

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97748; File No. SR-NYSEAMER-2023-32)

June 16, 2023

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Amend the Partial Cabinet Solution Bundles Offered as Part of Its Co-location Services

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 June 5, 2023, NYSE American LLC (“NYSE American” 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 Partial Cabinet Solution bundles offered as part of its co-location services. The description of the Partial Cabinet Solution bundles in the Connectivity Fee Schedule (“Fee Schedule”) would be updated accordingly. The proposed rule 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Partial Cabinet Solution (“PCS”) bundles offered to Users as part of its co-location services.⁴ The description of the PCS bundles in the Fee Schedule would be updated accordingly.

Background

The Fee Schedule currently lists two PCS bundles, Options C and D. As originally formulated, each PCS bundle option included a partial cabinet powered to a maximum of 2 kilowatts (“kW”); access to the Liquidity Center Network (“LCN”) and internet protocol (“IP”) networks, the local area networks available in the data center; two fiber cross connections; and connectivity to one of two time feeds.⁵ Users are only eligible to purchase PCS bundles if they meet specified requirements.⁶

⁴ For purposes of the Exchange’s co-location services, a “User” means any market participant that requests to receive co-location services directly from the Exchange. See Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR-NYSEMKT-2015-67). As specified in the Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange’s affiliates New York Stock Exchange LLC, NYSE Arca, Inc., 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-2023-23, SR-NYSEARCA-2023-42, SR-NYSECHX-2023-12, and SR-NYSENAT-2023-10.

⁵ See Securities Exchange Act Release No. 77071 (February 5, 2016), 81 FR 7382 (February 11, 2016) (SR-NYSEMKT-2015-89).

⁶ See id. The requirements are set forth in Note 1 under “Colocation Notes.”

In May 2020, the Exchange amended PCS bundle Options C and D to add two 10 Gb connections to the NMS Network to each bundle. The NMS Network is an alternate dedicated network connection that Users use to access the NMS feeds for which the Securities Industry Automation Corporation is engaged as the securities information processor.⁷ These two 10 Gb NMS Network connections were added to the Option C and D bundles at no additional cost.

The Exchange expects that the proposed rule change would become operative no later than September 1, 2023. The Exchange will announce the date through a customer notice.

Proposed Changes to the Current PCS Bundles

The Exchange proposes to amend current Options C and D so that Users may elect to include 40 Gb connections to the LCN, IP network and NMS network, rather than just 10 Gb connections, in their PCS bundles. There would be no change to the existing fees for the PCS bundles.

The purpose of the proposed changes to the PCS bundles is to allow a User to connect to all or a large part of the expanded Options Price Reporting Authority (“OPRA”) feed. More specifically, OPRA has announced that it is expanding data dissemination from a 48-line to a 96-line multicast data distribution network.⁸ As a result of this change, OPRA has estimated that an increase in bandwidth will be needed to consume the OPRA feed.⁹ This means that a 10 Gb network connection will not suffice for a User that wants to connect to all or a large part of the

⁷ See Securities Exchange Act Release No. 88837 (May 7, 2020), 85 FR 28671 (May 13, 2020) (SR-NYSE-2019-46, SR-NYSEAMER-2019-34, SR-NYSEArca-2019-61, SR-NYSEAT-2019-19).

⁸ See Securities Industry Automation Corporation, *Memo to OPRA Multicast Subscribers*, August 31, 2022, at https://assets.website-files.com/5ba40927ac854d8c97bc92d7/6377e5e4114b88c77be5552c_OPRA%20Migration%20to%2096%20Multicast%20Line%20Network_Q3%20Postponement.pdf. Connectivity to the OPRA feed is an Included Data Product available over the IP network and the NMS network.

⁹ See *id.*, at 2 (providing estimated bandwidth requirements).

expanded OPRA feed.¹⁰ Current and potential Users with PCS bundles have requested the inclusion of 40 Gb connections in the bundles.

The ability to connect with a larger section of the OPRA feed is not the only benefit that would occur. A User with a revised PCS bundle would be able to use it to connect to more of the Included Data Products and Third Party Data Feeds. The addition of 40 Gb connections may allow a User to have the same size connection in co-location that it has elsewhere. As the Exchange understands that 40 Gb connections are increasingly considered the industry standard for options trading, and understands that smaller customers – such as those who might qualify for a PCS – often prefer to normalize all of their equipment to one connection size, this may be a benefit to some Users.

