

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99850; File No. SR-NYSEARCA-2024-28)

March 22, 2024

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

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 March 14, 2024, NYSE Arca, Inc. (“NYSE Arca” 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 update the list of included data products. 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 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 (“Fee Schedule”) regarding colocation services and fees to update the list of included data products (“Included Data Products”).

Currently, the table of Included Data Products in Colocation Note 4 sets forth the market data feeds that Users⁴ can connect to at no additional cost when they purchase a service that includes access to the LCN or IP network.⁵

Each of the Exchange and the Affiliate SROs has filed to establish an “Aggregated Lite” market data feed (the “Aggregated Lite Feeds”).⁶ Accordingly, the Exchange proposes to update the table of Included Data Products to include the Aggregated Lite Feeds. To implement the change, the Exchange proposes to update the table of Included Data Products of the NYSE, NYSE American and NYSE Arca as follows (proposed additions underlined):

NYSE:

⁴ 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. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR-NYSEArca-2015-82). 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”), NYSE American LLC (“NYSE American”), NYSE Chicago, Inc. (“NYSE Chicago”), and NYSE National Inc. (“NYSE National” and together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2024-17, SR-NYSEAMER-2023-20, SR-NYSECHX-2024-13, and SR-NYSENAT-2024-11.

⁵ See Securities Exchange Act Release No. 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR-NYSEArca-2016-172) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule and the NYSE Arca Equities Schedule of Fees and Charges Related to Co-Location Services To Increase LCN and IP Network Fees and Add a Description of Access to Trading and Execution Services and Connectivity to Included Data Products).

⁶ See Securities Exchange Act Release No. 99713 (March 12, 2024) (SR-NYSEArca-2024-22).

<u>NYSE Aggregated Lite</u> NYSE Alerts NYSE BBO NYSE Integrated Feed NYSE OpenBook NYSE Order Imbalances NYSE Trades
NYSE American: <u>NYSE American Aggregated Lite</u> NYSE American Alerts NYSE American BBO NYSE American Integrated Feed NYSE American OpenBook NYSE American Order Imbalances NYSE American Trades
NYSE American Options
NYSE Arca: <u>NYSE Arca Aggregated Lite</u> NYSE ArcaBook NYSE Arca BBO NYSE Arca Integrated Feed NYSE Arca Order Imbalances NYSE Arca Trades

When NYSE Chicago and NYSE National were added to the Included Data Products, the individual market data feeds offered were not broken out.⁷ Accordingly, in addition to adding the Aggregated Lite Feeds, the Exchange proposes to break out the NYSE Chicago and NYSE National market data feeds in Included Data Products, as follows (proposed additions underlined):

NYSE Chicago <u>NYSE Chicago Aggregated Lite</u> <u>NYSE Chicago BBO</u> <u>NYSE Chicago Integrated Feed</u> <u>NYSE Chicago Trades</u>
NYSE National

⁷ See Securities Exchange Act Releases No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR-NYSECHX-2019-12) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of NYSE Chicago, Inc.), and 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR-NYSE-NAT-2018-07) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Co-Location Services and Fees In Connection With the Re-Launch of Trading on the Exchange and To Amend Its Schedule of Fees and Rebates To Provide for Such Co-Location Services).

<u>NYSE National Aggregated Lite</u> <u>NYSE National BBO</u> <u>NYSE National Integrated Feed</u> <u>NYSE National Trades</u>

The Exchange expects that the present filing will become operative immediately upon the filings to establish a fee for the Aggregated Lite Feed becoming operative. The Exchange expects such operative date or dates to be no later than the second quarter of 2024. It will announce the date or dates through a customer notice.

The Exchange does not charge for connectivity to the Included Data Feeds. Accordingly, it would not charge for connectivity to the Aggregated Lite Feeds.

General

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, including connectivity to the Aggregated Lite Feeds, would be completely voluntary and the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new 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 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,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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,¹⁰ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change is Reasonable

The Exchange believes that the proposed rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, because adding the Aggregated Lite Feeds would increase the number of Included Data Products available to Users for no additional charge. All Users that voluntarily select to access the LCN or IP network would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Accordingly, the Exchange believes that the proposed change is reasonable because the change would mean that a User would have the option of adding connectivity to additional market data feeds without paying additional charges.

