2) | 2,000 |
| CME Group | 3,000 |
| Euronext Optiq Compressed Cash | 900 |
| Euronext Optiq Compressed Derivatives | 600 |
| Euronext Optiq Shaped Cash | 1,200 |
| Euronext Optiq Shaped Derivatives | 900 |
| Financial Industry Regulatory Authority (FINRA) | 500 |
| Global OTC | 100 |
| ICE Data Services Consolidated Feed ≤100 Mb | 200 |
| ICE Data Services Consolidated Feed >100 Mb to ≤1 Gb | 500 |
| ICE Data Services Consolidated Feed >1 Gb | 1,000 |
| ICE Data Services Consolidated Feed Shared Farm ≤100Mb | 200 |
| ICE Data Services Consolidated Feed Shared Farm >100 Mb to ≤1 Gb | 500 |
| ICE Data Services Consolidated Feed Shared Farm >1 Gb | 1,000 |
| ICE Data Services—ICE TMC | 200 |
| ICE Data Services PRD | 200 |
| ICE Data Services PRD CEP | 400 |
| Intercontinental Exchange (ICE) | 1,500 |
| Investors Exchange (IEX) | 1,000 |
| ITG TriAct Matchnow | 1,000 |
| Members Exchange (MEMX) | 3,000 |
| MIAX Emerald | 3,500 |
| MIAX Options/MIAX PEARL Options | 2,000 |
| MIAX PEARL Equities | 2,500 |
| Montréal Exchange (MX) | 1,000 |
| MSCI 5 Mb | 500 |
| MSCI 25 Mb | 1,200 |
| NASDAQ Stock Market | 2,000 |
| NASDAQ OMX Global Index Data Service | 100 |
| NASDAQ UQDF & UTDF | 500 |
| NASDAQ Canada (CXC, CXD, CX2) | 1,500 |
| NASDAQ ISE | 1,000 |
| Neo Aequitas | 1,200 |
| Omega | 1,000 |
| OneChicago | 1,000 |
| OTC Markets Group | 1,000 |
| Vela—SuperFeed <500 Mb | 250 |
| Vela—SuperFeed >500 Mb to <1.25 Gb | 800 |
| Vela—SuperFeed >1.25 Gb | 1,000 |
| TMX Group | 2,500 |

* See Note 3.

The Exchange proposes to add Note 3 to the section of the Fee Schedule titled “D. Non-Colocation (“NCL”) Services.” Proposed Note 3 would be titled “Note

3: Third Party Systems” and would provide:

Pricing for data feeds from third party markets and other service providers (Third

Party Data Feeds) is for connectivity only. Connectivity to Third Party Data Feeds is subject to any technical provisioning requirements, authorization, and licensing

from the provider of the data feed. Connectivity to Third Party Data Feeds is over the IDS Network. Fees for Third Party Data Feeds are charged by the provider of such data feeds. Third Party Data Feed providers may charge redistribution fees. When IDS is charged a redistribution fee, IDS passes the charge through to the customer, without change to the fee. The fee is labeled as a pass-through of a redistribution fee on the customer's invoice. IDS does not charge third party markets or content providers for connectivity to their own feeds. IDS is not the exclusive method to connect to Third Party Data Feeds.

Connectivity to Third Party Data Testing and Certification Feeds: The

Exchange proposes to specify in the Fee Schedule that NCL Customers may obtain connectivity to third-party testing and certification feeds. Certification feeds are used to certify that an NCL Customer conforms to any of the relevant content service provider's requirements for accessing Third Party Systems or receiving Third Party Data Feeds, while testing feeds would provide NCL Customers an environment in which to conduct tests with non-live data. Such feeds, which are solely used for certification and testing and do not

carry live production data, are available over the IDS Network.

Connectivity to third party testing and certification feeds would be subject to any technical provisioning requirements, authorization, and licensing from the provider of the data feed. Fees for such feeds are charged by the provider of the feed. The Exchange is not the exclusive method to connect to third-party testing and certification feeds.

