Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2021–030 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CboeBZX–2021–030. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2021–030, and should be submitted on or before May 13, 2021.

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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2021–08313 Filed 4–21–21; 8:45 am]

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[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

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

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

April 16, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 9, 2021, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the schedule of wireless, circuits, and non-colocation connectivity services available at the Mahwah data center (the ''Fee Schedule'') to add services available to customers in the meet me rooms in the Mahwah data center and procedures for the allocation of cabinets and power to such customers. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

1. Purpose

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

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

Background

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

[4] *See* Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044 (October 21, 2020) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEArca–2020–08, SR–NYSECHX–2020–02, SR–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'').

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

[6] The Exchange is an indirect subsidiary of ICE and is an affiliate of New York Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc., and NYSE National, Inc. (together, the ''Affiliate SROs''). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2021–25, SR–NYSEAMER–2021–21, SR–NYSECHX–2021–07, and SR–NYSENAT–2021–09.

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

are also available to customers that are not colocation Users (''NCL Customers'' and, together with Users, ''Mahwah Customers'').

Mahwah Customers require circuits connecting into and out of the Mahwah Data Center in order to connect their equipment outside of the Mahwah Data Center to their equipment or port within the Mahwah Data Center. IDS and numerous third-party telecommunications service providers offer these connections to the Mahwah Customers in the form of wired circuits [8] into and out of the Mahwah Data Center.

A third-party telecommunications service provider that provides wired circuits into and out of the Mahwah Data Center (a ''Telecom'') [9] completes a circuit by placing equipment in a MMR and installing carrier circuits between its MMR equipment and one or more points outside the Mahwah Data Center.[10] Mahwah Customers that have contracted with the Telecom to use the circuit connect to the Telecom's MMR equipment using a cross connect. Once connected to the Telecom's equipment, the Mahwah Customers can use the Telecom's circuit to transport data into and out of the Mahwah Data Center.

In addition, a Telecom may sell access to its circuits to a second Telecom, which allows the second Telecom to use the first Telecom's circuit to access the Mahwah Data Center. In this way, the second Telecom gains access to the Mahwah Data Center, where it installs its equipment in an MMR, without incurring the cost of installing its own proprietary circuits to the Mahwah Data Center. IDS does not consent to, and need not be informed of, a Telecom's sale of a circuit to another Telecom.

By making it possible for Telecoms to offer their customers circuits into and out of the Mahwah Data Center, the MMR services that are the subject of the present filing allow Telecoms to compete with IDS. If the MMR services were not available, IDS circuits would be the only option for all Mahwah Customers and third-party telecommunications service providers.

MMR Services

The Exchange proposes to add change the title of the Fee Schedule to ''Wireless and Meet-Me-Room Connectivity Fees and Charges'' and add the following MMR services and fees to the end of the Fee Schedule, under the heading ''C. Meet-Me-Room ('MMR') Services.'' [11]

Cabinet-Related Services

The Exchange proposes to add the following services and fees relating to the cabinets that IDS provides to Telecoms for them to set up their servers in the MMRs (collectively, the ''Cabinet-Related Services''). The Cabinet-Related Services are substantially similar to co-location services and related fees that the Exchange and the Affiliate SROs offer to Users, which are set forth in their price lists and fee schedules (the ''Affiliate SRO Price Lists'').[12]

Initial Fee per MMR Cabinet and MMR Monthly Fee for Cabinets: IDS offers Telecoms dedicated cabinets in the MMRs to house their equipment. The cabinets come in sizes based on the number of kilowatts (''kW'') allocated, subject to a maximum of 8 kW per cabinet. Telecoms pay an initial fee for each cabinet and a monthly fee based on the number of kW allocated to all the Telecom's cabinets.[13] To indicate how the fee is calculated, the Exchange proposes to add a note stating that the monthly fee is based on total kWs allocated to all of a Telecom's cabinets.

