

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99521; File No. SR-NYSEAMER-2024-07)

February 12, 2024

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Amend the Connectivity Fee Schedule

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on January 29, 2024, 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 Connectivity Fee Schedule to expand existing wireless connections between the data center in Mahwah, New Jersey and Canada. 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 the 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Connectivity Fee Schedule to expand existing wireless connections between the data center in Mahwah, New Jersey (“MDC”)⁴ and Canada.⁵

The Exchange expects that the proposed rule change would become operative no later than March 31, 2024. The Exchange will announce the date that the proposed services will be available through a customer notice.

Proposed Changes to the Wireless Connections

The Exchange currently offers wireless connections between the MDC and the access center in the Markham, Canada data center (“Markham”) of 1, 5 and 10 Mb (the “Markham Connections”).⁶ The Exchange understands that purchasers may also wish to use a wireless

⁴ Through its Fixed Income and Data Services (“FIDS”) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and its affiliates the New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (the “Affiliate SROs”) are indirect subsidiaries of ICE. Each of the Exchange’s Affiliate SROs has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2024-05, SR-NYSEArca-2024-11, SR-NYSECHX-2024-03, and SR-NYSENAT-2024-02.

⁵ Although it presently has proprietary use of it, FIDS does not own the wireless network that would be used to provide the services. The services would be provided by FIDS pursuant to an agreement with one or more non-ICE entities.

⁶ 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).

bandwidth connection to send trading orders and relay market data between their equipment in the MDC and a data center in Toronto, Canada that hosts several Canadian exchanges, including Nasdaq Canada (“TR2”). With such a wireless connection, purchasers’ wireless connections to the Toronto area would not be limited to Markham and the exchanges located there. However, the Exchange is not aware of any wireless connection between the MDC and TR2 that is currently commercially available.

To that end, the Exchange proposes to expand its existing wireless bandwidth connections to Markham to include connections of the same size to TR2 (the “TR2 Connections”). As a result of the proposed expansion, a purchaser’s wireless bandwidth connection would be between the MDC and both Markham and TR2.⁷

The Exchange proposes to offer this expanded service at no additional charge. The previously filed⁸ initial charge and monthly recurring charge (“MRC”) for the Markham Connections would now also include the TR2 Connections as well. Customers purchasing the service would not be required to connect to both Markham and TR2, but if they chose to do so, they could connect to both data centers for the same fees that currently apply to connectivity to Markham only. Customers that currently have a Markham Connection would not have to pay a second initial charge or a second MRC in order to expand their Markham Connection to include a TR2 Connection of the same size.⁹

⁷ A purchaser would not be required to receive the connection in both Markham and TR2 if they chose to be present in only one Canadian access center.

⁸ See id.

⁹ As is currently true for Markham Connections, a customer that purchased a new connection would have its first month’s MRC waived. As is true now, if a customer that had a wireless connection purchased a larger or smaller size wireless connection to replace it, the customer would not be subject to a second initial charge.

Under the proposed expanded service, northbound and southbound wireless services would operate in a distinct manner. Data sent northbound from the MDC would be transported to both Canadian access centers such that the same data would be delivered to both Markham and TR2. The customer would not have two independent connections but rather would use a single connection to reach both Canadian access centers. At each, the customer would have access to the total Mb of the wireless circuit.¹⁰

Southbound, the purchaser could choose to send data from one or both of the Canadian access centers. The purchaser could send data up to the total number of Mb of the wireless circuit from either access center, so long as the combined amount of data that reached the MDC did not exceed the total Mb of the wireless circuit that the customer purchased. The distribution would not be static: the number of Mb of data from either Canadian access center could vary at the customer’s discretion.¹¹

In order to implement the proposed change, the Exchange proposes to amend the table under “B. Wireless Connectivity” in the Connectivity Fee Schedule as follows (proposed new text underlined and proposed deletions in brackets]):

Type of Service	Description	Amount of Charge
Wireless Connections between Mahwah Data Center and <u>one or both of (a) Markham access center and (b) TR2 access center</u>	1 Mb Circuit	\$10,000 per connection initial charge plus monthly charge per connection of \$6,000

¹⁰ For example, if a customer had a 5 Mb circuit, it would have a 5 Mb connection to Markham and a 5 Mb connection to TR2. A customer that chose to be at both access centers would receive all data that has been sent northbound at both access centers.

¹¹ For example, if a customer had a 5 Mb circuit, southbound the customer could choose to send 3 Mb of data from Markham and 2 Mb of data from TR2 at one moment, and then 1 Mb of data from Markham and 4 Mb of data from TR2 at the next moment.