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

Connectivity to Third Party Testing and Certification Feeds \$100 monthly recurring charge per feed.

Connectivity to DTCC: The Exchange proposes to specify in the Fee Schedule services that IDS provides to connect NCL Customers to Depository Trust & Clearing Corporation ("DTCC") for clearing, fund transfer, insurance, and settlement services.

In order to connect to DTCC, an NCL Customer enters into a contract with DTCC, pursuant to which DTCC charges the NCL Customer for the services provided. IDS receives the DTCC feed

over its fiber optic network and, after DTCC and the NCL Customer entered into the services contract and IDS received authorization from DTCC, IDS provides connectivity to DTCC to the NCL Customer over the NCL Customer's IDS Network port. IDS charges the NCL Customer for the connectivity to DTCC.

Connectivity to DTCC does not provide access or order entry to the Exchange's execution system, and an NCL Customer's connection to DTCC is

not through the Exchange's execution system.

Connectivity to DTCC is subject to any technical provisioning requirements, authorization, and licensing from DTCC. Fees for such feeds are charged by DTCC. IDS is not the exclusive provider to connect to DTCC feeds.

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

CONNECTIVITY TO DTCC

| Description | Amount of charge |
|--------------------------------|-----------------------------------|
| 5 Mb connection to DTCC | \$500 monthly recurring charge. |
| 50 Mb connection to DTCC | \$2,500 monthly recurring charge. |

3. NCL NMS Network Ports

The Exchange proposes to amend the Fee Schedule to add services that IDS

currently offers enabling NCL Customers to connect to the NMS Network in the Mahwah Data Center.

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

NCL NMS NETWORK PORTS *

| Type of service | Description | Amount of charge |
|------------------------------------|----------------------------------|---|
| NCL NMS Network Access—10 Gb | 10 Gb NCL NMS Network port | \$10,000 initial charge plus \$11,000 monthly charge. |
| NCL NMS Network Access—40 Gb | 40 Gb NCL NMS Network port | \$10,000 initial charge plus \$18,000 monthly charge. |

* See Note 4.

The Exchange also proposes to add Note 4 to the section of the Fee Schedule titled "D. Non-Colocation ("NCL") Services," to establish that, when an NCL Customer purchases an NMS Network port, it has the option of receiving the NMS feeds over the NMS Network.

Proposed Note 4 would be titled "Note 4: NMS Network" and would provide:

When an NCL Customer purchases access to the NMS Network, upon its request, it will receive connectivity to any of the NMS feeds

that it selects, subject to any necessary technical provisioning requirements, authorization, and licensing from the provider of such NMS feed. Fees for the NMS feeds are charged by the provider of such NMS feed. The NMS feeds are as follows:

NMS feeds
CTS
CQS
OPRA

4. NCL Cross Connect

The Exchange proposes to amend the Fee Schedule to specify fiber cross connect services that IDS offers NCL

Customers for an initial and monthly charge.¹⁰ A cross connect is used to connect a circuit to a port. NCL Customers use such cross connects to connect from the IDS Network or NMS Network to a circuit connecting outside the Mahwah Data Center. The Exchange

¹⁰ Because NCL Customers do not co-locate any equipment in the Mahwah Data Center, they generally require fewer fiber cross connects than colocation Users. Accordingly, the Exchange does not propose amending the Fee Schedule to include bundles of 6, 12, 18, or 24 cross connects as are available to colocation Users.

proposes that the fees for this service would be identical to the fees for the corresponding service in colocation.

