

requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

The Exchange proposes to adopt new NYSE Rule 5.2(j)(8) to establish generic listing standards pursuant to Rule 19b-4(e) under the Act<sup>21</sup> that would permit the Exchange to list and trade Exchange-Traded Fund Shares in a manner consistent with Rule 6c-11 under the 1940 Act. The Exchange represents that proposed NYSE Rule 5.2(j)(8) is based on recently adopted NYSE Arca Rule 5.2-E(j)(8).<sup>22</sup> The Commission believes that NYSE's proposed Rule 5.2(j)(8) is substantively identical to proposals that the Commission has previously approved relating to the listing and trading of Exchange-Traded Fund Shares that are permitted to operate in reliance on Rule 6c-11 under the 1940 Act.<sup>23</sup> Accordingly, for the reasons discussed in the Prior Rule 6c-11 Generic Listing Orders, the Commission finds that this proposed rule change is consistent with Section 6(b)(5) of the Act<sup>24</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>25</sup>

<sup>21</sup> Rule 19b-4(e)(1) under the Act states that "[t]he listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of this section, if the Commission has approved, pursuant to section 19(b) of the Act (15 U.S.C. 78s(b)), the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the self-regulatory organization has a surveillance program for the product class." 17 CFR 240.19b-4(e)(1). "New derivative securities product" is defined as "any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument." 17 CFR 240.19b-4(e).

<sup>22</sup> See *supra* note 9 and accompanying text.

<sup>23</sup> See Securities Exchange Act Release Nos. 88625 (April 13, 2020), 85 FR 21479 (April 17, 2020) (SR-NYSEArca-2019-81); 88566 (April 6, 2020), 85 FR 20312 (April 10, 2020) (SR-CboeBZX-2019-097); and 88561 (April 3, 2020), 85 FR 19984 (April 9, 2020) (SR-NASDAQ-2019-090). These releases are referred to collectively as the "Prior Rule 6c-11 Generic Listing Orders."

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> When relying on Rule 19b-4(e) under the Act to list and trade a new derivative securities product, the Commission notes that NYSE must submit Form 19b-4(e) (17 CFR 249.820) to the Commission within five business days after commencement of trading the new derivative securities product. See 17 CFR 240.19b-4(e)(2)(ii). See also 17 CFR 240.19b-4(e)(2)(i) (setting forth NYSE's recordkeeping requirements relating to all relevant records and information pertaining to each new

In addition, as stated above, the Exchange represents that proposed NYSE Rule 7.18(d)(2) governing trading halts for NYSE-listed ETPs (which would include Exchange-Traded Fund Shares), is based on NYSE Arca Rule 7.18-E(d)(2). The Commission believes that NYSE's proposed Rule 7.18(d)(2) is substantively identical to NYSE Arca Rule 7.18-E(d)(2) and concludes that this proposed rule does not present any novel or unique regulatory issues. The Commission therefore finds that this proposed rule change relating to trading halts is consistent with Section 6(b)(5) of the Act<sup>26</sup> and the rules and regulations thereunder applicable to a national securities exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, including the Exchange's representations relating to its surveillance procedures. Specifically, the Exchange represents, among other things, that its surveillance procedures are adequate to properly monitor the trading of the Exchange-Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules, and that the Exchange will implement and maintain written surveillance procedures to monitor trading in Exchange-Traded Fund Shares on the NYSE.<sup>27</sup>

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>28</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>29</sup> that the proposed rule change (SR-NYSE-2020-86) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

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

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derivative securities product traded pursuant to Rule 19b-4(e).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> See *supra* note 17 and accompanying text. See also *supra* note 21 (citing to Rule 19b-4(e)(1) under the Act requiring the self-regulatory organization to have a surveillance program for the product class of a new derivative securities product).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>29</sup> 15 U.S.C. 78f(b)(2).

<sup>30</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91037; File No. SR-NYSE-2021-01]

### Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing of Proposed Rule Change To Amend its Schedule of Fees and Rebates Related to Co-Location Services

February 1, 2021.

