

RML Orders, which cause the dissemination of the Retail Liquidity Identifier, over those that do not. Additionally, the Exchange believes that providing execution priority to designated RML Orders is not unfairly discriminatory since any User can designate their RML Orders to be identified as such for purposes of the Retail Liquidity Identifier, and the Exchange believes that Users would only choose not to designate RML Orders to be identified as such when another purpose, such as the potential for information leakage, outweighs the importance of execution priority for such orders.

In sum, the Exchange submits that the proposed RML Program is a simple, transparent approach designed to provide an opportunity for retail customers' orders to receive meaningful price improvement in a manner generally consistent with the approved retail programs of other exchanges. Thus, the Exchange believes that the proposed RML Program is consistent with the Act in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed RML Program would enhance competition and execution quality for retail investors and would enhance competition for Users and their clients seeking to interact with retail liquidity.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition since competing venues have and can continue to adopt similar retail programs, subject to the SEC rule change process. The Exchange operates in a highly competitive market in which market participants can easily direct their orders to competing venues, including off-exchange venues.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As described above, a Retail Midpoint Order may only be

submitted by firms approved to send Retail Orders on the Exchange (*i.e.*, RMOs), which is comparable to an IEX Retail Order offered under the IEX Retail Program and retail programs on other exchanges where specific rules have been approved allowing only certain participants to send Retail Orders.⁵⁴ All Users would be eligible to enter an RML Order, and all Users would be eligible to execute against an incoming Retail Midpoint Order in price priority in accordance with the Exchange's existing rules. Moreover, the proposed rule change would provide potential benefits to all Users to the extent it is successful in attracting additional midpoint liquidity.

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

The Exchange neither solicited nor received comments on 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 within 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 Exchange consents, the Commission will: (a) By order approve or disapprove such 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-MEMX-2021-10 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-MEMX-2021-10. 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-MEMX-2021-10 and should be submitted on or before September 29, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁵

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-19294 Filed 9-7-21; 8:45 am]

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SURFACE TRANSPORTATION BOARD

[Docket No. FD 36542]

NCSR, LLC d/b/a New Castle Southern Railroad—Lease and Operation Exemption With Interchange Commitment—Norfolk Southern Railway Company

NCSR, LLC d/b/a New Castle Southern Railroad (NCSR), a noncarrier, has filed a verified notice of exemption pursuant to 49 CFR 1150.31 to lease from Norfolk Southern Railway Company (NSR) and operate approximately 21 miles of rail line

⁵⁴ See *supra* note 47.

⁵⁵ 17 CFR 200.30-3(a)(12).

extending from milepost CB 5.40 at Beesons, Ind., to milepost CB 25.30 at New Castle, Ind., and from milepost R 0.09 to milepost R 1.16 at New Castle (the Line).

According to the verified notice, NCSR and NSR have recently reached a lease agreement pursuant to which NCSR will provide common carrier rail service on the Line. According to NCSR, the agreement between NCSR and NSR contains an interchange commitment that affects the interchange point at Beesons.¹ The verified notice states that NSR and Big Four Terminal Railroad, LLC, are the carriers that could physically interchange with NCSR at Beesons. As required under 49 CFR 1150.33(h), NCSR provided additional information regarding the interchange commitment.

NCSR has certified that its projected annual revenues will not exceed \$5 million and will not result in NCSR's becoming a Class I or Class II rail carrier.

Pursuant to 49 CFR 1150.32(b), the effective date of an exemption is 30 days after the verified notice of exemption is filed, which here would be September 22, 2021. However, concurrently with its verified notice, NCSR filed a petition to partially waive the 30-day effectiveness period to allow the exemption to become effective on September 13, 2021. The Board will address NCSR's petition for partial waiver and establish the effective date of the exemption in a separate decision.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. A deadline for petitions for stay will also be established in the Board's decision on the petition for partial waiver.

All pleadings, referring to Docket No. FD 36542, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, one copy of each pleading must be served on NCSR's representative: Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to NCSR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

¹ A copy of the agreement with the interchange commitment was submitted under seal. See 49 CFR 1150.33(h)(1).

Board decisions and notices are available at www.stb.gov.

Decided: September 1, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Brendetta Jones,
Clearance Clerk.

