

## Regulation S

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation S (17 CFR 230.901 through 230.905) sets forth rules governing offers and sales of securities made outside the United States without registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Regulation S clarifies the extent to which Section 5 of the Securities Act applies to offers and sales of securities outside of the United States. Regulation S is assigned one burden hour for administrative convenience.

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comments to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: December 9, 2019.

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-87686; File No. SR-NYSECHX-2019-23]

**Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fee Schedule of NYSE Chicago, Inc. Related to Co-Location Services**

December 9, 2019.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 25, 2019, the NYSE Chicago, Inc. (“NYSE Chicago” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the Fee Schedule of NYSE Chicago, Inc. (the “Fee Schedule”) related to co-location services to eliminate (a) a connectivity option whose manufacturer will no longer support a key component of the network hardware, and (b) services that are no longer utilized by Users. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

1. Purpose

The Exchange proposes to amend the Fee Schedule related to co-location<sup>4</sup> services offered by the Exchange to eliminate (a) a connectivity option whose manufacturer will no longer support a key component of the network hardware, and (b) services that are no longer utilized by Users.<sup>5</sup>

Proposed Change

LCN 10 Gb Circuit

Among other connectivity options, Users are able to connect to the Exchange over the Liquidity Center Network (“LCN”), a local area network available in the data center.<sup>6</sup> LCN access is available at 1, 10 and 40 Gb bandwidth capacities. Currently, Users have two 10 Gb options for LCN access:

- LCN 10 Gb, which has been in place since 2010,<sup>7</sup> and
- LCN 10 Gb LX, which was introduced in 2013.<sup>8</sup>

<sup>4</sup> The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (“Commission”) in October 2019. See Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR-NYSECHX-2019-27) (“Co-location Notice”). The Exchange operates a data center in Mahwah, New Jersey (the “data center”) from which it provides co-location services to Users.

<sup>5</sup> For purposes of the Exchange’s co-location services, a “User” means any market participant that requests to receive co-location services directly from the Exchange. See Securities Exchange Act Release No. See *id.* at note 6. As specified in the Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange’s affiliates the New York Stock Exchange LLC (“NYSE”), NYSE American LLC (“NYSE American”), NYSE Arca, Inc. (“NYSE Arca”), and NYSE National, Inc. (“NYSE National”) and together, the “Affiliate SROs”). See *id.* at 58779.

<sup>6</sup> The other local area network is the internet protocol (“IP”) network. See Co-location Notice, *supra* note 4, at 58780.

<sup>7</sup> See Securities Exchange Act Release Nos. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56); 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR-NYSEAmex-2010-80); and 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR-NYSEArca-2010-100). In July 2018, the Exchange and its direct parent company were acquired by NYSE Group, Inc. As a result, the Exchange and the Affiliate SROs are direct or indirect subsidiaries of NYSE Group, Inc. and, indirectly, Intercontinental Exchange, Inc. See Exchange Act Release No. 83635 (July 13, 2018), 83 FR 34182 (July 19, 2018) (SR-CHX-2018-004); see also Exchange Act Release No. 83303 (May 22, 2018), 83 FR 24517 (May 29, 2018) (SR-CHX-2018-004).

<sup>8</sup> See Securities Exchange Act Release Nos. 70888 (November 15, 2013), 78 FR 69907 (November 21, 2013) (SR-NYSE-2013-73); 70979 (December 4, 2013), 78 FR 74200 (December 10, 2013) (SR-

The LCN 10 Gb LX has a lower latency than the LCN 10 Gb connection, and has latency levels substantially similar to those of the LCN 40 Gb connection.<sup>9</sup> Between the two 10 Gb LCN alternatives, the vast majority (80%) of User connections are the newer LCN 10Gb LX connections.

The Exchange proposes to cease offering the LCN 10 Gb connection. The Exchange does not propose the current change lightly: It recognizes that removing the LCN 10 Gb connection from its Fee Schedule would eliminate a connectivity option previously available to Users. For the reasons discussed below, however, the Exchange has concluded that the proposed change is necessary because it believes that if it does not eliminate the LCN 10 Gb connections, the Exchange's ability to provide support or supplies to Users with LCN 10 Gb connections would be compromised.

