

imposed by the Funds will comply with rule 6c–10 under the Act as if the rule were applicable to closed-end investment companies. The Funds will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSLs.

#### *Asset-Based Service and Distribution Fees*

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to the extent necessary to permit the Funds to impose asset-based service and distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its shares through asset-based service and distribution fees.

3. For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based service and distribution fees is consistent with the provisions, policies, and purposes of the Act and does not

involve participation on a basis different from or less advantageous than that of other participants.

#### **Applicants' Condition**

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1, and, where applicable, 11a–3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020–00451 Filed 1–14–20; 8:45 am]

**BILLING CODE 8011–01–P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34–87927; File No. SR–NYSE–2019–46]**

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 to Proposed Rule Change Amending the Exchange's Price List Related to Co-Location Services in the Mahwah, New Jersey Data Center**

January 9, 2020.

On August 22, 2019, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to amend its co-location fee schedule to offer co-location Users <sup>3</sup> access to the “NMS Network”—an alternate, dedicated network providing connectivity to data feeds for the National Market System Plans for which Securities Industry Automation Corporation (“SIAC”) is engaged as the exclusive securities information processor (“SIP”)—and establish associated fees. The proposed rule change was published for comment in the **Federal Register** on September 10, 2019. <sup>4</sup> On October 24, 2019, the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See *infra* note 9 defining “Users.”

<sup>4</sup> See Securities Exchange Act Release Nos. 86865 (September 4, 2019), 84 FR 47592.

Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to December 9, 2019. <sup>5</sup> The Commission received one comment letter on the proposal, a response from the Exchanges, and a subsequent letter from the original commenter. <sup>6</sup> On December 9, 2019, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change. <sup>7</sup> On December 23, 2019, the Exchange filed Amendment No. 1 to the proposed rule change as described in Items I and II below, which Items have been prepared by Exchange. The Commission is publishing this notice to solicit comments on Amendment No. 1 to 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 services available to Users that use co-location services in the Mahwah, New Jersey data center to add the NMS network to connect to the NMS feeds. This Amendment No. 1, which supersedes the original filing in its entirety, is designed to address comments in the Commission's Order instituting proceedings to determine whether to approve or disapprove the original filing. <sup>8</sup> 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.

<sup>5</sup> See Securities Exchange Act Release Nos. 87399, 84 FR 58189 (October 30, 2019).

<sup>6</sup> See, respectively, letter dated October 24, 2019 from John M. Yetter, Vice President and Senior Deputy General Counsel, Nasdaq Stock Market LLC (“Nasdaq”), to Vanessa Countryman, Secretary, Commission (“Nasdaq Letter”); letter dated November 8, 2019 from Elizabeth K. King, Chief Regulatory Officer, ICE, General Counsel and Corporate Secretary, NYSE to Ms. Vanessa Countryman, Secretary, Commission (“NYSE Response Letter”); and letter dated November 25, 2019 from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, to Vanessa Countryman, Secretary, Commission (“Second Nasdaq Letter”). All comments received by the Commission on the proposed rule change are available on the Commission's website at: <https://www.sec.gov/comments/sr-nyse-2019-46/srnyse201946.htm>.

<sup>7</sup> See *infra* note 8.

<sup>8</sup> See Securities Exchange Act Release No. 87699 (December 9, 2019), 84 FR 68239 (December 13, 2019) (SR–NYSE–2019–46) (“Order”).

## 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

##### Overview

This Amendment No. 1 supersedes the original filing in its entirety. In the original filing, the Exchange proposed to amend its co-location services<sup>9</sup> to provide Users<sup>10</sup> with an alternate, dedicated network connection to access the NMS feeds (the "NMS network") through the Securities Industry Automation Corporation ("SIAC") is engaged as the securities information processor ("SIP") and proposed fees for the NMS network.<sup>11</sup>

On December 9, 2019, the Commission issued an Order instituting proceedings to determine whether to approve or disapprove the original filing, and in that Order, raised questions about how the Exchange

<sup>9</sup> The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. See Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users.

<sup>10</sup> 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. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR-NYSE-2015-40). As specified in the Price List, 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 NYSE American LLC ("NYSE American"), NYSE Arca, Inc. ("NYSE Arca"), and NYSE National, Inc. ("NYSE National") and together, the "Affiliate SROs"). See Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR-NYSE-2013-59).

<sup>11</sup> Specifically, as originally proposed, Users would be eligible for up to eight "No Fee NMS Network Connections" that would not be subject to any fees. Users not eligible for the No Fee NMS Network Connection or that needed additional NMS network connections would have been charged at the same rate as the same-sized IP network.

proposed to charge fees for the NMS network.<sup>12</sup> Because the purpose of the NMS network is to enhance performance of the SIP and not to generate revenue, to address the questions raised in the Order, the Exchange is amending the proposal to eliminate any fee changes associated with the introduction of the NMS network. As amended, this proposed rule change would solely add the NMS network as part of the services available if a User purchases a 10 Gigabit ("Gb") or 40 Gb connection to one of the two local area networks in the Mahwah data center.