Type of Service	Description	Amount of Charge
Wireless Connections between Mahwah Data Center and <u>one or both of (a) Markham access center and (b) TR2 access center</u>	5 Mb Circuit	\$10,000 per connection initial charge plus monthly charge per connection of \$15,500
Wireless Connections between Mahwah Data Center and <u>one or both of (a) Markham access center and (b) TR2 access center</u>	10 Mb Circuit	\$10,000 per connection initial charge plus monthly charge per connection of \$23,000

The Exchange also proposes to add the following to the Connectivity Fee Schedule, following the table under “B. Wireless Connectivity” (all text is new):

Wireless Connectivity Note

A customer may purchase a Wireless Connection between the Mahwah Data Center and one or both of (a) the Markham access center and (b) the TR2 access center. If the customer chooses to connect to both Canadian access centers, the northbound and southbound wireless services operate in a distinct manner. Northbound, the same data is sent to both the Markham and TR2 access centers. Southbound, the customer may choose the Mb of data it sends from each Canadian access center, so long as the combined total Mb entering the Mahwah Data Center equals no more than the total Mb of the wireless circuit.

Once a customer requested connectivity to TR2 as part of the expanded service, FIDS would establish a wireless connection between TR2 and the MDC using the wireless network owned by another party. As is currently true of the Markham Connections, the proposed expanded wireless connection would terminate on a pole off the grounds of the MDC property.¹² Also as currently true of the Markham Connections, the expanded service would not connect

¹² See 85 FR 67044, note 6, *supra*, at 67054.

directly to the Exchange trading and execution systems.

The Exchange proposes to expand its existing service because it understands that purchasers may also wish to use a wireless bandwidth connection to send trading orders and relay market data between their equipment in the MDC and TR2. With such a wireless connection, purchasers' wireless connections would not be limited to Markham and the exchanges located there.

Customers would have control over what data they send over their TR2 Connection or Markham Connection. They may, but are not required to, use them to send trading orders to their equipment in co-location; relay Exchange market data, third party market data and public quote feeds from securities information processors; send risk management, billing, or compliance information; or to carry any other market information or other data they wish to and from their equipment in TR2, Markham, and the MDC. The Exchange would not, and could not, know what data customers sent over the connections and would not send or receive any data over the connections.

General

The proposed changes would apply to all customers equally. The proposed changes would not apply differently to distinct types or sizes of market participants. As is currently the case, the purchase of any connectivity service is completely voluntary and the Connectivity Fee Schedule is applied uniformly to all customers.

FIDS has proposed to expand the existing service to include the TR2 Connections at the request of FIDS customers. It does not expect that the proposed change will result in new customers in Markham.

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 customers 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.

The Proposed Change is Reasonable

The Exchange believes that the proposed expansion of the existing services 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 it would increase the connectivity

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(4).

currently offered by allowing customers to connect to TR2 as well as Markham for no additional charge. Adding this additional connection option would allow the customer to use a wireless bandwidth connection to relay market data and send trading orders between the MDC and the exchanges and alternative trading systems located in TR2. The purchaser would be able to determine what data to transport between the MDC and the two Canadian access centers based on what would best serve its needs, tailoring the service to the requirements of its business operations, at no additional cost to customers.

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 public interest to expand the connectivity options because it would be responsive to requests from customers, who have asked for the TR2 Connections.

The Exchange believes that the proposed wireless connection between MDC and TR2 would be the first commercially available wireless connection between the two points, creating a new connectivity option for customers. The Exchange believes that creating such a connection would be 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 market participants may create their own proprietary or commercial wireless connections between the two points. 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.

Because the proposed expanded service is designed to offer market participants a means to minimize the latency of their communications, including trading orders, and receipt of market data, it will thereby enhance the efficiency of their trading strategies on the Exchange and

elsewhere, and because there is no impediment to competitors offering similar services, the Exchange 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.

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 the expanded service including TR2 Connections would be available at the currently filed initial charge and MRC for the Markham Connections, with no additional charge for the expanded service. Accordingly, the Exchange believes that the proposed change is reasonable because the change would mean that a customer would receive an enhanced offering with the option of adding connectivity to a second Canadian access center for the same price that the Exchange currently charges for a connection to one Canadian access center. Customers that currently have a Markham Connection would not have to pay a second initial charge in order to obtain an expanded connection. As is currently true for Markham Connections, a customer that purchased a new connection would have its first month's MRC waived.