There would be no change to the initial charge and monthly recurring charge (“MRC”) for the PCS bundles. As a result of the change a User would receive an enhanced offering, with the option of both 10 Gb and 40 Gb connections, for the same price that the Exchange currently charges for PCS bundles with 10 Gb options only. Users with a PCS bundle would not have to pay a second initial charge to change the content of their PCS bundles. As a result, a User would be able to upgrade its PCS bundle from 10 Gb to 40 Gb, in whole or, if it opts to retain some 10 Gb connections, in part.

To implement the proposed changes as well as remove or update obsolete text, the Exchange proposes to make the following amendments to the description of PCS bundles Options C and D:

¹⁰ The proposed change would be of utility even if OPRA were not expanding its data distribution network, as a User cannot connect to all of the OPRA feed with the current 10 Gb connections in the PCS bundles.

- Update the names to Options A and B. Currently no PCS bundles use those names,¹¹ and the Exchange believes that continuing to use Option C and Option D as names could be confusing as a result.
- Amend the description to state that Users may elect to include 40 Gb connections to the LCN, IP network and NMS network, rather than just 10 Gb connections, in their PCS bundles.
- Consistent with the requirements for NMS Network connections,¹² add text stating that a purchaser of a Partial Cabinet Solution must select NMS Network connections of the same size (i.e. 10 Gb or 40 Gb) as the related LCN and IP network connections.
- Currently, the Fee Schedule includes text regarding a reduced MRC for PCS bundles for 24 months, which applied so long as a User ordered its PCS bundle on or before December 31, 2020. Since that time has expired, the text has become obsolete, and the Exchange proposes to delete it.

The amended portion of the Fee Schedule would read as follows (proposed deletions in brackets, proposed additions underlined):

Type of Service	Description	Amount of Charge
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¹¹ The previous Options A and B were deleted in 2022. See Securities Exchange Act Release No. 95970 (October 4, 2022), 87 FR 61426 (November 11, 2022) (SR-NYSEAMER-2022-43).

¹² See 85 FR 28671, supra note 7, at 28674 (stating that “if a User purchases a service that includes a 10 Gb or 40 Gb IP or LCN network connection, that purchase would include an NMS Network connection of the same size”). By way of example, if a User with a PCS bundle selected one 10 Gb LX LCN connection and one 40 Gb IP network connection, it would receive one 10 Gb NMS connection and one 40 Gb NMS connection. If the User instead chose 10 Gb for both its LCN and IP network connection, it would receive two 10 Gb NMS connections.

<p>Partial Cabinet Solution bundles</p> <p>Notes:</p> <p>A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 1 under “Colocation Notes.”</p> <p><u>A purchaser of a Partial Cabinet Solution must select NMS Network connections of the same size (i.e. 10 Gb or 40 Gb) as the related LCN and IP network connections.</u></p>	<p>Option <u>A</u>[C]:</p> <p>1 kW partial cabinet, 1 LCN connection (10 Gb LX or 40 Gb), 1 IP network connection (10 Gb or 40 Gb), 2 NMS Network connections (10 Gb or 40 Gb each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol</p>	<p>\$10,000 initial charge per bundle plus [monthly charge per bundle as follows:</p> <ul style="list-style-type: none"> • For Users that order on or before December 31, 2020: \$7,000 monthly for first 24 months of service, and \$14,000 monthly thereafter • For Users that order after December 31, 2020:]\$14,000 monthly <u>charge per bundle</u>
	<p>Option <u>B</u>[D]:</p> <p>2 kW partial cabinet, 1 LCN connection (10 Gb LX or 40 Gb), 1 IP network connection (10 Gb or 40 Gb), 2 NMS Network connections (10 Gb or 40 Gb each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol</p>	<p>\$10,000 initial charge per bundle plus [monthly charge per bundle as follows:</p> <ul style="list-style-type: none"> • For Users that order on or before December 31, 2020: \$7,500 monthly for first 24 months of service, and \$15,000 monthly thereafter • For Users that order after December 31, 2020:]\$15,000 monthly <u>charge per bundle</u>

The PCS bundles would continue to include a 1 kw or 2 kw partial cabinet and either the Network Time Protocol Feed or the Precision Timing Protocol. The requirements set forth in Note 1 under “Colocation Notes” would continue to apply.