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 January 19, 2021, NYSE National, Inc. ("NYSE National" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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 its Schedule of Fees and Rebates ("Fee Schedule") related to co-location services to add two Partial Cabinet Solution bundles. 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 its Fee Schedule related to co-location<sup>4</sup> services to add two Partial Cabinet Solution ("PCS") bundles that would be offered to Users.<sup>5</sup>

Proposed Addition of Option E and Option F PCS Bundles

The Fee Schedule currently lists four PCS bundles, Options A through D. As originally formulated, each PCS bundle option included a partial cabinet powered to a maximum of 2 kilowatts ("kW"); access to the liquidity center network ("LCN") and internet protocol ("IP") networks, the local area networks available in the data center; two fiber cross connections; and connectivity to one of two time feeds.<sup>6</sup> The PCS bundles are designed to attract smaller Users, including those with minimal

power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet are too burdensome.<sup>7</sup> Users are only eligible to purchase PCS bundles if they meet specified requirements, set forth in General Note 2 of the Fee Schedule.<sup>8</sup>

In May 2020, the Exchange amended PCS bundle Options C and D to each include two 10 Gb connections to the NMS Network, an alternate dedicated network connection that Users could use to access the NMS feeds for which the Securities Industry Automation Corporation ("SIAC") is engaged as the securities information processor ("SIP").<sup>9</sup> These two 10 Gb NMS Network connections were added to the Option C and D bundles at no additional cost.

In response to customer interest, the Exchange now proposes to add two new PCS bundles to the Fee Schedule. Proposed Options E and F would be substantially similar to Options C and D, respectively, with the difference that

each connection included in the proposed bundles would be upgraded to 40 Gb from 10 Gb: That is, proposed Options E and F would include a 1 kw (Option E) or 2 kw (Option F) partial cabinet, one 40 Gb LCN connection, one 40 Gb IP network connection, two 40 Gb NMS Network connections, and either the Network Time Protocol Feed or the Precision Timing Protocol. Users selecting an Option E or F bundle would be charged the same initial charge of \$10,000 that currently applies to Options C and D. In addition, Users would be charged monthly recurring charges ("MRC") of \$18,000 for an Option E bundle and \$19,000 for an Option F bundle. The Exchange proposes that Users that purchase Option E or F bundles on or before December 31, 2021 would receive a 50% reduction in the MRC for the first 12 months.

The amended portion of the Fee Schedule would read as follows (proposed additions *italicized*):

Type of service	Description	Amount of charge
Partial Cabinet Solution bundles Note: A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 2 under "General Notes."	<p><i>Option E: 1 kW partial cabinet, 1 LCN connection (40 Gb), 1 IP network connection (40 Gb), 2 NMS Network connections (40 Gb each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.</i></p> <p><i>Option F: 2 kW partial cabinet, 1 LCN connection (40 Gb), 1 IP network connection (40 Gb), 2 NMS Network connections (40 Gb each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.</i></p>	<p><i>\$10,000 initial charge per bundle plus monthly charge per bundle as follows:</i></p> <ul style="list-style-type: none"> <li><i>For Users that order on or before December 31, 2021: \$9,000 monthly for first 12 months of service, and \$18,000 monthly thereafter.</i></li> <li><i>For Users that order after December 31, 2021: \$18,000 monthly.</i></li> </ul> <p><i>\$10,000 initial charge per bundle plus monthly charge per bundle as follows:</i></p> <ul style="list-style-type: none"> <li><i>For Users that order on or before December 31, 2021: \$9,500 monthly for first 12 months of service, and \$19,000 monthly thereafter</i></li> <li><i>For Users that order after December 31, 2021: \$19,000 monthly</i></li> </ul>

The Exchange proposes that General Note 2 of the Fee Schedule—which currently applies to PCS bundle Options A through D—would also apply to proposed Option E and F bundles, without alteration. Specifically, a User and its Affiliates would be limited to one PCS bundle at a time, and a User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a PCS bundle.

The Exchange is not proposing any changes to PCS bundle Options A through D.

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally.

Users that require other sizes or combinations of cabinets, network

connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, is completely voluntary and the Fee Schedule is applied uniformly to all Users.

Competitive Environment

A User may host another entity in its space within the data center. Such Users

<sup>4</sup> The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2018. See Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR-NYSENAT-2018-07) ("NYSE National Co-location Notice").

<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 *id.*, *supra* note 4, at 26314 n.9. 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 New York Stock Exchange LLC ("NYSE"), NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. (together, the "Affiliate SROs"). See *id.* at 26314 n.11. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2021-05, SR-NYSEAMER-2021-04, SR-NYSEArca-2021-07, and SR-NYSECHX-2021-01.

<sup>6</sup> See *id.* at 26315.

<sup>7</sup> See *id.*

<sup>8</sup> See *id.* The definitions of "Affiliate" and "Aggregate Cabinet Footprint" were added to the Fee Schedule at the same time.