The Exchange proposes to add the following fees and language to the Fee Schedule for the Cabinet-Related Services:

Initial Fee per MMR Cabinet:	
Dedicated Cabinet of up to 8 kW	$5,000
MMR Monthly Fee for Cabinets:	
Monthly fee is based on total kWs allocated to all of a Telecom's cabinets.	
Number of kWs	*Monthly fee per kW*
4–8	$1,200
9–20	1,050
21–40	950
41+	900

Access and Service Fees

The Exchange proposes to add the following services and fees relating to the access and services IDS provides to Telecoms (collectively, the ''Access and Service Fees'') to the Fee Schedule. Most of the Access and Service Fees are substantially similar to services and related fees that the Exchange and the Affiliate SROs offer to Users, which are set forth in the Affiliate SRO Price Lists.[14]

Data Center Fiber Cross Connect: IDS offers fiber cross connects for an initial and monthly charge. Cross connects may run between a Telecom's cabinets, between its cabinet and the cabinet of another Telecom, or between its cabinet and its customer's cabinet or port.[15] Cross connects may be bundled (*i.e.,* multiple cross connects within a single sheath) such that a single sheath can hold either one cross connect or six cross connects.

Conduit Sleeve Fee: A Telecom's circuits into and out of the Mahwah Data Center run through IDS conduits. There are currently three IDS conduit paths leading into the Mahwah Data Center. A Telecom determines which conduit or conduits it will use to carry its circuits, which are carried in individual conduit sleeves. The Telecom is charged an initial charge for the installation of circuits in the IDS conduit, which covers up to five hours of work, and a monthly fee per conduit sleeve for using the IDS conduit.[16]

Carrier Connection Fee: Telecoms contract with their customers for

(''Commission'') in 2010. *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca-2010–100).

[8] A Mahwah Customer may use a third party wireless connection, including a proprietary wireless connection, to the Mahwah Data Center. In such a case, the portion of the connection closest to the Mahwah Data Center is wired.

[9] Telecoms are licensed by the Federal Communications Commission (''FCC'') and are not required to be, or be affiliated with, a member of the Exchange or of an Affiliate SRO.

[10] Neither IDS nor the Exchange knows the termination point of a Telecom's circuit or the content of any data sent on a circuit. A Telecom elects which MMR it will use, or if it will use both.

[11] The Exchange recently filed proposed rule changes regarding the IDS circuits and services offered to NCL Customers. *See* Securities Exchange Act Release No. 91216 (February 26, 2021), 86 FR 12735 (March 4, 2021) (SR–NYSEArca–2021–13). If such filing is approved by the Commission, the Exchange expects to file an amendment to the present filing to conform to the relevant changes.

[12] *See* ''Co-Location Fees'' in ''New York Stock Exchange Price List 2021'' at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf*; ''NYSE American Equities Price List'' at *https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf*; ''NYSE American Options Fee Schedule'' at *https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf*; ''NYSE Arca Equities Fees and Charges'' at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf*; ''NYSE Arca Options Fees and Charges'' at *https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf*; ''Fee Schedule of NYSE Chicago, Inc.'' at *https://www.nyse.com/publicdocs/nyse/NYSE_Chicago_Fee_Schedule.pdf*; and ''NYSE National, Inc. Schedule of Fees and Rebates'' at *https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf*.

[13] For example, a Telecom that had two cabinets with a total power allocation of 12 kW would have a monthly charge of $1,200 per kW for the first eight kW and $1,050 per kW for the next four kW (between 9 kW and 12 kw), for a total of $13,800, irrespective of how it divided the 12 kW between its cabinets.

[14] *See* note 12, *supra.*

[15] A cross connect to MMR cabinets may be purchased by the Telecom or the Telecom's customer. The same fee applies irrespective of which entity purchases the cross connect.

[16] The number of conduit sleeves a Telecom uses is dependent on the equipment and technology it uses and the size of the circuits it sells to Mahwah Customers. Most Telecoms that use them have one conduit sleeve.

circuits into and out of the Mahwah Data Center. A Telecom is charged a monthly fee for providing such circuits to Mahwah Customers, on a per connection basis.

Connection to Time Protocol Feed: IDS offers Telecoms the option to purchase connectivity to the Precision Time Protocol, with monthly and initial charges. Telecoms may make use of time feeds to receive time and to synchronize clocks between computer systems or throughout a computer network, and time feeds may assist Telecoms in other functions, including record keeping or measuring response times.

Expedite Fee: IDS offers Telecoms the option to expedite the completion of MMR services purchased or ordered by the Telecoms, for which the Exchange charges an ''Expedite Fee.''