Adding the proposed additional Included Data Products would allow a User to connect to any of the Aggregated Lite Feeds that it wished, but would not require it to do so. As now, a User would be able to determine which Included Data Products, if any, to which it connects,

¹⁰ 15 U.S.C. 78f(b)(4).

based on what would best serve its needs, tailoring the service to the requirements of its business operations.

The Exchange believes that the proposed rule change is reasonable because, as with the other Included Data Products, it believes it is not the exclusive method to connect to the Aggregated Lite Feeds. As alternatives to connecting to the Aggregated Lite Feeds as Included Data Products, a User may connect to the market data feeds through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor.

By adding the Aggregated Lite Feeds and setting forth the NYSE Chicago and NYSE National feeds already offered, the proposed change would ensure that the list of Included Data Products was up to date and consistent in the level of detail. Accordingly, the Exchange believes that the proposed rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, as it would ensure that the description of Included Data Products was complete, ensuring that it is accessible and transparent, and providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP networks.

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 adding the Aggregated Lite Feeds would increase the number of Included Data Products available to Users for no additional charge. All Users that voluntarily select to access the LCN or IP network would not be subject to a charge above and beyond the fee paid for the relevant LCN

or IP network access. Accordingly, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because the change would mean that a User would have the option of adding connectivity to additional market data feeds without paying additional charges.

Further, the Exchange believes that the proposed change is equitable and not unfairly discriminatory since, as is true now, the proposed change would not apply differently to distinct types or sizes of Users but would apply to all Users equally. Moreover, adding the proposed additional Included Data Products would allow a User to connect to any of the Aggregated Lite Feeds that it wished, but would not require it to do so. As now, a User would be able to determine which Included Data Products, if any, to which it connects, based on what would best serve its needs, tailoring the service to the requirements of its business operations.

By adding the Aggregated Lite Feeds and setting forth the NYSE Chicago and NYSE National feeds already offered, the proposed change would ensure that the list of Included Data Products was up to date and consistent in the level of detail. Accordingly, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory, as it would ensure that the description of Included Data Products was complete, ensuring that it is accessible and transparent, and providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP networks.

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.¹¹

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because adding the Aggregated Lite Feeds would increase the number of Included Data Products available to Users for no additional charge. All Users that voluntarily select to access the LCN or IP network would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Accordingly, the change would mean that a User would have the option of adding connectivity to additional market data feeds without paying additional charges.

Adding the proposed additional Included Data Products would allow a User to connect to any of the Aggregated Lite Feeds that it wished, but would not require it to do so. In this way, the proposed changes would enhance competition by, as now, enabling a User to determine to which Included Data Products, if any, it connects, based on what would best serve its needs, tailoring the service to the requirements of its business operations.

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as with the other Included Data Products, it believes it is not the exclusive method to connect to the Aggregated Lite Feeds. As alternatives to connecting to the Aggregated Lite Feeds as Included Data Products, a User may connect to the market data feeds through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor.

By adding the Aggregated Lite Feeds and setting forth the NYSE Chicago and NYSE National feeds already offered, the proposed change would ensure that the list of Included Data

¹¹ 15 U.S.C. 78f(b)(8).

Products was up to date and consistent in the level of detail. Accordingly, the Exchange believes that the proposed additions to the description of Included Data Products would make the description more accessible and transparent. In this manner, the proposed change would provide market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP networks, thereby enhancing competition by ensuring that all Users have access to the same information regarding the Included Data Products.

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 Act¹² and Rule 19b-4(f)(6) thereunder.¹³ 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.¹⁴

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

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange 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.

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)¹⁵ 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-NYSEARCA-2024-28 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-NYSEARCA-2024-28. 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

¹⁵ 15 U.S.C. 78s(b)(2)(B).

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-NYSEARCA-2024-28 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.¹⁶

Sherry R. Haywood,

Assistant Secretary.

¹⁶ 17 CFR 200.30-3(a)(12).