For each LCN connection, the network hardware relies on a switch, which acts as the "gatekeeper" for a User's inbound messaging (e.g., orders and quotes) sent to the Exchange's trading and execution system and the Exchange's outbound messaging (e.g., market data and drop copies) within the data center.<sup>10</sup> Switches are manufactured and sold to the Exchange by third parties. Currently, the LCN 1 Gb and LCN 10 Gb connections use one type of switch (the "First Switch") and the LCN 10 Gb LX and LCN 40 Gb connections use a second type of switch (the "Second Switch").<sup>11</sup>

The manufacturer of the First Switch made an "end of life" ("EOL") announcement notifying customers that the First Switch is being discontinued. The manufacturer stated that it is phasing out the provision of replacement parts and support for the First Switch. Per its EOL notice, it has ceased offering the First Switch, and, as of January 1, 2020:<sup>12</sup>

- It has no commitment to furnish software engineering level support for the operating system software licensed

NYSE-2013-77); 70886 (November 15, 2013), 78 FR 69904 (November 21, 2013) (SR-NYSEMKT-2013-92); 70982 (December 4, 2013), 78 FR 74197 (December 10, 2013) (SR-NYSEMKT-2013-97); 70887 (November 15, 2013), 78 FR 69897 (November 21, 2013) (SR-NYSEArca-2013-123); and 70981 (December 4, 2013), 78 FR 74203 (December 10, 2013) (SR-NYSEARCA-2013-131).

<sup>9</sup> See 78 FR 69907, *supra* note 8, at 69907.

<sup>10</sup> See *id.* at 69908.

<sup>11</sup> See *id.* at note 7.

<sup>12</sup> "JTAC Technical Bulletin," at [https://kb.juniper.net/resources/sites/CUSTOMERSERVICE/content/live/TECHNICAL\\_BULLETINS/16000/TSB16960/en\\_US/TSB16960.pdf](https://kb.juniper.net/resources/sites/CUSTOMERSERVICE/content/live/TECHNICAL_BULLETINS/16000/TSB16960/en_US/TSB16960.pdf). See also "Juniper Networks Product End-of-Life," at <https://support.juniper.net/support/pdf/eol/990833.pdf>.

for the First Switch. No further service or maintenance releases or patches will be created to support the First Switch.

- It has no commitment to perform hardware engineering level support, including hardware modifications and failure analysis, for hardware defects.

As a consequence, the Exchange will not be able to provide Users with new LCN 10 Gb connections or give the present level of support to existing ones, and so it proposes to discontinue the service and remove it from the Fee Schedule.<sup>13</sup>

The Exchange plans to implement the change during the first half of 2020.<sup>14</sup> It will announce the implementation date through a customer notice. After the implementation date, the Exchange will not accept new orders for LCN 10 Gb connections.<sup>15</sup>

To provide time for Users that have LCN 10 Gb connections ("Current Users") to implement any changes, the Exchange proposes to give them a six month grace period, starting on the implementation date. After the grace period ends, any remaining LCN 10 Gb connections will be terminated. The Exchange also proposes to waive any change fees<sup>16</sup> and non-recurring charges<sup>17</sup> that a Current User would

<sup>13</sup> The Fee Schedule provides that a User that purchased five 10 Gb LCN connections would be charged the initial fee for a sixth 10 Gb LCN connection but would not be charged the monthly fee that would otherwise be applicable. Currently, no Users qualify for the discount. As part of the proposed change, the provision would be deleted.

<sup>14</sup> Also during the first half of 2020, the Exchange expects to update the network hardware of the LCN 10 Gb LX and LCN 40 Gb connections by replacing the Second Switch with a new switch (the "New Switch"). The Exchange plans to update the LCN 1 Gb network hardware with the New Switch as well, which would allow the Exchange to continue to offer the LCN 1 Gb circuit despite the EOL of the First Switch. Because the New Switch, like the Second Switch, will provide a lower-latency connection, the Exchange expects that the latency of the LCN 1 Gb will decrease.

The Exchange does not propose to make a similar change to the LCN 10 Gb network hardware because, if it did, there would be no difference between the LCN 10 Gb and the LCN 10 Gb LX connection: They would have the same bandwidth and latency levels. However, the two services cannot have the same latency. Rather, the LCN 10 Gb LX has a lower latency than the LCN 10 Gb connection. See, e.g., 78 FR 69907, *supra* note 8, at 69907. Its latency levels are similar to those of the LCN 40 Gb connection, and the same fees are assessed for both services. See 78 FR 74200, *supra* note 8, at 74201-74202. In addition, the Exchange does not believe that it would be reasonable or equitable to charge different fees for equivalent services. See *id.*

<sup>15</sup> The Exchange believes that it has enough First Switches to fulfil any orders it may receive prior to the implementation date.