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

Type of service	Description	Amount of charge
Data Center Fiber Cross Connect.	Furnish and install 1 cross connect Furnish and install bundle of 6 cross connects	$500 initial charge plus $600 monthly charge. $500 initial charge plus $1,800 monthly charge.
Conduit Sleeve Fee	Install (5 hrs) and maintain conduit sleeve supporting Telecom circuit into data center.	$1,000 initial charge plus $2,000 monthly charge per conduit sleeve.
Carrier Connection Fee	Maintain Telecom's connections to its non-Telecom data center customers.	$1,150 monthly charge per connection.
Connection to Time Protocol Feed.	Precision Time Protocol	$1,000 initial charge plus $250 monthly charge.
Expedite Fee	Expedited installation/completion of MMR service	$4,000 per request.

Service-Related Fees

The Exchange proposes to add the following services and fees relating to services IDS provides to Telecoms (collectively, the ''Service-Related Fees'') to the Fee Schedule. The Service-Related Fees are substantially similar to services and related fees that the Exchange and the Affiliate SROs offer to Users, which are set forth in the Affiliate SRO Price Lists.[17]

Change Fee: IDS charges a Telecom a ''Change Fee'' if the Telecom requests a change to one or more existing MMR services that IDS has already established or completed for the Telecom. The Change Fee is charged per order. If a Telecom orders two or more services at one time (for example, through submitting an order form requesting multiple services) the Telecom is charged a one-time Change Fee, which would cover the multiple services.

Hot Hands Service: IDS offers Telecoms a ''Hot Hands Service,'' which allows Telecoms to use on-site data center personnel to maintain Telecom equipment, support network troubleshooting, rack and stack a server in a Telecom's cabinet, power recycling, and install and document the fitting of cable in a Telecom's cabinet(s). The Hot Hands fee is charged per half hour.

Shipping and Receiving: IDS offers shipping and receiving services to Telecoms, with a per shipment fee for the receipt of one shipment of goods at the Mahwah Data Center from the Telecom or supplier.

Visitor Security Escort: Telecom representatives are required to be accompanied by a visitor security escort during visits to the Mahwah Data Center. A fee per visit is charged.

To reflect the above IDS services and fees, the Exchange proposes to add the following to the Fee Schedule:

Type of service	Description	Amount of charge
Change Fee	Change to a service that has already been installed/completed for a Telecom	$950 per request.
Hot Hands Service	Allows Telecom to use on-site data center personnel to maintain Telecom equipment, support network troubleshooting, rack and stack, power recycling, and install and document cable.	$100 per half hour.
Shipping and Receiving	Receipt of one shipment of goods at data center on behalf of Telecom (includes coordination of shipping and receiving).	$100 per shipment.
Visitor Security Escort	All Telecom representatives are required to be accompanied by a visitor security escort during visits to the data center.	$75 per visit.

Allocation of Cabinets and Power

The Exchange proposes to establish procedures for the allocation of cabinets and power to Telecoms. The Exchange believes it would be prudent to have procedures in place for the allocation of cabinets and power to Telecoms (''Proposed Procedures''), should such allocation be necessary. The Exchange proposes to add the Proposed Procedures to the Fee Schedule under the heading ''MMR Notes.''

As noted above, IDS offers dedicated cabinets in the MMRs to Telecoms to house their equipment. A Telecom pays an initial fee for each cabinet and a monthly fee based on the number of kW allocated to the Telecom's cabinets. The Exchange allocates cabinets on a first-come/first-serve basis.

A Telecom may request power upgrades to a dedicated cabinet in addition to the power allocated to such cabinet (the ''Standard Cabinet Power''), subject to a maximum of 8 kW per cabinet. A Telecom may request that such additional power (''Additional Power'') be allocated to a cabinet when it is first set up or later.[18] A Telecom with a dedicated cabinet, for example, may develop its infrastructure in a manner that allows it to expand the hardware within that cabinet by adding Additional Power. Because it could add Additional Power to its existing cabinet, the Telecom would not need an additional cabinet.