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

| Type of service | Description | Amount of charge |
|-------------------------|---|---|
| NCL Cross Connect | Furnish and install one cross-connect | \$500 initial charge plus \$600 monthly charge. |

5. NCL Expedite Fee

The Exchange proposes to amend the Fee Schedule to specify optional services that IDS offers NCL Customers to expedite the completion of services purchased or ordered by the NCL Customer, for which IDS charges an

“Expedite Fee.” Similar to the “Expedite Fee” applicable to Users in colocation,¹¹ if an NCL Customer wishes to obtain NCL Services earlier than the expected completion date, the NCL Customer may pay the Expedite Fee. The time saved would vary depending on the type(s) of service(s)

ordered, but the Expedite Fee would always be a flat \$4,000, allowing the NCL Customer to determine if the expected time savings warrants payment of the fee.

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

| Type of service | Description | Amount of charge |
|------------------------|--|----------------------|
| NCL Expedite Fee | Expedited installation/completion of a customer's NCL service. | \$4,000 per request. |

6. NCL Change Fee

The Exchange proposes to amend the Fee Schedule to specify the “Change Fee” that IDS charges an NCL Customer if the NCL Customer requests a change to one or more existing NCL Services that IDS has already established or completed for the NCL Customer.

In this regard, the Exchange notes that several of the proposed services that would be added to the Fee Schedule include an initial fee in addition to an ongoing monthly fee. These initial fees are related to IDS's initial cost of

establishing or installing a particular service for the NCL Customer. Similar to the “Change Fee” applicable to Users in colocation,¹² IDS charges a fee of \$950 per order if the NCL Customer requests a change to one or more existing NCL Services that IDS has already established or completed for the NCL Customer. For example, the initial installation of an IDS Network connection would include establishing and configuring market data services requested by the NCL Customer, which would be covered by the initial install fee. However, if the NCL Customer

requests that IDS establish and configure additional market data services for its IDS Network connection, the NCL Customer would be charged a one-time Change Fee of \$950 for that request. If an NCL Customer orders two or more services at one time (for example, through submitting an order form requesting multiple services), the NCL Customer would be charged a one-time Change Fee of \$950, which would cover the multiple services.

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

| Type of service | Description | Amount of charge |
|----------------------|--|--------------------|
| NCL Change Fee | Change to an NCL service that has already been installed/completed for a customer. | \$950 per request. |

Fee Schedule Name

In addition, the Exchange proposes to change the name of the “Wireless Connectivity Fee Schedule” to “Connectivity Fee Schedule.” [sic] Because the Fee Schedule will no longer be limited to wireless services, the Exchange proposes to change the name of the Fee Schedule from “Wireless Connectivity Fee Schedule” [sic] to “Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fee Schedule.”

Application and Impact of the Proposed Changes

There are currently few NCL Customers. Accordingly, the Exchange

expects that the impact of the proposed change would be minimal.

The proposed change is not targeted at, or expected to be limited in applicability to, a specific segment of market participant. The Mahwah Circuits are available for purchase for any potential customer requiring a circuit between the Mahwah Data Center and a remote location. The NCL Services are available for purchase by any customer. The proposed changes do not apply differently to distinct types or sizes of customers. Rather, they apply to all customers equally.

Use of the services proposed in this filing are completely voluntary and

available to all market participants on a non-discriminatory basis.

Competitive Environment

IDS operates in a highly competitive market in which exchanges, third party telecommunications providers, Hosting Users,¹³ and other third-party vendors offer connectivity services 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

¹¹ See Securities Exchange Act Release No. 67669 (August 15, 2012), 77 FR 50746 (August 22, 2012) (SR-NYSEArca-2012-62) and No. 67667 (August 15, 2012), 77 FR 50743 (August 22, 2012) (SR-NYSEArca-2012-63).

¹² See *id.*

¹³ “Hosting” is a service offered by a User to another entity in the User's space within the Mahwah Data Center. The Exchange allows Users

to act as Hosting Users for a monthly fee. See Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR-NYSEArca-2015-82).