<sup>16</sup> The Exchange charges a User a "Change Fee" if the User requests a change to one or more existing co-location services that the Exchange has already established or completed for the User. See Co-location Notice, *supra* note 4, at 58785.

<sup>17</sup> Co-location connectivity services have a non-recurring initial charge. For example, the LCN 10

otherwise incur as a result of the proposed change.

#### Bundled Network Access

The Exchange currently offers a pair of "bundled" connectivity options ("Bundled Network Access") at 1 and 10 Gb bandwidths,<sup>18</sup> but no User is utilizing one. Accordingly, the Exchange proposes to discontinue the Bundled Network Access options and remove references to the related pricing from the Fee Schedule.

The change would be consistent with previous practice: In 2014 and 2016 previously existing bundled network access connectivity options were discontinued, as they were no longer utilized by Users.<sup>19</sup>

#### Application and Impact of the Proposed Change

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

#### LCN 10 Gb

As a consequence of the manufacturer's declaration of EOL for the First Switch, the Exchange will not be able to provide Users with new LCN 10 Gb connections or give the present level of support to the nine Current Users' existing LCN 10 Gb connections. Accordingly, after the implementation date, the Exchange will not accept new orders for LCN 10 Gb connections and, after the grace period, it will terminate any remaining LCN 10 Gb connections. The Exchange also proposes to waive any change fees and non-recurring charges that a Current User would otherwise incur as a result of the proposed change.

The Current Users have several options available to them upon termination of the LCN 10 GB connections:

- A Current User may move to the faster LCN 10 Gb LX connection. The change would increase the User's

Gb LX has a \$15,000 initial charge per connection. See *id.* at 58783.

<sup>18</sup> See *id.*

<sup>19</sup> See Securities Exchange Act Release Nos. 77975 (June 2, 2016), 81 FR 36973 (June 8, 2016) (SR-NYSE-2016-39); 72721 (July 30, 2014), 79 FR 45562 (August 5, 2014) (SR-NYSE-2014-37); 77973 (June 2, 2016), 81 FR 36975 (June 8, 2016) (SR-NYSEMKT-2016-57); 72719 (July 30, 2014), 79 FR 45502 (August 5, 2014) (SR-NYSEMKT-2014-61); 77977 (June 2, 2016), 81 FR 36981 (June 8, 2016) (SR-NYSEArca-2016-77; and 72720 (July 30, 2014), 79 FR 45577 (August 5, 2014) (SR-NYSEArca-2014-81).

monthly recurring charge from \$14,000 to \$22,000, but the User would benefit from a faster connection while maintaining the same amount of bandwidth and system redundancy.

- A Current User may move to the slower IP Network, which offers a 10 Gb circuit alternative. The change would lower the User's monthly recurring charge from \$14,000 to \$11,000. The connection would have greater latency, but the User would maintain the same bandwidth and resiliency.

- A Current User may opt to re-tailor its system to reduce the number of LCN connections it has. For example, a Current User with two LCN 10 Gb connections could consolidate them into one LCN 40 Gb connection. The change would decrease the User's monthly recurring charge from \$28,000 to \$22,000 while allowing it to benefit from a faster connection and increased bandwidth, although it would reduce the redundancy of its connection.

- A Current User may opt to become a "Hosted Customer" by being hosted by another User (a "Hosting User"), or to cross connect to another User within co-location, either of which would likely decrease its monthly connectivity costs and available bandwidth.<sup>20</sup>

The Exchange expects to work with the Current Users to implement the change.

#### Bundled Network Access

As no Users utilize a Bundled Network Access option, no Users will be impacted by the proposed change.

#### Competitive Environment

The Exchange operates in a highly competitive market in which exchanges and other vendors (*e.g.*, Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its

<sup>20</sup> See Co-location Notice, *supra* note 4, at 58782–58783. The Exchange does not have visibility into what other Users, including Hosting Users, charge or the bandwidth they offer, but to the best of its knowledge no Hosting User offers its hosted customers a 10 Gb connection.

broader forms that are most important to investors and listed companies."<sup>21</sup>

#### General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.*, a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;<sup>22</sup> and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.<sup>23</sup>

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>24</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>25</sup> in particular, 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. In addition, it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and

<sup>21</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>22</sup> As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies, as compared to Users that are not co-located, in sending orders to, and receiving market data from, the Exchange.