The Exchange believes that it is reasonable that the charge be the same whether the purchaser opts to connect to one or both Canadian access centers. The size of the connection, not the number of Canadian access centers it leads to, factors into setting the price. First, the Exchange believes it is reasonable to view the expanded service as one service, and not two. Whether a purchaser connects to one or both Canadian access centers, the southbound connection is limited in size to the total bandwidth of the circuit. At the same time, northbound both access centers will receive all data sent on the connection. Second, the Exchange believes it

is reasonable to base its cost on the size of the wireless bandwidth connection, not the number of Canadian access centers it reaches. If one customer wishes to use more of the wireless connection than its current circuit allows, it would need to increase the size of its circuit, and so its cost would increase. Markham and TR2 are geographically close together and both are important access centers, so the network was designed to connect to both locations. Accordingly, it is the size of the circuit, not the number of Canadian access centers, that matters to the Exchange.

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 the proposed wireless connectivity note. The Exchange believes that adding such text would alleviate any possible customer confusion as to how the connections between the MDC and Canadian access centers would work. In this way, it would enhance the clarity and transparency of the Connectivity Fee Schedule.

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 the change would mean that a customer would receive an expanded service, with the option of adding connectivity to two Canadian access centers for the same price that the Exchange currently charges for a connection to one Canadian access center.

Customers that currently have a Markham Connection would not have to pay a second initial charge in order to also obtain a TR2 Connection of the same size. As is currently true for

Markham Connections, a customer that purchased a new connection would have its first month's MRC waived.

Further, the Exchange believes that the proposed change is equitable and not unfairly discriminatory since, as is true now, only customers that purchased the proposed service 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 customers equally. Moreover, although the Exchange proposes to expand the connectivity options, a customer that currently has a Markham Connection would not be obligated to make any changes. As is currently the case, the purchase of any connectivity service would be completely voluntary.

The Exchange believes that it is equitable and not unfairly discriminatory that the charge be the same whether the purchaser opts to connect to one or both Canadian access centers. The size of the connection, not the number of Canadian access centers it leads to, factors into setting the price. First, the Exchange believes it is equitable and not unfairly discriminatory to view the expanded service as one service, and not two. Whether a purchaser connects to one or both Canadian access centers, the southbound connection is limited in size to the total bandwidth of the circuit. At the same time, northbound both access centers will receive all data sent on the connection. Second, the Exchange believes it is equitable and not unfairly discriminatory to base its cost on the size of the wireless bandwidth connection, not the number of Canadian access centers it reaches. If one customer wishes to use more of the wireless connection than its current circuit allows, it would need to increase the size of its circuit, and so its cost would increase. Markham and TR2 are geographically close together, and both are important access centers, so the network was designed to connect to both locations. Accordingly, it is the size of the circuit, not the number of Canadian access centers, that matters to the Exchange.

The Exchange believes that the proposed wireless connection between MDC and TR2 would be the first commercially available wireless connection between the two points, creating a new connectivity option for customers. The Exchange believes that creating such a connection would be equitable and not unfairly discriminatory because market participants may create their own proprietary or commercial wireless connections between the two points. 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.

The Exchange believes that it is equitable and not unfairly discriminatory to add the proposed wireless connectivity note. The Exchange believes that adding such text would alleviate any possible customer confusion as to how the connections between the MDC and Canadian access centers would work. In this way, it would enhance the clarity and transparency of the Connectivity Fee Schedule, making it easier to read and understand and 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 Act¹⁶ because it is not designed to address any competitive issues. The proposed rule change would provide customers with a wider range of choices for wireless connectivity to Canada.

¹⁶ 15 U.S.C. 78f(b)(8).

The Exchange believes the wireless connections between MDC and TR2 are the first commercially available wireless connections between the two points, creating a new connectivity option for customers. The Exchange believes that creating such a connection would not impose any burden on competition that is not necessary or appropriate because market participants may create their own proprietary or commercial wireless connections between the two points. 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, a third party has announced that it plans to create a wireless connection between Markham and the MDC and the Exchange believes it intends to expand its offering to connect to the TR2, underscoring that the Exchange could not impose any impediments to a third party providing wireless connectivity.

The proposed rule change would provide customers the ability to connect to a second Canadian data center for the same price they currently pay to connect to one. All customers would be able to choose if they want connections to one or both Canadian data centers and the size of connection they want. The Exchange does not believe that the proposed rule change would place any customer at a relative disadvantage compared to other customers.

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 Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸ 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 Act¹⁹ and Rule 19b-4(f)(6)(iii) thereunder.²⁰

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)²¹ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6). 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, along with a brief description and text of 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.

²¹ 15 U.S.C. 78s(b)(2)(B).

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-2024-07 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-NYSEAMER-2024-07. 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-2024-07 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Sherry R. Haywood,

Assistant Secretary.

²² 17 CFR 200.30-3(a)(12).