The Proposed Procedures would be set forth in Notes 1 and 2. Note 1 would provide that, if the amount of power or cabinets available fell below specified thresholds, Telecoms would be subject to purchasing limits. Note 1 would also specify when the purchasing limits would cease to apply and would

[17] *See* note 12, *supra.*

[18] For example, a Telecom with a 4 kW cabinet may purchase an additional 1 kW of Additional Power. It would then have a cabinet with 5 kW of power. It could not, however, purchase more than 4 kW of Additional Power, as that would take the cabinet to above 8 kW. The smallest Standard Cabinet Power is 4 kW.

provide that if a Telecom requests a number of cabinets and/or amount of Additional Power that would cause the unallocated capacity to be below the specified power and cabinet thresholds, the purchasing limits would apply only to the portion of the Telecoms's order below the relevant threshold.[19]

Note 2 would provide that, if the amount of power or cabinets available fell to zero, Telecoms seeking to purchase power or cabinets would be put on a waitlist. In both Notes 1 and 2, the Proposed Procedures would also state how the procedures regarding cabinets and the procedures regarding power would relate to each other. In each case, the Proposed Procedures would state what the threshold amount of power and cabinets would be to discontinue the limits.

Proposed MMR Note 1

The Exchange proposes to add the following under the heading ''Note 1: Cabinet and Power Purchasing Limits'':

If (i) unallocated cabinet inventory is at or below 3 cabinets (''Cabinet Threshold''), or (ii) the unallocated power capacity in the MMRs is at or below 8 kW (the ''Power Threshold''), the following limits on the purchase of new cabinets (''Purchasing Limits'') will apply:

a. Cabinet Limits. If only the Cabinet Threshold is reached, the following measures (the ''Cabinet Limits'') will apply:

- The Exchange will limit each Telecom's purchase of new cabinets to a maximum of one dedicated cabinet.
- If a Telecom requests, in writing, a number of cabinets that, if provided, would cause the available cabinet inventory to be below 3 cabinets, the Cabinet Limits will only apply to the portion of the Telecom's order below the Cabinet Threshold.
- A Telecom will have to wait 30 days from the date of its signed order form before purchasing a new cabinet again.
- When unallocated cabinet inventory for the MMRs is more than 3 cabinets, the Exchange will discontinue the Cabinet Limits.

b. Combined Limits. If only the Power Threshold is reached or both the Cabinet Threshold and the Power Threshold are reached, the following measures (the ''Combined Limits'') will apply:

- A Telecom may purchase either or both of the following, so long as the combined power usage of such purchases is no more than a maximum of 4 kW:

a. One new cabinet, subject to a maximum standard power allocation of 4 kW (''Standard Cabinets'').

b. Additional power for new or existing cabinets.

- If a Telecom requests, in writing, a number of Standard Cabinets and/or an amount of additional power that, if provided, would cause the unallocated power capacity to be below the Power Threshold or Cabinet Threshold, the Combined Limits would apply only to the portion of the Telecom's order below the relevant threshold.
- A Telecom will have to wait 30 days from the date of its signed order form before purchasing a new Standard Cabinet or additional power again.
- When unallocated power capacity is above the Power Threshold, the Exchange will discontinue the Combined Limits. If at that time the unallocated cabinet inventory is 3 or fewer cabinets, the Cabinet Limits would enter into effect.

c. Applicability. If the Cabinet Threshold is reached before the Power Threshold, the Cabinet Limits will be in effect until the Power Threshold is reached, after which the Combined Limits will apply.

Proposed MMR Note 2

The Exchange proposes to add the following under the heading ''Note 2: Cabinet and Combined Waitlists'':

a. Cabinet Waitlist. The Exchange will create a cabinet waitlist (''Cabinet Waitlist'') if the available cabinet inventory is zero, or a Telecom requests, in writing, a number of cabinets that, if provided, would cause the available inventory to be zero. The Exchange will place Telecoms seeking cabinets on a Cabinet Waitlist, as follows:

- A Telecom will be placed on the Cabinet Waitlist based on the date its signed order is received. A Telecom may only have one order for a new cabinet on the Cabinet Waitlist at a time, and the order is subject to the Cabinet Limits. If a Telecom changes the size of its order while it is on the Cabinet Waitlist, it will maintain its place on the Cabinet Waitlist, provided that the Telecom may not increase the size of its order such that it would exceed the Cabinet Limits.
- As cabinets become available, the Exchange will offer a cabinet to the Telecom at the top of the Cabinet Waitlist. If the Telecom's order is completed, it will be removed from the Cabinet Waitlist.
- A Telecom will be removed from the Cabinet Waitlist (a) at the Telecom's request or (b) if the Telecom turns down an offer of a cabinet of the same size it requested in its order. If the Exchange offers the Telecom a cabinet of a different size than the Telecom requested in its order, the Telecom may turn down the offer and remain at the top of the Cabinet Waitlist until its order is completed.
- A Telecom that is removed from the Cabinet Waitlist but subsequently submits a new written order for a cabinet will be added back to the bottom of the Cabinet Waitlist.
- When unallocated cabinet inventory is more than 3 cabinets, the Exchange will cease use of the Cabinet Waitlist.