<sup>23</sup> See Co-location Notice, *supra* note 4, at 58790. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR–NYSE–2019–66, SR–NYSEAmer–2019–52, SR–NYSEArca–2019–85, and SR–NYSENAT–2019–29.

<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> 15 U.S.C. 78f(b)(4) and (5).

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 because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

#### The Proposed Rule Change Is Reasonable

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

As a consequence of the manufacturer's declaration of the First Switch's EOL, the Exchange believes that, if it did not eliminate the LCN 10 Gb connections, it would be unable to provide the current level of support to Users that have such connections. More specifically, pursuant to its EOL, the manufacturer is ceasing to offer the First Switch and terminating its software and hardware engineering level support. As a result, when the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches, and Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one. Accordingly, the Exchange believes that it is reasonable to eliminate the LCN 10 Gb connectivity option.

The Exchange believes that the proposed change will facilitate its compliance with the requirements of Regulation Systems Compliance and Integrity ("SCI").<sup>26</sup> The LCN is an SCI system<sup>27</sup> of the Exchange, which is itself an SCI entity. Accordingly, the Exchange is obligated to have reasonable policies and procedures in place to ensure the LCN has a level of capacity, integrity, resiliency, availability and security, adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.<sup>28</sup> Because the manufacturer is ceasing to offer the First Switch, if the Exchange is unable to eliminate the LCN 10 Gb connectivity

<sup>26</sup> 17 CFR 242.1000 through 242.1007; see also Securities Exchange Act Release No. 73639, 79 FR 72251 (December 5, 2015) (adopting Regulation Systems Compliance and Integrity).

<sup>27</sup> "SCI systems" means "all computer, network, electronic, technical, automated, or similar systems of, or operated by or on behalf of, an SCI entity that, with respect to securities, directly support trading, clearance and settlement, order routing, market data, market regulation, or market surveillance." 17 CFR 242.1000.

<sup>28</sup> 79 FR 72251, *supra* note 26, at 72256–72257.

option its reasonable policies and procedures would need to contemplate being unable to resolve connectivity issues related to First Switches or even replace them. Regulation SCI also obligates SCI entities such as the Exchange to take corrective action upon the occurrence of an SCI event to mitigate potential harm to investors and market integrity. The Exchange's ability to take such action promptly and effectively, if needed, with respect to the LCN 10 Gb connection would be severely limited by its inability to seek support from the manufacturer should issues arise with the First Switch. Accordingly, the Exchange believes that, in light of the EOL of the First Switch, the proposed change to eliminate the LCN 10 Gb connectivity option is a reasonable solution.

The Exchange believes the situation is analogous to when an SCI entity determines to utilize a third party to operate an SCI system on its behalf. As the Commission has noted, in such case, the SCI entity "is responsible for having in place processes and requirements to ensure that it is able to satisfy the requirements of Regulation SCI for systems operated on behalf of the SCI entity by a third party."<sup>29</sup> Likewise, "if an SCI entity is uncertain of its ability to manage a third-party relationship (whether through due diligence, contract terms, monitoring, or other methods) to satisfy the requirements of Regulation SCI, then it would need to reassess its decision to outsource the applicable system to such third party."<sup>30</sup> In the present case, the third party that provides the First Switch, an important part of the network hardware for the LCN 10 Gb connection, has declared its intention to discontinue both production of and technical support for the First Switch. Given that, the Exchange has assessed its ability to manage the LCN 10 Gb connection going forward, and has concluded that it cannot continue to offer a product that relies on the First Switch.

The Exchange believes that providing Current Users with a six month grace period and waiving any applicable change fees and non-recurring charges would be reasonable because Current Users would be terminating their LCN 10 Gb connections at the Exchange's request. The grace period would provide a Current User with time to terminate its LCN 10 Gb connection, move to an LCN 10 Gb LX connection, move to a 10 Gb IP network connection, re-tailor its system to reduce the number of connections, become a Hosted

Customer, cross-connect to another User, or otherwise adjust for the change. The fee waivers would help to alleviate the burden of the change on the Current Users.