General

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

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

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ 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,¹⁵ 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.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(4).

The Proposed Change is Reasonable

The Exchange believes that it 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 to expand the connectivity options in the PCS bundles because it would allow Users to connect to all or a large part of the expanded OPRA feed. As noted above, OPRA has announced that it is expanding data dissemination from a 48-line to a 96-line multicast data distribution network.¹⁶ As a result of the change, OPRA has estimated that an increase in bandwidth will be needed to consume the OPRA feed.¹⁷ This means that a 10 Gb network connection would not suffice for a User that wanted to connect to all or a large part of the expanded OPRA feed. The proposed revised PCS bundles allow the User to connect to all or a large part of the expanded feed, however.

The Exchange also believes that it 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 to expand the connectivity options in the PCS bundles because a User with a revised PCS bundle would be able to use it to connect to more of the Included Data Products and Third Party Data Feeds. Moreover, the addition of 40 Gb connections may allow a User to have the same size connection in co-location that it has elsewhere. That said, although the Exchange proposes to expand the connectivity options within the two PCS bundles, a User that currently has a PCS bundle would not be obligated to make any changes.

The Exchange further believes that it 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

¹⁶ See supra note 8.

¹⁷ See id., at 2 (providing estimated bandwidth requirements).

public interest to expand the connectivity options in the PCS bundles because it would be responsive to requests from current and potential Users of PCS bundles, who have asked for the bundles to include 40 Gb connections.

The Exchange also believes that the proposed 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 because there would be no change to the initial charge and MRC for the PCS bundles. Accordingly, the Exchange believes that the proposed change is reasonable because the change would mean that a User would receive an enhanced offering, with the option of both 10 Gb and 40 Gb connections, for the same price that the Exchange currently charges for PCS bundles with 10 Gb options only. A User with a PCS bundle would not have to pay a second initial charge to upgrade its PCS bundle from 10 Gb to 40 Gb in whole or, if it opts to retain some 10 Gb connections, in part.

The Exchange believes that it 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 to add text stating that a purchaser of a Partial Cabinet Solution must select NMS Network connections of the same size (i.e. 10 Gb and 40 Gb) as the related LCN or IP network connection. The requirement would be consistent with the current requirements for NMS Network connections¹⁸ and so all Users would be treated equally. The Exchange believes that adding such text would alleviate any possible customer confusion as to whether the same requirements would apply to the PCS bundles. In this way, it would enhance the clarity and transparency of the Fee Schedule.

¹⁸ See 85 FR 28671, *supra* note 7, at 28674 (stating that “if a User purchases a service that includes a 10 Gb or 40 Gb IP or LCN network connection, that purchase would include an NMS Network connection of the same size”).

The Exchange believes that updating the names of the PCS bundles from Option C and D to Option A and B and removing obsolete text from the Fee Schedule would be reasonable for the same reasons. It would make the Fee Schedule easier to read and understand, alleviating possible customer confusion.

The Proposed Change Is Equitable and Not Unfairly Discriminatory

The Exchange believes that the proposed change 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 because, even though the connectivity options available in a PCS bundle would increase, there would be no change to the initial charge and MRC for a PCS bundle. A User with a PCS bundle would not have to pay a second initial charge to upgrade its PCS bundle from 10 Gb to 40 Gb in whole or, if it opts to retain some 10 Gb connections, in part.

Further, the Exchange believes that the proposed change is equitable and not unfairly discriminatory since, as is true now, only Users that purchased a PCS bundle would be charged for it. The proposed change would not apply differently to distinct types or sizes of market participants but would apply to all Users equally. Moreover, although the Exchange proposes to expand the connectivity options within the two PCS bundles, a User that currently has a PCS bundle would not be obligated to make any changes. Users that require other sizes or combinations of cabinets, network connections, and cross connects could still request them. As is currently the case, the purchase of any co-location service, including PCS bundles, would be completely voluntary.