b. Combined Waitlist. The Exchange will create a power and cabinet waitlist (''Combined Waitlist'') if the unallocated power capacity is zero, or if a Telecom requests, in writing, an amount of power (whether power allocated to a Standard Cabinet or additional power) that, if provided, would cause the unallocated power capacity to be below zero. The Exchange will place Telecoms seeking cabinets or power on the Combined Waitlist, as follows:

- If a Cabinet Waitlist exists when the requirements to create a Combined Waitlist are met, the Cabinet Waitlist will automatically convert to the Combined Waitlist. If a Combined Waitlist exists when the requirements to create a Cabinet Waitlist are met, no new waitlist will be created, and the Combined Waitlist will continue in effect.
- A Telecom will be placed on the Combined Waitlist based on the date its signed order for a cabinet and/or additional power is received. A Telecom may only have one order for a new cabinet and/or additional power on the Combined Waitlist at a time, and the order would be subject to the Combined Limits. If a Telecom changes the size of its order while it is on the Combined Waitlist, it will maintain its place on the Combined Waitlist, provided that the Telecom may not increase the size of its order such that it would exceed the Combined Limits.
- As additional power and/or cabinets become available, the Exchange will offer them to the Telecom at the top of the Combined Waitlist. If the Telecom's order is completed, the order

[19] For example, if there was 10 kW unallocated power capacity in the MMR and a Telecom requested to purchase cabinets and Additional Power that would, together, total 9 kW, the purchasing limits in MMR Note 1 would not apply to the Telecom's purchase of the first 2 kW, whether those kW were in the form of cabinets or Additional Power. Once the power threshold was reached, the combined limits would be activated, limiting the Telecom's purchase of additional cabinets and Additional Power. In all, the Telecom would be permitted to purchase a total of 6 kW out of its original order of 9 kW. The Telecom could choose whether the 6 kW was in the form of cabinets, Additional Power, or both.

will be removed from the Combined Waitlist. If the Telecom's order is not completed, it will remain at the top of the Combined Waitlist.

- A Telecom will be removed from the Combined Waitlist (a) at the Telecom's request; or (b) if the Telecom turns down an offer that is the same as its order (*e.g.,* the offer includes a cabinet of the same size and/or the amount of additional power that the Telecom requested in its order). If the Exchange offers the Telecom an offer that is different than its order, the Telecom may turn down the offer and remain at the top of the Combined Waitlist until its order is completed.
- A Telecom that is removed from the Combined Waitlist but subsequently submits a new written order for a cabinet and/or additional power will be added back to the bottom of the waitlist.
- If the Combined Waitlist is in effect, when unallocated power capacity in co-location is at 8 kW or more, the Exchange will cease use of the Combined Waitlist. If at that time the unallocated cabinet inventory is 3 or fewer cabinets, the Cabinet Waitlist would enter into effect.

Application and Impact of the Proposed Changes

The existing Telecoms are currently subject to the described services and fees. Accordingly, the Exchange expects that if it is approved, the impact of the proposed change would be minimal.

The proposed change applies to all market participants and does not apply differently to distinct types or sizes of licensed telecommunications service providers. Rather, it applies to all equally.

Use of the services proposed in this filing is completely voluntary and available to all market participants on a non-discriminatory basis.

Competitive Environment

By making it possible for Telecoms to offer their customers circuits into and out of the Mahwah Data Center, the MMR services that are the subject of the present filing allow Telecoms to compete with IDS. Due to the MMR services, the market for circuits into and out of the Mahwah Data Center is competitive, with market participants able to choose between various Telecom and IDS options. Each market participant considering whether to purchase a circuit can choose which circuit to purchase based on which combination of provider, latency, bandwidth, price, and route diversity best meets its business needs.