<sup>9</sup> 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").

are called “Hosting Users,” and their customers are “Hosted Customers.”<sup>10</sup>

Based on conversations with Users and potential customers, the Exchange believes that Hosting Users offer bundles (“Hosting User Bundles”) that include cabinet space and space on shared LCN, IP, and NMS network connections, and that the Hosting User Bundles provide their end users with a service similar to that of the PCS bundles.<sup>11</sup>

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 broader forms that are most important to investors and listed companies.”<sup>12</sup>

The proposed changes are 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>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>14</sup> 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,<sup>15</sup> 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.

The Exchange believes that it is reasonable to expand its PCS bundle options by offering the proposed Option E and F bundles. Currently, the Exchange offers Users the ability to purchase connectivity to the LCN/NMS and IP/NMS networks in 10 Gb and 40 Gb bandwidths, but within the Exchange’s existing PCS bundle options, 40 Gb connections are not available. This means that at present, Users interested in the PCS bundled services—either because they have minimal power and cabinet space demands or because the costs attendant with having a dedicated cabinet are too burdensome—cannot access 40 Gb connections and are limited to the 10 Gb connections offered as part of the Option C and D bundles. Users and potential customers have requested that the Exchange provide them the opportunity to purchase PCS bundles that include 40 Gb connections, which would enable them to connect to more of the Included Data Products and Third Party Data Feeds or have the same size connection in co-location that they have everywhere. The Exchange believes that it is reasonable to offer the proposed Option E and F bundles to satisfy this customer demand, while continuing to offer the existing bundle offerings, in order to provide potential Users of the PCS bundled services an additional 40 Gb option for their network connection requirements.

Additionally, the Exchange believes that the proposed change may make PCS bundles more competitive with the services that Hosting Users offer. Without this proposed rule change, potential Users choosing between a PCS bundle and a Hosting User Bundle would have fewer options.

The Exchange believes that the proposed charges for the Option E and F bundles are reasonable. The Exchange proposes that Users choosing the Option E or F bundles would pay the same \$10,000 initial charge that Users currently pay when choosing the Option C or D bundles, which reflects the fact that setting up each of these four cabinet options involves a similar amount of work for the Exchange. It is also reasonable for the Exchange to set MRC charges of \$18,000 for an Option E bundle (a \$4,000 increase over Option C) and \$19,000 for an Option F bundle (a \$4,000 increase over Option D) which reflects the fact that the Exchange will have to supply multiple 40 Gb connections in the Option E and F bundles, as opposed to the 10 Gb connections included in the Option C and D bundles.

The Exchange believes that it is reasonable to provide a period of eligibility for a 50% MRC reduction as an incentive to Users to utilize the Option E and F bundles. Similar 50% MRC reductions were proposed and approved for Options A through D when those product offerings were added to the Fee Schedule.

### The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. The Exchange would continue to offer the four existing PCS bundles (Options A through D) with different cabinet footprints and network connection options, in addition to the proposed Option E and F bundles. Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, would be completely voluntary.

The Exchange believes that the proposed charges for Option E and F bundles are not unfairly discriminatory. The proposed initial charges and MRCs for Options E and F would apply equally to all Users that purchase an Option E or F bundle, and the proposed 50% reduction of MRC for the first 12

<sup>10</sup> A Hosting User is required to be a User, but because only Users can be Hosting Users, a Hosted Customer is not able to provide hosting services to any other entities in the space in which it is hosted. The Exchange allows Users to act as Hosting Users for a monthly fee. See NYSE National Co-location Notice, *supra* note 4, at 26318.

<sup>11</sup> Because Hosting Users’ services are not regulated, they may offer differentiated pricing and are not required to make their pricing public or disclose it to the Exchange. The Exchange therefore does not have direct visibility into the specific range of options, or cost thereof, offered by Hosting Users, and relies on third parties for information.

<sup>12</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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

months would apply to any User that orders an Option E or F bundle on or before December 31, 2021.

#### The Proposed Change Is an Equitable Allocation of Fees and Credits

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

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. Specifically, the proposed initial charges and MRCs for Options E and F would apply equally to all Users that purchase an Option E or F bundle, and the proposed 50% reduction of MRC for the first 12 months would apply to any User that orders an Option E or F bundle on or before December 31, 2021. The Exchange would continue to offer the four existing PCS bundles (Options A through D) with different cabinet footprints and network connection options, in addition to the proposed Option E and F bundles. Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, would be completely voluntary.

Without this proposed rule change, potential Users choosing between a PCS bundle and a Hosting User Bundle would have fewer options. Potential Users could benefit from having an additional 40 Gb option for their network connection requirements, which would allow them to connect to more of the Included Data Products and Third Party Data Feeds or have the same size connection in co-location that they have elsewhere.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or

appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.<sup>16</sup> Intramarket Competition

The Exchange believes that the proposed changes would not place any burden on intramarket competition that is not necessary or appropriate.

