

*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-C2-2024-008. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-C2-2024-008, and should be submitted on or before July 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100347; File No. SR-NYSECHX-2024-21]

### Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

June 14, 2024.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on June 3, 2024, the NYSE Chicago, Inc. (“NYSE Chicago” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Connectivity Fee Schedule (“Fee Schedule”) regarding colocation services and fees to provide Users with wireless connectivity to an additional market data feed. 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.

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

##### 1. Purpose

The Exchange proposes to amend the Fee Schedule regarding colocation services and fees to provide Users<sup>4</sup> with wireless connectivity to an additional market data feed.

The Exchange currently provides Users with wireless connections to nine market data feeds or combinations of feeds from third-party markets (the “Existing Third Party Data”), and wired connections to more than 45 market data feeds or combinations of feeds.<sup>5</sup>

The Exchange proposes to add to the Fee Schedule wireless connections (“Connectivity”) to the Nasdaq CXC and Nasdaq CX2 market data feeds.<sup>6</sup> As there would be limited bandwidth available on the wireless network from the TR2 data center in Toronto, Canada, where the two feeds are generated, the Exchange would not transport information for all the symbols included in the Nasdaq CXC and Nasdaq CX2 market data feeds. Rather, FIDS would provide connectivity to a selection of symbols from the two market data feeds, which would include those symbols for which there is demand (the “Proposed Third Party Data”).<sup>7</sup>

<sup>4</sup> For purposes of the Exchange's colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 at n.6 (November 1, 2019) (SR-NYSECHX-2019-12). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, 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-2024-33, SR-NYSEAMER-2024-38, SR-NYSEARCA-2024-49, and SR-NYSEENAT-2024-18.

<sup>5</sup> See Securities Exchange Act Release No. 99809 (March 20, 2024), 89 FR 21158 (March 26, 2024) (SR-NYSECHX-2024-11).

<sup>6</sup> According to the Nasdaq Canada website, “CXC is a lit book providing clients with a reliable platform for trading Canadian equities, offering the benefits of anonymous or attributed trading and price/broker/time priority” and “[t]he CX2 trading book is designed to provide additional cost savings and trading efficiencies. Through a unique pricing model and broker preferencing functionality, this lit book helps to improve investment performance and to drive positive market structure change.” <https://www.nasdaq.com/solutions/nasdaq-canada>

<sup>7</sup> When a User requested a wireless connection to Nasdaq CXC or Nasdaq CX2 market data feeds, it would receive connectivity to the Proposed Market Data. The User would then determine the symbols for which it would receive data. The Exchange would not have visibility into which portions of the

Continued

<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.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

As with most other Existing Third Party Data,<sup>8</sup> the monthly charge for the Connectivity to Proposed Third Party Data would be subject to a 30-day testing period, during which the monthly charge per connection would be waived. Consistent with that fact, the Exchange proposes to amend the Fee Schedule to clarify that this provision is applicable to wireless connections to the Proposed Third Party Data.

The Exchange expects that the proposed Connectivity to Proposed Third Party Data would become operative by the end of 2024. The Exchange will announce the date or dates that Connectivity to Proposed Third Party Data will be available through a customer notice.

Users would be offered Connectivity to the Proposed Third Party Data through connections into the colocation center in the Mahwah, New Jersey data

center (“MDC”).<sup>9</sup> To receive either market data feed in the Proposed Third Party Data, the User would enter into an agreement with a third party for permission to receive the data, if required. The User would pay this third party any fees for the data content.

In order to implement the proposed change, the Exchange proposes to add the following item to the Connectivity Fee Schedule under “A. Co-Location Fees”:

| Type of Service                                | Description  | Amount of charge   |
|--|--|--|
| Wireless Connection for Third Party Data ..... | Wireless connection of Nasdaq CXC and Nasdaq CX2 data. | \$5,000 per connection initial charge plus monthly charge per connection of \$5,000 Fees are subject to a 30-day testing period, during which the monthly charge per connection is waived. |

If a User were to purchase more than one wireless connection to Proposed Third Party Data, it would pay more than one non-recurring initial charge. Unless the User already had a port for Toronto Stock Exchange data, a proposed wireless connection would include the use of one port for Connectivity to Proposed Third Party Data, and a User would not pay a separate fee for the use of such port.<sup>10</sup>

If a User already had a port for Toronto Stock Exchange data, it would not need an additional port for the Proposed Third Party Data. Rather, the User would be able to connect to the Proposed Third Party Data using the same port that it already had.