The Exchange understands that most of the Telecoms that provide circuits do so at fees lower than those of IDS, and that most Mahwah Customers use Telecom circuits into and out of the Mahwah Data Center. If the MMR services were not available, all Mahwah Customers and third-party telecommunications service providers would be required to use IDS circuits if they wanted access to the Mahwah Data Center, thereby reducing competition.[20]

The Exchange does not expect that IDS would attract any new customers as a result of the proposed change.

IDS operates in a highly competitive market in which exchanges, third party telecommunications providers, Hosting Users,[21] 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 highlighted the importance of market forces in determining prices and SRO revenues and recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies." [22]

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,[23] in general, and furthers the objectives of Section 6(b)(5) of the Act,[24] 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,[25] 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 the proposed rule change is reasonable because, by making it possible for Telecoms to continue to offer their customers circuits into and out of the Mahwah Data Center, the MMR services that are the subject of the present filing would allow Telecoms to continue to compete with IDS.

The benefit is not just to the Telecoms themselves. The Exchange understands that most Mahwah Customers use Telecom circuits into and out of the Mahwah Data Center. If the MMR services were not available, all Mahwah Customers and third-party telecommunications service providers would be required to use IDS circuits to access the Mahwah Data Center, thereby reducing competition for connectivity into the Mahwah Data Center. So long as the MMR services are available, such market participants have more choices with respect to the provider, latency, bandwidth, price, and route diversity of the circuits they use, allowing market participants to select the circuits that better suit their needs, thereby helping them tailor their circuits to the requirements of their businesses.

Use of any MMR service is completely voluntary. Each third-party telecommunications provider is able to determine whether to use MMR services based on the requirements of its business operations, and each Mahwah Customer is able to determine whether to use Telecom or IDS services based on the requirements of their business operations.

[20] The Exchange recently filed proposed rule changes regarding the IDS circuits and services offered to NCL Customers. *See* note 11, *supra.*

[21] "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).

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

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

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78f(b)(4).

The Exchange believes that the proposed rule change is reasonable because only the market participants that voluntarily select to receive the MMR services described herein are charged for them, and those services are available to all telecommunications service providers licensed by the FCC. Furthermore, the IDS services described in this filing are available to all such market participants on an equal basis. All Telecoms that voluntarily select a specific MMR service are charged the same amount for that service as all other Telecoms purchasing that service. A Telecom could change what services it receives at any time.

The Exchange believes the proposed fees are reasonable because, to the extent the services IDS offers to Telecoms are substantially the same as the services offered by the Exchange to Users, the fees are the same. With respect to the two services not offered to Users, the Conduit Sleeve Fee and Carrier Connection Fee, the Exchange believes the fees IDS charges Telecoms are reasonable because the services correspond to the Telecoms' usage of the IDS conduits and the Telecoms' ability to offer their circuits to their customers. The Exchange believes the proposed fees are reasonable because to offer the MMRs, IDS must provide, maintain and operate the Mahwah Data Center technology infrastructure, including the installation, monitoring, support, and maintenance of the MMR services. Also in connection with providing the MMR services, IDS needs to expand the network infrastructure to keep pace with the services available to Telecoms, including any increasing demand for bandwidth and conduit space, and to establish any additional administrative controls. Finally, IDS has to handle the installation, administration, monitoring, support and maintenance of the MMR services, including by responding to any production issues.

The Exchange believes that IDS's fees for different MMR services are reasonable because not all Telecoms need, or choose, to utilize the same services. The variety of services offered by IDS, particularly with respect to cabinets and power, allows Telecoms to select which services to use, based on their business needs, and Telecoms are only charged for the services that they select. By charging only those Telecoms that utilize a service, those Telecoms that directly benefit from a service support it.

The Exchange believes the proposed MMR Notes 1 and 2 are reasonable because it would be reasonable for it to put in place the Proposed Procedures to establish the allocation of power and cabinets on an equitable basis.

The Exchange believes that it is reasonable that, if a shortage in power or in both power and cabinets should arise, the Proposed Procedures would address the allocation of both power and cabinets, as the Exchange would not be able to provide cabinets if no power were available. If Telecoms purchased sufficient Additional Power to trigger the Combined Waitlist, the Exchange would be unable to provide Telecoms with cabinets, even if it did not have a shortage in cabinets, because cabinets come with power. For the same reason, if Telecoms purchased sufficient Additional Power to trigger the Combined Limits, it would be reasonable to have limits that apply to both power and cabinets.