The Exchange's offering of the proposed Option E and F bundles would provide potential Users of PCS bundles a wider range of choices, which would be especially beneficial for potential Users with minimal power and cabinet space demands, but which could nevertheless benefit from an additional 40 Gb option for their network connection requirements. The Exchange believes that the proposed change may make PCS bundles more attractive to potential Users who might otherwise opt to become Hosted Customers, and thus would enhance the competitive environment for potential Users, who would then have more options from which to select. At the same time, however, no potential User would be obligated to purchase a PCS bundle, and it would still have the options offered by Hosting Users.

#### Intermarket Competition

The Exchange believes that the proposed changes will not impose any burden on intermarket competition that is not necessary or appropriate. The proposed change is not meant to affect competition among national securities exchanges. Rather, the Exchange believes that the proposed change is a reasonable attempt to maintain a more level playing field between the Exchange and the Hosting Users, who compete for Hosted Customer business. Because Hosting Users' services are not regulated, they may offer differentiated pricing and are not required to make their pricing public. The Exchange believes that the proposed change may make PCS bundles more attractive to potential users who might otherwise opt to become Hosted Customers.

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. If a particular exchange charges excessive fees for co-location services, affected market participants

will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, an exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining price, 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, recognizing 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."<sup>17</sup>

For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

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

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

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

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

(A) By order approve or disapprove the proposed rule change, or

<sup>16</sup> 15 U.S.C. 78f(b)(8).

<sup>17</sup> See Regulation NMS Adopting Release, *supra* note 12, at 37499.

(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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSENAT-2021-01 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to: Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSENAT-2021-01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSENAT-2021-01 and should be submitted on or before February 26, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91032; File No. SR-EMERALD-2021-02]

### Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Port Fees and Increase Certain Network Connectivity Fees

February 1, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 22, 2021, MIAX Emerald, LLC ("MIAX Emerald" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the "Fee Schedule").

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/emerald>, at MIAX's principal office, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

the most significant aspects of such statements.

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

##### 1. Purpose

The Exchange proposes to amend the Fee Schedule to: (1) Adopt Port fees; and (2) increase the Exchange's network connectivity fees for its 10 gigabit ("Gb") ultra-low latency ("ULL") fiber connection for Members<sup>3</sup> and non-Members (collectively, the "Proposed Access Fees"). On September 15, 2020, the Exchange issued a Regulatory Circular which announced, among other things, that the Exchange would adopt Port fees, thereby terminating the Waiver Period<sup>4</sup> for such fees, and increase the fees for its 10Gb ULL connection for Members and non-Members, beginning October 1, 2020.<sup>5</sup>

The Exchange initially filed this proposal on October 1, 2020.<sup>6</sup> The First Proposed Rule Change was published for comment in the **Federal Register** on October 20, 2020.<sup>7</sup> The Exchange notes that the First Proposed Rule Change did not receive any comment letters. Nonetheless, the Exchange withdrew the First Proposed Rule Change on November 25, 2020<sup>8</sup> and resubmitted a replacement proposal.<sup>9</sup> The Second Proposed Rule Change was published for comment in the **Federal Register** on December 14, 2020.<sup>10</sup> The Exchange notes that the Second Proposed Rule

<sup>3</sup> The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

<sup>4</sup> "Waiver Period" means, for each applicable fee, the period of time from the initial effective date of the MIAX Emerald Fee Schedule until such time that the Exchange has an effective fee filing establishing the applicable fee. The Exchange will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. See the Definitions Section of the Fee Schedule.

<sup>5</sup> See MIAX Emerald Regulatory Circular 2020-41 available at [https://www.miaxoptions.com/sites/default/files/circular-files/MIAX\\_Emerald\\_RC\\_2020\\_41.pdf](https://www.miaxoptions.com/sites/default/files/circular-files/MIAX_Emerald_RC_2020_41.pdf).

<sup>6</sup> See Securities Exchange Act Release No. 90184 (October 14, 2020), 85 FR 66636 (October 20, 2020) (SR-EMERALD-2020-12) (the "First Proposed Rule Change").

<sup>7</sup> See *id.*

<sup>8</sup> See Comment Letter from Joseph Ferraro, SVP, Deputy General Counsel, the Exchange, dated November 20, 2020, notifying the Commission that the Exchange would withdraw the First Proposed Rule Change.

<sup>9</sup> See Securities Exchange Act Release No. 90600 (December 8, 2020), 85 FR 80831 (December 14, 2020) (SR-EMERALD-2020-17) (the "Second Proposed Rule Change").

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

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.