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.”¹⁴

The proposed changes are not otherwise intended to address any other issues relating to services related to the Mahwah Data Center and/or related fees, and the Exchange is not aware of any problems that market participants would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁷ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

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

General: Only the market participants that voluntarily select to receive the IDS services described herein are charged for them, and those services are available to all market participants. Furthermore, the IDS services described

in this filing 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 a specific proposed IDS service would be charged the same amount for that service as all other market participants purchasing that service.

In addition, the Exchange believes that the proposed rule change is reasonable because the IDS services described herein are offered as a convenience to market participants, but offering them requires the provision, maintenance, and operation of the Mahwah Data Center, including the installation, monitoring, support, and maintenance of the services.

Mahwah Circuits: The Exchange believes the fees proposed herein for IDS’s Mahwah Circuits are reasonable. The market for circuits into and out of the Mahwah Data Center is competitive, and the proposed IDS offerings are merely one of several options from which market participants can choose. Each of the third-party telecommunications providers that has a presence in the Mahwah Data Center’s “Meet Me Rooms” offers similar circuits to market participants, in competition with the IDS offerings proposed here. Each market participant considering whether to purchase a circuit directly can weigh that option against similar circuits offered by those third-party carriers, and can choose which circuit to purchase based on which combination of latency, bandwidth, price, and other factors best meets its business needs. Indeed, the Exchange understands that most of the third-party telecommunications providers that provide circuits do so at fees lower than those proposed herein, and that most NCL Customers and colocation Users use such third party telecommunication circuits into and out of the Mahwah Data Center.

IDS Network Ports: The Exchange believes that the IDS Network ports proposed herein are reasonable. The market for connecting with the Exchange’s trading and execution systems is competitive, and the proposed IDS Network ports that IDS provides are merely one of several options that market participants may choose. As alternatives to the IDS Network ports, a market participant would be able to access or connect to Exchange Systems, Third Party Systems, Included Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC through (a) a connection to an IDS access center outside of the Mahwah Data Center, (b) a third-party access center, (c) a third-

party vendor, (d) a Hosting User, or (e) colocation.

Market participants consider various factors in determining which connectivity options to choose, including latency; bandwidth size; amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. IDS’s offering of connectivity services via IDS Network ports gives market participants another service to evaluate and consider, thereby broadening their options for connectivity to the Exchange Systems and allowing them to tailor their connectivity options to their specific needs.

The Exchange further believes that the proposed fees for IDS Network ports for NCL Customers are reasonable because such prices are constrained by competition with the numerous other providers that offer connectivity to the Exchange Systems. If IDS were to attempt to offer such ports at a supra-competitive price, potential customers would likely respond by seeking out less expensive substitutes from other providers.

NCL NMS Network Ports: The Exchange believes that the proposed fees for NMS Network ports for NCL Customers are reasonable to recoup the costs of building the NMS Network. Until 2019, SIAC was required to provide connectivity to the NMS feeds only via the IP network. Although the operating committees for the CTA/CQ Plans authorized SIAC to offer connectivity to the NMS feeds in the Mahwah Data Center via an alternate, dedicated, low-latency NMS Network, the operating committee did not assume the costs of creating such a network; instead, the Exchange and the Affiliate SROs funded the capital and operational expenses to build and operate the NMS Network. The implementation costs of approximately \$3.8 million are applicable only to the NMS Network, which is used for the sole purpose of providing access to the NMS feeds. None of the implementation costs are applicable to any other Exchange services. As of the date of this filing, only one customer has contracted with IDS for an NCL NMS Network port, and the Exchange expects that demand for NMS Network ports outside of colocation will be very low. The service is nevertheless available, and so the Exchange proposes to add it to the Fee Schedule.

NCL Notes: With respect to proposed NCL Notes 1, 2, 3, and 4, the Exchange believes they are reasonable because they provide detailed descriptions of the access and connectivity that NCL

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78f(b)(4).