[FR Doc. 2021-19309 Filed 9-7-21; 8:45 am]

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SURFACE TRANSPORTATION BOARD

[Docket No. EP 767]

First-Mile/Last-Mile Service

The Board seeks comments on issues regarding first-mile/last-mile (FMLM) service, particularly on whether additional metrics to measure such service might have utility that exceeds any associated burden. FMLM service refers to the movement of railcars between a local railroad serving yard and a shipper or receiver facility. So-called "local trains" serve customers in the vicinity of the local yard, spotting (*i.e.*, placing for loading or unloading) inbound cars and pulling (*i.e.*, picking up) outbound cars from each customer facility. A larger local yard may run numerous local trains serving many customers dispersed along separate branches; a smaller yard may run only a handful of local trains. Yard crews build outbound local trains by assembling blocks (groups of cars) for each customer on the route. Inbound local trains return to the yard with cars released from shipper facilities and, in turn, are sorted into outbound blocks for line-haul movements. After hearing concerns raised by shippers across numerous industries and requests for transparency of FMLM data, the Board seeks information on possible FMLM service issues, the design of potential metrics to measure such service, and the associated burdens or trade-offs with any suggestions raised by commenters.

Background

In addition to weekly and monthly collection of certain railroad performance data metrics from Class I railroads,¹ the Board actively monitors, on an informal basis, the national rail network, including network fluidity and service issues, through, for example, the Railroad-Shipper Transportation Advisory Council (RSTAC), the Rail Customer and Public Assistance Program, and information requests to Class I railroads. See, e.g., Surface Transportation Board, *Budget Request*

¹ See 49 CFR 1250.2.

Fiscal Year 2022, 14-15.² Since Spring 2020, the Board has focused its informal monitoring on the effects of and response to the pandemic, engaging in frequent communication³ with carriers, shippers, and other stakeholders. See *id.* Recently, the Board's Chairman inquired to each Class I carrier about rail service issues⁴ and supply chain issues⁵ (including local service issues). The Board appreciates the carriers' responses to its informal requests and now seeks more formal input from shippers, carriers, and the public focused specifically on FMLM service. As the Board has heard from various stakeholders, in recent months, crew shortages and other issues stemming from the COVID-19 pandemic and worldwide supply chain complications have heightened and added to the importance of the Board exploring FMLM service.

The Board has received a number of letters about FMLM service issues. For example, the Rail Customer Coalition (RCC) wrote to the Board this year to request, among other things, that the Board "adopt new reporting metrics to provide a more complete and useful picture of rail service, including [FMLM] performance." RCC Letter 2.⁶ Following the Chairman's May 27, 2021 letters regarding rail service to the Class I carriers, the American Chemistry Council (ACC) wrote to the Board regarding general service concerns, briefly noting local service failures, see

² Available at <https://prod.stb.gov/about-stb/agency-materials/budget-requests/> then follow hyperlink "FY 2022 Budget Request Final."

³ This communication during the initial phase of the pandemic included "daily and weekly communications with key railroad and shipper stakeholders to actively monitor the reliability of the freight rail network with a special focus on critical supply chains." Surface Transportation Board, *Budget Request Fiscal Year 2022*, 14. For example, the Board and RSTAC convened weekly (and later biweekly) conference calls. *Id.* The Board also participated in calls hosted by the Federal Railroad Administration, held with representatives from each Class I railroad, the short line and regional railroads, and the National Passenger Railroad Corporation (Amtrak). *Id.*

⁴ See, e.g., Letter from Martin J. Oberman, Chairman, to Canadian Pacific (May 27, 2021), <https://prod.stb.gov/news-communications/non-docketed-public-correspondence/> (follow hyperlink "Chairman Oberman Rail Service Letter to CP, May 27, 2021" under headings "2021" and "May").

⁵ See, e.g., Letter from Martin J. Oberman, Chairman, to BNSF Railway Company (July 22, 2021), <https://prod.stb.gov/news-communications/non-docketed-public-correspondence/> (follow hyperlink "Chairman Oberman Letter to BNSF Regarding Intermodal Supply Chain Issues, July 22, 2021" under headings "2021" and "July").

⁶ Available at <https://prod.stb.gov/news-communications/non-docketed-public-correspondence/> then follow hyperlink "RCC Letter to STB regarding regulation and rail service, February 11, 2021" under headings "2021" and "February."