The Exchange believes that integrating the procedures for the allocation of cabinets and power would be reasonable, because cabinets are provided with power. Having both power and cabinets covered by the Proposed Procedures would ensure that the procedures for all relevant services are consistent and coordinated. Having the Proposed Procedures state what would occur if the Cabinet Threshold and Power Threshold are reached at different times, and how the Cabinet Waitlist and Combined Waitlist interrelate, is reasonable for the same reason.

The Exchange believes that having a two-tier structure of establishing, first, a purchasing limitation on order size, and second, a waitlist, would be a reasonable method to respond to increasing demand for power and cabinets in the future. The Exchange notes that the Proposed Procedures are consistent with both the Nasdaq procedures for allocating cabinets and the Exchange procedures for allocating cabinets and power in colocation.[26]

The Exchange believes that the proposed thresholds are reasonable. Based on experience, the Exchange believes that the Cabinet Threshold and Power Threshold are both reasonable and appropriate because they are sufficiently low that they would not be triggered repeatedly, yet offer a reasonable buffer during which the purchase limits would apply before a waitlist would become effective.

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

Further, the Exchange believes that, by establishing a waitlist on the basis of the date it receives signed orders, limiting the size and number of orders a Telecom may have on the waitlist at any one time, stating what happens if a Telecom changes its order while on the waitlist, and removing a Telecom from the waitlist if it turns down an offer that is the same as what it requested, the Proposed Procedures are reasonably designed to prevent Telecoms from utilizing the waitlist as a method to obtain a greater portion of the power and cabinets available, and facilitating a more equitable distribution. Similarly, the Exchange believes that by requiring a 30-day delay before a Telecom subject to the Cabinet Limits or Combined Limits could purchase a cabinet or Additional Power again, the Proposed Procedures are reasonably designed to prevent a Telecom from obtaining a greater portion of the power and cabinets available.

The Exchange believes that the proposed change is reasonable because the Exchange would only place limits on Telecoms' ability to purchase cabinets or Additional Power if either or both the Power Threshold and Cabinet Threshold are reached. Similarly, the Exchange believes that the proposed change is reasonable because a waitlist would only be created if unallocated cabinet inventory or power capacity fell to zero, or if a Telecom requests, in writing, a number of cabinets or amount of power that, if provided, would cause the available inventory of cabinets and/or unallocated power capacity to be below zero, and because there would be an established threshold for cessation of the waitlists.

The Proposed Change Is Equitable

The Exchange believes that IDS's fees for MMR services are equitably allocated among market participants.

By making it possible for Telecoms to continue to offer their customer circuits into and out of the Mahwah Data Center, the MMR services that are the subject of the present filing would allow Telecoms to continue to compete with IDS.

[26] *See* Securities Exchange Act Release Nos. 62397 (June 28, 2010), 75 FR 38860 (July 6, 2010) (SR–NASDAQ–2010–019) and 91515 (February 18, 2021), 86 FR 11350 (February 24, 2021) (SR–NYSE–2021–12; SR–NYSEAmer–2021–08; SR–NYSEArca–2021–11; SR–NYSECHX–2021–02; and SR–NYSENAT–2021–03).

The benefit is not just to the Telecoms themselves. The Exchange understands that most Mahwah Customers use Telecom circuits into and out of the Mahwah Data Center. If the MMR services were not available, all Mahwah Customers and third-party telecommunications service providers would be required to use IDS circuits, thereby reducing competition for connectivity into the Mahwah Data Center. So long as the MMR services are available, such market participants have more choices with respect to the provider, latency, bandwidth, price, and route diversity of the circuits they use, allowing market participants to select the circuits that better suit their needs, thereby helping them tailor their circuits to the requirements of their businesses.

The Exchange believes that the proposed change is equitable because it would apply to all market participants and would not apply differently to distinct types or sizes of licensed telecommunications service providers. It would apply to all equally.