The proposed Connectivity would not utilize the pole on the grounds of the MDC.

**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. As is currently the case, the purchase of any colocation service is completely voluntary and the Fee Schedule is applied uniformly to all Users.

The Exchange believes that it would not obtain new Users due to the proposed change.

**Competitive Environment**

The Exchange operates in a highly competitive market in which other

vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation 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>11</sup>

A third party has created a wireless connection between the Markham, Canada data center and the MDC. The Exchange believes it intends to expand its offering to connect to the TR2. If so, Users could use the third-party wireless connection to transport the Proposed Market Data. Third-party vendors are not at any competitive disadvantage created by the Exchange.

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

would be provided by FIDS pursuant to an agreement with a non-ICE entity. FIDS does not own the wireless network that would be used to provide the services.

<sup>10</sup> Toronto Stock Exchange data and CME Group Data each require their own port. The remaining Existing Third Party Data requires one port. Accordingly, a User would not be able to connect

**2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>13</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>14</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. In considering the reasonableness of proposed services and fees, the Commission’s market-based test

to the Proposed Third Party Data using the same port that it uses for connectivity to CME Group Data.

<sup>11</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

Proposed Market Data a given customer chooses to receive.

<sup>8</sup> See 84 FR 58778, *supra* note 4, at 58784–85.

<sup>9</sup> Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed services

considers “whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees.”<sup>15</sup> If the Exchange meets that burden, “the Commission will find that its proposal is consistent with the Act unless ‘there is a substantial countervailing basis to find that the terms’ of the proposal violate the Act or the rules thereunder.”<sup>16</sup> Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because the Exchange has not placed third party vendors at a competitive disadvantage created by the Exchange.

The Exchange’s proposed Connectivity to Proposed Third Party Data would compete with other methods by which both the Exchange and various third parties already provide, or could provide, Users with connectivity to the Proposed Third Party Data.

Under the proposed rule, for the first time, a User also would be able to connect to the Proposed Market Data wirelessly, increasing the options available to it. Without this proposed rule change, Users would not have wireless access to the Proposed Third Party Data.

Moreover, a third party created a wireless connection between the Markham, Canada data center and the MDC. The Exchange believes it intends to expand its offering to connect to the TR2. If so, Users could use the third-party wireless connection to transport the Proposed Market Data.

Accordingly, the wireless connections would compete with the Exchange’s proposed Connectivity and would exert significant competitive forces on the Exchange in setting the terms of its proposal, including the level of the Exchange’s proposed fees.<sup>17</sup> If the Exchange were to set its proposed fees

too high, Users could respond by instead selecting the telecoms’ substantially similar wireless connectivity.

In addition, the Exchange believes that at least three third-party market participants offer fiber connections to Nasdaq CXC and Nasdaq CX2 market data, including the Proposed Third Party Data, in colocation.<sup>18</sup> FIDS offers connectivity to the Proposed Third Party Data as part of its connectivity to Nasdaq Canada data feeds.<sup>19</sup>

The Exchange Would Not Preclude Other Connections to Proposed Market Data in TR2

The Exchange is not aware of any other public, commercially available wireless connections to the Proposed Third Party Data in colocation.

Additional third party competitors could offer fiber or wireless connectivity to the Proposed Third Party Data in colocation by obtaining the market data and sending it over a fiber or wireless network to the MDC. A User also may create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize the existing or potential fiber connections offered by third parties; or utilize the existing fiber connections offered by FIDS. The Exchange could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other competitive disadvantage with respect to the Exchange. Indeed, as noted above, the Exchange believes that in the future a third party may offer a wireless connection to TR2, which may compete with Connectivity, as customers could use the third-party wireless connection to transport the Proposed Third Party Data.

Wireless connections and fiber connections to the Proposed Third Party Data in the MDC would compete with each other. Given the various advantages and disadvantages of both wireless and fiber connections, a User interested in purchasing a connection to the Proposed Third Party Data is likely to consider a variety of factors in deciding whether to use a wireless versus fiber connection, including latency; the amount of network uptime; the equipment the network uses; the cost of the connection; and the applicable contractual provisions.

Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

Third Party Competitors Would Not Be at a Competitive Disadvantage Created by the Exchange

The Exchange does not believe that FIDS would have any competitive advantage over any future providers of connectivity to the Proposed Third Party Data in the MDC. The Exchange’s proposed service for Connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. FIDS would collect the Proposed Third Party Data, then send it over a wireless connection from the TR2 data center to the MDC via a pole, connecting to equipment in a MDC meet-me-room. The pole is owned by a third party and is not on the grounds of the MDC, and the path into the MDC through a meet-me-room is available to any telecommunications provider. Further, all distances in the MDC are normalized.

Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC’s meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party telecommunications service providers that have installed their equipment in the MDC’s two meet-me-rooms (“Telecoms”).<sup>20</sup> Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange’s best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level<sup>21</sup> so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These

<sup>15</sup> See Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR-NYSE-2020-05, SR-NYSEAMER-2020-05, SR-NYSEARCA-2020-08, SR-NYSECHX-2020-02, SR-NYSEAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEARCA-2020-15, SR-NYSECHX-2020-05, SR-NYSEAT-2020-08) (“Wireless Approval Order”), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (“2008 ArcaBook Approval Order”). See *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

<sup>16</sup> See Wireless Approval Order, *supra* note 15, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 15, at 74781.

<sup>17</sup> See 2008 ArcaBook Approval Order, *supra* note 15, at 74789 and n.295 (recognizing that products need not be identical to be substitutable).

<sup>18</sup> Because the providers of such connectivity are not regulated entities, they are not obligated to make the availability of connections, latency figures or fees publicly available or the same for all entities.

<sup>19</sup> See Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR-NYSECHX-2019-12).

<sup>20</sup> Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

<sup>21</sup> See Securities Exchange Act Release No. 98001 (July 26, 2023), 88 FR 50202 [sic] (August 1, 2023) (SR-NYSECHX-2023-14) (“MMR Notice”).

competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.<sup>22</sup> Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because a substantially similar substitute is available, and the Exchange has not placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the Exchange's Connectivity to Proposed Third Party Data are reasonable.<sup>23</sup> If the Exchange were to set its prices for Connectivity to Proposed Third Party Data at a level that Users found to be too high, Users could easily choose to connect to Proposed Third Party Data in colocation at the MDC through the competing wireless connections, as detailed above.

<sup>22</sup> See *id.* at 50199. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

<sup>23</sup> See Wireless Approval Order, *supra* note 15.

#### Additional Considerations

The Exchange believes that it is reasonable to add text to the Fee Schedule indicating that the monthly charge for Connectivity to the Proposed Third Party Data is subject to a 30-day testing period, during which the monthly charge per connection would be waived. The change would clarify that the terms on which the Connectivity to Proposed Third Party Data is offered are the same as those of most connections to Existing Third Party Data.

The Exchange believes that, unless a User connects to Toronto Stock Exchange data, it is reasonable that each proposed service would include the use of a wireless connection port, and a User would not pay a separate fee for the use of such port. If a User already had a port for Toronto Stock Exchange data, it would not need an additional port for the Proposed Third Party Data, because the User would be able to connect to the Proposed Third Party Data using the same port that it already had.

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

The Exchange believes that its proposal equitably allocates its fees among Users.

Without this proposed rule change, Users would have fewer options for connectivity to Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data over fiber connections.

Additional third party competitors could offer fiber or wireless connectivity to the Proposed Third Party Data in colocation by obtaining the market data and sending it over a fiber or wireless network to the MDC. A User also may create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize the existing or potential fiber connections offered by third parties; or utilize the existing fiber connections offered by FIDS. The Exchange could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other

competitive disadvantage with respect to the Exchange. Indeed, as noted above, the Exchange believes that in the future a third party may offer a wireless connection to TR2, which may compete with Connectivity, as customers could use the third-party wireless connection to transport the Proposed Third Party Data.

The Exchange believes that the proposed change is equitable because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be charged the same amount for the same services.

#### The Proposed Change Is Not Unfairly Discriminatory

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

The Exchange believes that it is not unfairly discriminatory to make wireless Connectivity to the Proposed Third Party Data available to Users. The proposed rule change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data over third party fiber connections.

Given the limitation on bandwidth, the Exchange believes that it is not unfairly discriminatory not to transport information for all the symbols included in the Nasdaq CXC and Nasdaq CX2 market data feeds, but rather that the Proposed Market Data include a subset of that data.

The Exchange believes that the proposed change is not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees

proposed herein are not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed Connectivity to Proposed Third Party Data would be charged the same amount for the same services.

#### *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>24</sup>

The proposed change would not affect competition among national securities exchanges or among members of the Exchange, but rather between FIDS and its commercial competitors.

The proposed wireless Connectivity would provide Users with an alternative means of connectivity to Proposed Third Party Data. For the first time, a User would be able to connect wirelessly to the Proposed Third Party Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive Proposed Third Party Data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations.