The Exchange believes that it is equitable and not unfairly discriminatory to add text stating that purchaser of a Partial Cabinet Solution must select NMS Network connections of the

same size (i.e. 10 Gb or 40 Gb) as the related LCN and IP network connections. The requirement would be consistent with the current requirements for NMS Network connections,¹⁹ and so all Users with NMS Network connections would be treated equally. The Exchange believes that adding such text would alleviate any possible customer confusion as to whether the same requirements would apply to the PCS bundles.

The Exchange also believes that updating the names of the PCS bundles and removing obsolete text from the Fee Schedule would be equitable and not unfairly discriminatory, as it would enhance the clarity and transparency of the Fee Schedule. It would make the Fee Schedule easier to read and understand, alleviating possible customer confusion for all market participants.

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

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

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

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.²⁰ The proposed expansion of the existing PCS bundles would allow Users to connect to all or a large part of the expanded OPRA feed, unlike the 10 Gb network connections currently offered in the PCS bundles. More specifically, as noted above, OPRA has announced that it is expanding data dissemination from a 48-line to a 96-line multicast data distribution network.²¹ As a result of the change, OPRA has estimated that an increase in bandwidth will be needed to consume the OPRA

¹⁹ See id.

²⁰ 15 U.S.C. 78f(b)(8).

²¹ See supra note 8.

feed.²² This means that a 10 Gb network connection would not suffice for a User that wanted to connect to all or a large part of the expanded OPRA feed. The proposed revised PCS bundles allow the User to connect to all or a large part of the expanded feed, however.

A User with a revised PCS bundle also would be able to use it to connect to more of the Included Data Products and Third Party Data Feeds, and the addition of 40 Gb connections may allow a User to have the same size connection in co-location that it has elsewhere.

The Exchange does not believe that the proposed rule change would place any User at a relative disadvantage compared to other Users, but rather that competition among Users would be enhanced. By allowing PCS bundles to include 40 Gb connections, the proposed change would allow smaller Users to not only take advantage of the option for co-location services with a PCS bundle but also compete with Users that have 40 Gb connections. The smaller Users include those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome. The PCS bundles originally were designed to make it more cost effective for such Users to compete,²³ and the Exchange believes that the proposed change would enhance their ability to do so. The proposed change would be responsive to requests from current and potential Users of PCS bundles, who have asked for the bundles to include 40 Gb connections.

The proposed rule change would not impose a burden on competition because it would expand the existing PCS bundles without changing the initial charge or MRC or otherwise adding any fees. As a result of the change a User would receive an enhanced offering, with the option of both 10 Gb and 40 Gb connections, for the same price that the Exchange currently

²² See id., at 2 (providing estimated bandwidth requirements).

²³ See 81 FR 7382, supra note 5, at 7384.

charges for PCS bundles with 10 Gb options only. A User with a PCS bundle would not have to pay a second initial charge to upgrade its PCS bundle from 10 Gb to 40 Gb in whole or, if it opts to retain some 10 Gb connections, in part. As is true now, only Users that purchased a PCS bundle would be charged for it.

All Users would be able to choose what size connections they want, and all Users, whether or not they had a PCS bundle, would be subject to the same requirements for connectivity to the NMS network. Accordingly, the Exchange does not believe that the proposed rule change would place any User at a relative disadvantage compared to other Users.

Finally, the Exchange believes that removing obsolete text from the Fee Schedule would not place any burden on competition that is not necessary or appropriate. Rather, it would benefit competition, as it would enhance the clarity and transparency of the Fee Schedule. It would make the Fee Schedule easier to read and understand, alleviating possible customer confusion.

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

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

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

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²⁴ and Rule 19b-4(f)(6) thereunder.²⁵ 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

²⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁵ 17 CFR 240.19b-4(f)(6).

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.

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)²⁶ 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. Please include file number SR-NYSEAMER-2023-32 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.

²⁶ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to file number SR-NYSEAMER-2023-32. 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-NYSEAMER-2023-32 and should be submitted on or before [INSERT DATE 21 AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

J. Matthew DeLesDernier,

Deputy Secretary.

²⁷ 17 CFR 200.30-3(a)(12).