Customers receive when they purchase IDS Network or NMS Network ports. Such detailed descriptions remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because they provide market participants with transparency and clarity as to what connectivity is included in the purchase of IDS Network or NMS Network ports by NCL Customers.¹⁸ The notes would also make clear that all NCL Customers that voluntarily select to access the IDS Network or NMS Network receive the same access and connectivity, and are not subject to a charge above and beyond the fee paid for the relevant IDS Network or NMS Network ports. The notes further make clear that NCL Customers are not required to use any of their bandwidth to access Exchange systems or connect to an Included Data Product unless they wish to do so; rather, an NCL Customer only receives the access and connectivity that it selects, and can change what access or connectivity it receives at any time, subject to authorization from the data provider or the relevant Exchange or Affiliate SRO.¹⁹ Notes 1, 2, 3, and 4 are all based on similar provisions in the Exchange's Price List for colocation.

Other NCL Services: The Exchange believes it is reasonable to specify in the Fee Schedule NCL Services that IDS offers including NCL cross connects, the NCL Expedite Fee, the NCL Change Fee, and NCL connectivity to Third Party Systems, Third Party Data Feeds, third-party testing and certification feeds, and DTCC.

The Exchange believes that the specific fees it has proposed for NCL cross connects, the NCL Expedite Fee, and the NCL Change Fee are reasonable. As noted above, IDS faces competition in the market for connectivity from Hosting Users, IDS access centers outside of the Mahwah Data Center, third-party access centers, and third-party vendors. Market participants can consider IDS's proposed fees for the specific services listed above in the context of this competition, and choose

the connectivity provider that offers the services the market participant needs at the optimal cost. As such, the proposed fees for these IDS services are constrained by competition.

The Exchange believes that charging distinct fees for different NCL Services is reasonable because not all market participants need or wish to utilize the same NCL Services. The proposed choice of services allows market participants to select which NCL Services to use, based on their business needs, and market participants are only charged for the services that they select. By charging only those market participants that utilize an NCL Service the related fee, those market participants that directly benefit from a service support its cost.

In addition, the Exchange believes that the proposed fees are reasonable because they allow the costs associated with offering different NCL Services to be defrayed or covered while providing market participants the benefit of such services. The Exchange believes that the proposed charges are reasonable because IDS offers NCL Services as conveniences to market participants, but in order to do so must provide, maintain, and operate the Mahwah Data Center facility hardware and technology infrastructure. IDS needs to provide network infrastructure that keeps pace with the number of services available to NCL Customers, including any increasing demand for bandwidth, and handle the installation, administration, monitoring, support, and maintenance of such services, including by responding to any production issues. In addition, in order to provide connectivity to Third Party Data Feeds, Third Party Systems, third party testing and certification feeds, and DTCC, IDS must establish and maintain multiple connections to each Third Party Data Feed, Third Party System, and DTCC, allowing IDS to provide resilient and redundant connections, adapt to any changes made by the relevant third party, and cover any applicable fees (other than redistribution fees) charged by the relevant third party, such as port fees.

The Exchange believes it is reasonable for redistribution fees charged by providers of Third Party Data Feeds to be passed through to NCL Customers, without change to the fee. If not passed through, the cost of the redistribution fees would be factored into the proposed fees for connectivity to Third Party Data Feeds. The Exchange believes that passing through the fees makes them more transparent to the NCL Customer, allowing the NCL Customer to better assess the cost of the

connectivity to a Third Party Data Feed by seeing the individual components of the cost, *i.e.*, IDS's fee and redistribution fee.

The Exchange believes that it is reasonable to not charge third-party markets or content providers for connectivity to their own Third Party Data Feeds, as the Exchange understands that such parties generally receive their own feeds for purposes of diagnostics and testing. The Exchange believes that facilitating such diagnostics and testing removes impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest.

Finally, the Exchange believes it is reasonable to make available third party testing and certification feeds to enable customers to test and certify their connections to third party data feeds.