With respect to the Bundled Network Access, the Exchange believes that the proposed change is reasonable because it would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Fee Schedule, make the Fee Schedule easier to read, understand and administer. In addition, removing services that Users do not utilize from the co-location offerings would contribute to a more efficient process for managing the various services offered to Users, which would improve the utilization of the data center resources, both with respect to personnel and infrastructure, including hardware and software.

#### The Proposed Rule Change Is Equitable

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits for the following reasons.

The Exchange believes that providing Current Users with a six month grace period and waiving any applicable change fees and non-recurring charges would be equitable because Current Users would be terminating their LCN 10 Gb connections at the Exchange's request. The grace period would provide a Current User with time to terminate its LCN 10 Gb connection, move to an LCN 10 Gb LX connection, move to a 10 Gb IP network connection, re-tailor its system to reduce the number of connections, become a Hosted Customer, cross-connect to another User, or otherwise adjust for the change.

The fee waivers would help to alleviate the burden of the change on the Current Users. With respect to the Bundled Network Access, the Exchange believes that the proposed change is reasonable because it would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Fee Schedule, make the Fee Schedule easier to read, understand and administer.

#### The Proposed Rule Change Would Protect Investors and the Public Interest

The Exchange believes that the proposed rule change 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.

It would be against the protection of investors and the public interest if the Exchange were to continue to offer an older connectivity option that it could not support at current levels, or if, as a consequence of the EOL, Users' connectivity was compromised or they were wholly unable to use it to connect to the Exchange. As noted above, as a consequence of the manufacturer's declaration of the First Switch's EOL, if the Exchange did not eliminate the LCN 10 Gb connections, the Exchange believes it would be unable to provide the current level of support to Users that have such connections. When the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches, and Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one.

The Exchange believes that the proposed change will protect investors and the public interest because it will facilitate the Exchange's compliance with the requirements of Regulation SCI. The Exchange is obligated to have reasonable policies and procedures in place to ensure the LCN, as an SCI system, has a level of capacity, integrity, resiliency, availability and security, adequate to maintain the Exchange's operational capability and promote the maintenance of fair and orderly markets.<sup>31</sup> Because the manufacturer is ceasing to offer the First Switch, if the Exchange is unable to eliminate the LCN 10 Gb connectivity option its reasonable policies and procedures would need to contemplate being unable to resolve connectivity issues related to First Switches or even replace them. Regulation SCI also obligates SCI entities such as the Exchange to take corrective action upon the occurrence of an SCI event to mitigate potential harm to investors and market integrity. The Exchange's ability to take such action promptly and effectively, if needed, with respect to the LCN 10 Gb connection would be severely limited by its inability to seek support from the manufacturer should issues arise with the First Switch. Not being able to resolve connectivity issues related to First Switches or even replace them would make the Exchange's compliance with Regulation SCI suboptimal.

<sup>29</sup> *Id.* at 72276.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

With respect to the Bundled Network Access, the Exchange believes that the proposed change would protect investors and the public interest because it would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Fee Schedule, make the Fee Schedule easier to read, understand and administer.

#### The Proposed Change Is Not Unfairly Discriminatory

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

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As a consequence of the manufacturer's declaration of EOL for the First Switch, the Exchange will not be able to provide any Users with new LCN 10 Gb connections or give the present level of support to Current Users' existing ones. In addition, no Users would be able to purchase the Bundled Network Access. The Exchange believes that, because no Users utilize such services, it would be equitable and not unfairly discriminatory to discontinue the services.

At the same time, Users would continue to have the choice of purchasing an LCN 1 Gb, LCN 10 Gb LX, LCN 40 Gb or IP network connection or any of the other connectivity options available. Use of any co-location service is completely voluntary, and each market participant is able to determine whether to use co-location services based on the requirements of its business operations.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

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

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

In accordance with Section 6(b)(8) of the Act,<sup>32</sup> the Exchange believes that the proposed rule change will not impose any burden on competition that is not

necessary or appropriate in furtherance of the purposes of the Act.

#### Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally: No Users would be able to purchase a LCN 10 Gb connection or Bundled Network Access.

The Exchange does not propose the current change lightly: It recognizes that removing the LCN 10 Gb connection from its Fee Schedule would eliminate a connectivity option previously available to Users. As a consequence of the change, nine Current Users would be required to terminate their LCN 10 Gb connections and either move to LCN 10 Gb LX connections, move to 10 Gb IP network connections, re-tailor their systems to reduce the number of connections, become Hosted Customers, cross-connect to other Users, or otherwise adjust for the change.