The Exchange believes that the proposed rule change is equitable because only the market participants that voluntarily select to receive the MMR services described herein are charged for them, and those services are available to all telecommunications service providers licensed by the FCC. Furthermore, the IDS services described in this filing are available to all such market participants on an equal basis (*i.e.,* the same products and services are available to all telecommunications service providers licensed by the FCC). All Telecoms that voluntarily select a specific MMR service are charged the same amount for that service as all other Telecoms purchasing that service. A Telecom could change what services it receives at any time.

The Exchange believes the proposed MMR Notes 1 and 2 are equitable because the Proposed Procedures would establish a rational, objective procedure that would be applied uniformly by the Exchange to all Telecoms that requested new cabinets or Additional Power.

The Exchange believes that the proposed thresholds are equitable. Based on experience, the Exchange believes that the Cabinet Threshold and Power Threshold are both reasonable and appropriate because they are sufficiently low that they would not be triggered repeatedly, yet offer a reasonable buffer during which the purchase limits would apply before a waitlist would become effective.

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

Further, the Exchange believes that the Proposed Procedures facilitate an equitable distribution of cabinets and power, as they are reasonably designed to prevent Telecoms from utilizing the waitlist as a method to obtain a greater portion of the power and cabinets available, and because they would require a 30-day delay before a Telecom subject to the Cabinet Limits or Combined Limits could purchase a cabinet or Additional Power again. The Exchange would only place limits on Telecoms' ability to purchase cabinets or Additional Power if either or both the Power Threshold and Cabinet Threshold are reached. A waitlist would only be created if unallocated cabinet inventory or power capacity fell to zero, or if a Telecom requests, in writing, a number of cabinets or amount of power that, if provided, would cause the available inventory of cabinets and/or unallocated power capacity to be below zero.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change would apply to all market participants and would not apply differently to distinct types or sizes of licensed telecommunications service providers. It would apply to all equally.

The Exchange believes that the proposed rule change is not unfairly discriminatory because only the market participants that voluntarily select to receive the MMR services described herein are charged for them, and those services are available to all telecommunications service providers licensed by the FCC. Furthermore, the IDS services described in this filing are available to all such market participants on an equal basis (*i.e.,* the same products and services are available to all telecommunications service providers licensed by the FCC). All Telecoms that voluntarily select a specific MMR service are charged the same amount for that service as all other Telecoms purchasing that service. A Telecom could change what services it receives at any time.

Due to the MMR services, the market for circuits into and out of the Mahwah Data Center is competitive, with market participants able to choose between various Telecom and IDS options. Each of the Telecoms offers circuits to market participants in competition with the IDS offerings. Each market participant considering whether to purchase a circuit can weigh whether to purchase an IDS or Telecom circuit, and can choose which circuit to purchase based on which combination of provider, latency, bandwidth, price, and route diversity best meets its business needs.

If the MMR services were not available, all Mahwah Customers and third-party telecommunications service providers would be required to use IDS circuits, thereby reducing competition for connectivity into the Mahwah Data Center. So long as the MMR services are available, such market participants have more choices with respect to the provider, latency, bandwidth, price, and route diversity of the circuits they use, allowing market participants to select the circuits that better suit their needs, thereby helping them tailor their circuits to the requirements of their businesses.

The Exchange believes that the proposed rule change is not unfairly discriminatory because, if the Proposed Procedures were in place, all Telecoms would be able to identify the permitted cabinet and power options and the procedures that would apply to them in the event that unallocated cabinet or power supply runs low in the future. The Proposed Procedures would assist the Exchange in accommodating demand for MMR services, and power and cabinets in particular, on an equitable basis.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable 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 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.[27] The Exchange has nevertheless proposed this rule change in order to preserve the ability of IDS to offer the services described herein.

If IDS were compelled to stop offering such services, Telecoms would not be able to provide circuits into and out of the Mahwah Data Center, and all Mahwah Customers and third-party telecommunications service providers would be required to use IDS circuits, thereby reducing competition for connectivity into the Mahwah Data Center, which would be a detriment to competition overall. Indeed, the Exchange understands that most Mahwah Customers use Telecom circuits into and out of the Mahwah Data Center. That option would be removed if IDS were compelled to stop offering MMR services.

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

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

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

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

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

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

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

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

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

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

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

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2021–24 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–2021–24. 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–2021–24, and should be submitted on or before May 13, 2021.

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

J. Lynn Taylor,

Assistant Secretary.

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[27] *See* note 5, *supra.*

[28] 17 CFR 200.30–3(a)(12).