The Proposed Change Is Equitable

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

The Exchange believes that the proposed change is equitable because it would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all NCL Customers equally.

In addition, the Exchange believes that the proposal is equitable because only the market participants that voluntarily select to receive the services described herein would be charged for them. The services described in this filing are available to all market participants on an equal basis (*i.e.*, the same products and services are available to all market participants), and all market participants that voluntarily select a specific proposed service are charged the same amount for that service as all other market participants purchasing that service.

IDS faces competition from numerous other providers that offer market participants choices for connectivity to the Mahwah Data Center, Exchange Systems, Third Party Systems, Included Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC. Without this proposed rule change, market participants seeking such connectivity would have fewer options. With this proposal, market participants would have more choices with respect to the form and price of the services they use, allowing market participants to select the services and connectivity options that better suit their needs, thereby helping them tailor their connectivity operations to the requirements of their businesses.

¹⁸ See Securities Exchange Act Release Nos. 79730 (January 4, 2017), 82 FR 3045 (January 10, 2017) (SR-NYSE-2016-92); 79728 (January 4, 2017), 82 FR 3035 (January 10, 2017) (SR-NYSEMKT-2016-126); 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR-NYSEArca-2016-172).

¹⁹ The General Note on page 1 of the Fee Schedule would also apply to all of the services proposed herein. A market participant that incurs fees for NCL connectivity or other NCL Services from the Exchange or one of the Affiliate SROs would not be subject to fees for the same service charged by the other Affiliate SROs.

The Exchange believes that the proposed NCL Notes 1 and 4 are equitable because they specify that NCL Customers that voluntarily select to access the IDS Network or NMS Network would not be subject to charges above and beyond the fee paid for the relevant IDS Network or NMS Network port. Further, Notes 1, 2, 3, and 4 specify that NCL Customers will not be charged for any access or connectivity that they had not selected.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntarily and the Fee Schedule will be applied uniformly to all market participants.

IDS faces competition from numerous other providers that offer market participants choices for connectivity to the Mahwah Data Center, Exchange Systems, Third Party Systems, Included Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC. Without this proposed rule change, market participants seeking such connectivity would have fewer options. With this proposal, market participants would have more choices with respect to the form and price of the services they use, allowing market participants to select the services and connectivity options that better suit their needs, thereby helping them tailor their connectivity operations to the requirements of their businesses.

The Exchange believes that the proposed NCL Notes 1 and 4 are not be unfairly discriminatory because they specify that NCL Customers that voluntarily select to access the IDS Network or NMS Network are not be subject to charges above and beyond the fee paid for the relevant IDS Network or NMS Network port. Further, Notes 1, 2, 3, and 4 specify that NCL Customers will not be charged for any access or connectivity that they had not selected.²⁰

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 proposed change does not affect competition among national securities

exchanges or among members of the Exchange, but rather between IDS and its commercial competitors.

As noted above, the Exchange is making the current proposal solely as a result of the Commission's recent interpretation of the definitions of "exchange" and "facility" in the Wireless Approval Order, which the Exchange is presently challenging on appeal to the Court of Appeals for the District of Columbia Circuit.²¹ The Exchange has nevertheless proposed this rule change in order to preserve the ability of IDS to offer the services at issue herein. If IDS were compelled to stop offering such services, consumers would have fewer service providers to choose from for their connectivity needs, which would be a detriment to competition overall.

Notwithstanding the foregoing, the Exchange notes that there are numerous other third parties that provide circuits and connectivity at the Mahwah Data Center, and that IDS competes with those third parties for the provision of such services to customers. None of these third parties have been compelled to file their services or fees with the Commission, and 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 herein 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, without the additional burden on IDS alone to file any proposed changes to services and fees with the Commission.

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-NYSEArca-2021-13 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-NYSEArca-2021-13. 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-NYSEArca-2021-13, and should be submitted on or before March 25, 2021.