Users that do not opt to utilize the Exchange's proposed wireless Connectivity would still be able to connect to Proposed Third Party Data wirelessly using third party fiber connections. Additional third party competitors could offer fiber or wireless connectivity to the Proposed Third Party Data in colocation by obtaining the market data and sending it over a fiber or wireless network to the MDC. A User also may create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize the existing or potential fiber connections offered by third parties; or utilize the existing fiber connections offered by FIDS. The Exchange could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other competitive disadvantage with respect to the Exchange. Indeed, as noted above, the Exchange believes that in the future a third party may offer a wireless connection to TR2, which may compete

with Connectivity, as customers could use the third-party wireless connection to transport the Proposed Third Party Data.

Adding text to the Fee Schedule indicating that the monthly charge for Connectivity to the Proposed Third Party Data is subject to a 30-day testing period, during which the monthly charge per connection would be waived, is not designed to address any competitive issues, but rather to enhance the clarity and transparency of the Fee Schedule and alleviate possible customer confusion that may arise.

The Exchange does not believe that FIDS would have any competitive advantage over any future providers of connectivity to the Proposed Third Party Data in the MDC. The Exchange's proposed service for Connectivity to Proposed Third Party Data does not have any special access to or advantage within the MDC. FIDS would collect the Proposed Third Party Data, then send it over a wireless connection from the TR2 data center to the MDC via a pole, connecting to equipment in a MDC meet-me-room. The pole is owned by a third party and is not on the grounds of the MDC, and the path into the MDC through a meet-me-room is available to any telecommunications provider. Further, all distances in the MDC are normalized.

Nor does the Exchange have a competitive advantage over any third-party competitors offering wireless connectivity to the Proposed Third Party Data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to the Proposed Third Party Data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party Telecoms.<sup>25</sup> Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level<sup>26</sup> so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the

Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.<sup>27</sup> Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to the Proposed Third Party Data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

Given the limitation on bandwidth, the Exchange believes that it will not impose any burden on competition that is not necessary or appropriate to not transport information for all the symbols included in the Nasdaq CXC and Nasdaq CX2 market data feeds, but rather that the Proposed Market Data include a subset of that data.

#### *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**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>28</sup> and Rule

<sup>24</sup> 15 U.S.C. 78f(b)(8).

<sup>25</sup> See *supra* note 20.

<sup>26</sup> See MMR Notice, *supra* note 21.

<sup>27</sup> See *id.* at 50199.

<sup>28</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

19b-4(f)(6) thereunder.<sup>29</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>30</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>31</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### *Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSECHX-2024-21 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-NYSECHX-2024-21. 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

<sup>29</sup> 17 CFR 240.19b-4(f)(6).

<sup>30</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>31</sup> 15 U.S.C. 78s(b)(2)(B).

only one method. The Commission will post all comments on the Commission's internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSECHX-2024-21 and should be submitted on or before July 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024-13549 Filed 6-20-24; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100342; File No. SR-CboeBYX-2024-021]

### Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Related to Physical Port Fees

June 14, 2024.

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 June 7, 2024, Cboe BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the 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

Cboe BYX Exchange, Inc. (the "Exchange" or "BYX Equities") proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/BYX/](http://markets.cboe.com/us/equities/regulation/rule_filings/BYX/)), at the Exchange's Office of the Secretary, 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 its fee schedule relating to physical connectivity fees.<sup>3</sup>

<sup>3</sup> The Exchange initially filed the proposed fee changes on July 3, 2023 (SR-CboeBYX-2023-010). On September 1, 2023, the Exchange withdrew that filing and submitted SR-CboeBYX-2023-013. On September 29, 2023, the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees (the "OIP") in anticipation of a possible U.S. government shutdown. On September 29, 2023, the Exchange filed the proposed fee change (SR-CboeBYX-2023-014). On October 13, 2023, the Exchange withdrew that filing and submitted SR-CboeBYX-2023-015. On December 12, 2023, Exchange filed the proposed fee change (SR-CboeBYX-2023-018). On December 12, 2023, the Exchange withdrew that filing and submitted SR-CboeBYX-2023-019. On February 9, 2024, the Exchange withdrew that filing and submitted SR-CboeBYX-2024-006. On April 9, 2024, the Exchange withdrew that filing and submitted SR-Cboe-BYX-2024-012. On June 7, 2024, the Exchange withdrew that filing and submitted this filing.

<sup>32</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.