Nonetheless, the Exchange believes that the change is necessary and appropriate because, as a consequence of the manufacturer's declaration of the First Switch's EOL, if the Exchange did not eliminate the LCN 10 Gb connections, the Exchange's ability to provide support or supplies to Users that have such connections would be compromised. Not being able to resolve connectivity issues related to First Switches or even replace them would make the Exchange's compliance with Regulation SCI suboptimal. When the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches. Users' connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one. It would be contrary to the protection of investors and the public interest if the Exchange were to continue to offer a connectivity option that it could not support, or if Users were compromised or wholly unable to use their connectivity to connect to the Exchange.

The Exchange believes that providing Current Users with a six month grace period and waiving any applicable change fees and non-recurring charges would not place any burden on intramarket competition that is not necessary or appropriate because Current Users would be terminating

their LCN 10 Gb connections at the Exchange's request. The grace period would provide a Current User with time to terminate its LCN 10 Gb connections and adjust for the change, while the fee waivers would help to alleviate the burden of the change.

With respect to the Bundled Network Access, the Exchange believes that the proposed change would not place any burden on intramarket competition that is not necessary or appropriate, as currently no Users utilize the service, and so no Users would be affected. The change would permit the Exchange to streamline the offerings available to Users in the data center and, by removing references to related pricing from the Fee Schedule, make the Fee Schedule easier to read, understand and administer. In addition, removing services that Users do not utilize from the co-location offerings would contribute to a more efficient process for managing the various services offered to Users, which would improve the utilization of the data center resources, both with respect to personnel and infrastructure, including hardware and software.

Users would continue to have the choice of purchasing an LCN 1 Gb, LCN 10 Gb LX, LCN 40 Gb or IP network connection or any of the other connectivity options available. Use of any co-location service is completely voluntary, and each market participant is able to determine whether to use co-location services based on the requirements of its business operations.

#### Intermarket Competition

The Exchange does not believe that the proposed fee would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange operates in a highly competitive market in which exchanges and other vendors (*i.e.*, Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such 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, also, recognized that current regulation of the market

<sup>32</sup> 15 U.S.C. 78f(b)(8).

system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>33</sup>

As noted above, the Exchange recognizes that removing the LCN 10 Gb connection from its Fee Schedule would eliminate a connectivity option previously available to Users. Indeed, the proposed change may negatively impact the Exchange’s revenues, since Current Users may opt to re-tailor their systems to reduce the number of connections, move to 10 Gb IP network connections, re-tailor become Hosted Customers, or cross-connect to another User. Such choices, any of which would reduce revenue, may be more attractive to Users as a consequence of the change.

Nonetheless, the Exchange believes that the change is necessary and appropriate because, as a consequence of the manufacturer’s declaration of the First Switch’s EOL, if the Exchange did not eliminate the LCN 10 Gb connections, the Exchange’s ability to provide support or supplies to Users that have such connections would be compromised. Not being able to resolve connectivity issues related to First Switches or even replace them would make the Exchange’s compliance with Regulation SCI suboptimal. When the inevitable hardware or software issues involving the First Switch arose, the Exchange would not have the manufacturer resources available to solve connectivity issues or replace switches. Users’ connections to the Exchange could be compromised or wholly cut off. At the same time, if a User requested a new or replacement LCN 10 Gb connection, the Exchange would not be able to obtain one. It would be contrary to the protection of investors and the public interest if the Exchange were to continue to offer a connectivity option that it could not support, or if Users were compromised or wholly unable to use their connectivity to connect to the Exchange.

For the reasons described above, the Exchange believes that the proposed rule change reflects 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.

<sup>33</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>34</sup> and Rule 19b-4(f)(6) thereunder.<sup>35</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>36</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>37</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSECHX-2019-23 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange

<sup>34</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>35</sup> 17 CFR 240.19b-4(f)(6).

<sup>36</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>37</sup> 15 U.S.C. 78s(b)(2)(B).

Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSECHX-2019-23. 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-NYSECHX-2019-23 and should be submitted on or before January 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

### **Proposed Collection; Comment Request**

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

#### *Extension:*

Rule 12h-1(f), SEC File No. 270-570, OMB Control No. 3235-0632.

<sup>38</sup> 17 CFR 200.30-3(a)(12).