²⁰ In addition, the General Note on page 1 of the Fee Schedule would apply to all of the services proposed herein. See *supra* note 19.

²¹ *Intercontinental Exchange, Inc. v. SEC*, No. 20-1470 (D.C. Cir. 2020).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-04423 Filed 3-3-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91218; File No. SR-NYSEAMER-2021-10]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Rule Change To Amend the Schedule of Wireless Connectivity Fees and Charges To Add Circuits for Connectivity Into and Out of the Data Center in Mahwah, New Jersey

February 26, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on February 12, 2021, NYSE American LLC (“NYSE American” 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 Connectivity Fees and Charges (the “Fee Schedule”) to (1) add circuits for connectivity into and out of the data center in Mahwah, New Jersey (the “Mahwah Data Center”); (2) add services available to customers of the Mahwah Data Center that are not colocation Users; and (3) change the name of the Fee Schedule to “Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fee Schedule.” 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 amend the Fee Schedule to add services (“NCL Services”) and related fees available to customers of the Mahwah Data Center that are not colocation Users (“NCL Customers”),⁴ as well as circuits into and out of the Mahwah Data Center that are available to both colocation Users and NCL Customers. In addition, in a conforming change, because the Fee Schedule would no longer be limited to wireless services, the Exchange proposes to change the name of the Fee Schedule from “Wireless Connectivity Fee Schedule” to “Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fee Schedule.”⁵

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,⁶ apply to 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

⁴ For purposes of the Exchange’s colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR-NYSEMKT-2015-67).

⁵ Each of the Exchange’s affiliates (New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.) (the “Affiliate SROs”) has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2021-14, SR-NYSEArca-2021-13, SR-NYSECHX-2021-03, and SR-NYSENAT-2021-04.

⁶ 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-NYSENAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEArca-2020-15, SR-NYSECHX-2020-05, SR-NYSENAT-2020-08) (“Wireless Approval Order”).

expressed in the Wireless Approval Order, in the Court of Appeals for the District of Columbia Circuit.⁷ Pending resolution of such appeal, however, the Exchange is making this proposal 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.”

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

Mahwah Circuits

Customers can connect into and out of the Mahwah Data Center using either wireless connections or wired fiber optic circuits. Both IDS and numerous third-party telecommunications service providers offer wired circuits into and out of the Mahwah Data Center. The circuits that IDS offers are described below. Such IDS circuits are available to all colocation Users and NCL Customers, but such customers are not obligated to use them; rather, both colocation Users and NCL Customers may instead choose to contract directly with third-party telecom carriers for circuits into and out of the Mahwah Data Center.

The Exchange proposes to add to the Fee Schedule the circuit options offered by IDS to both colocation Users and NCL Customers to connect into and out of the Mahwah Data Center. Specifically, the Exchange proposes to amend the Fee Schedule to add two different types of circuits, each available in three different sizes, under the new heading “C. Mahwah Circuits.”

First, the Exchange proposes to amend the Fee Schedule to add “Optic Access” circuits, which are circuits that IDS operates and that customers can use to connect between the Mahwah Data Center and IDS access centers at the following six third-party owned data centers: (1) 111 Eighth Avenue, New York, NY; (2) 32 Avenue of the Americas, New York, NY; (3) 165 Halsey, Newark, NJ; (4) Secaucus, NJ (the “Secaucus Access Center”); (5) Carteret, NJ (the “Carteret Access Center”); and (6) Weehawken, NJ. Optic Access circuits are available in 1 Gb, 10 Gb, and 40 Gb sizes.

Second, the Exchange proposes to amend the Fee Schedule to add lower-latency Optic Low Latency circuits that IDS operates and that customers can use to connect between the Mahwah Data Center and IDS’s Secaucus Access Center or Carteret Access Center. Optic

⁷ *Intercontinental Exchange, Inc. v. SEC*, No. 20-1470 (D.C. Cir. 2020).

²² 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.