As described below, today Users can connect to Regulation NMS equities and options feeds<sup>13</sup> disseminated by the SIP using either of the co-location local area networks. Currently, a User would need to purchase a service that includes either a 10 Gb or 40 Gb connection to access a local area network in order to connect to the NMS feeds.<sup>14</sup> Users do not pay an additional charge to connect to the NMS feeds: It comes with their connection to the local area network.<sup>15</sup>

The Exchange has recently been authorized to build the NMS network in the Mahwah data center that will only connect to the NMS feeds. The new network will connect to the NMS feeds faster than either of the existing local area networks. Because a User currently needs to purchase a service that includes access to one of the two local area networks in the data center via either a 10 Gb or 40 Gb connection to connect to the NMS feeds, the Exchange proposes to expand that service to include the option to also connect to the NMS network via a same-sized connection at no additional charge. Accordingly, with this proposed rule change, Users will have the option to use the NMS network or either of the existing local area networks to connect to the NMS feeds. The Exchange is not proposing any changes to its fees.

Because the NMS network has been built and tested and is ready to be implemented, subject to approval of this proposed rule change, the Exchange proposes to implement the NMS network as soon as practicable. The Exchange will announce the

<sup>12</sup> See Order, *supra* note 7. The Order also discussed a comment letter submitted in connection with the original proposal.

<sup>13</sup> The NMS feeds include the Consolidated Tape System and Consolidated Quote System data streams, as well as Options Price Reporting Authority ("OPRA") feeds. See Securities Exchange Act Release No. 79730 (January 4, 2017), 82 FR 3045 (January 10, 2017) (SR-NYSE-2016-92).

<sup>14</sup> Because of the volume of data, a 1 Gb connection is not sufficient to connect to an NMS feed. See *id.* at 3047.

<sup>15</sup> See *id.*

implementation date through a customer notice.

#### Background

The Exchange's affiliate, SIAC, is engaged as the SIP for three separate Regulation NMS plans (collectively, the "NMS Plans").<sup>16</sup> SIAC operates as the SIP for the NMS Plans in the same data center where the Exchange and its Affiliate SROs operate. In that data center, Users can access SIAC as the SIP over the same network connections through which they access other services. Specifically, a User can access the SIAC SIP environment via either the IP network or the Liquidity Center Network ("LCN"), which are the local area networks in the data center.<sup>17</sup>

The Exchange offers Users connectivity to the SIAC SIP environment at no additional charge when a User purchases access to a 10 Gb or 40 Gb LCN or IP network.<sup>18</sup> In connection with the services available over the local area networks, the SIAC feeds are referred to as the "NMS feeds." As described in General Note 4 of the Price List, when a User purchases access to the LCN or IP network, it receives connectivity to certain market data products (the "Included Data Products") that it selects, subject to technical provisioning requirements and authorization from the provider of the data feed. The NMS feeds are included in the list of the Included Data Products that come with connections to the LCN or IP network. The remaining Included Data Products are proprietary feeds of the Exchange, its Affiliate SROs, and the Exchange's affiliate NYSE Chicago, Inc. ("NYSE Chicago" and together with the Exchange and Affiliate SROs, the "NYSE Exchanges").

A User that purchases access to the LCN or IP network also receives the

<sup>16</sup> SIAC has been engaged as the SIP to, among other things, receive, process, validate and disseminate: (1) Last-sale price information in Tape A and Tape B-listed securities pursuant to the CTA Plan ("CTA Plan"), which is available here: <https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CTA%20Plan%20-%20Composite%20as%20of%20August%202018.pdf>; (2) quotation information in Tape A and B-listed securities pursuant to the CQ Plan ("CQ Plan"), which is available here: [https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CQ\\_Plan\\_Composite\\_as\\_of\\_July\\_9\\_2018.pdf](https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CQ_Plan_Composite_as_of_July_9_2018.pdf); and (3) quotation and last-sale price information in all exchange options trading pursuant to the OPRA Plan ("OPRA Plan"), which is available here: [https://uploads-ssl.webflow.com/5ba40927ac854d8c97bc92d7/5bf419a6b7c4f5085340f9af\\_opra\\_plan.pdf](https://uploads-ssl.webflow.com/5ba40927ac854d8c97bc92d7/5bf419a6b7c4f5085340f9af_opra_plan.pdf).

<sup>17</sup> See 82 FR 3045, note 12, *supra*.

<sup>18</sup> As set forth on the Price List, the Exchange offers a range of LCN and IP network connectivity options at different rates depending on the bandwidth and latency profile of the applicable network.

ability to access the trading and execution systems of the NYSE Exchanges (the “Exchange Systems”) and the trading and execution systems of OTC Global, an alternative trading system (“ATS”), subject, in each case, to authorization by the relevant entity.<sup>19</sup>

Accordingly, without paying an additional connectivity fee, a User that purchases access to either the LCN or IP network can use such network to:

1. Access the trading and execution services of five registered exchanges (five equities markets, two options markets, and a fixed income market) and an ATS;
2. Connect to the market data of five registered exchanges (five equities exchanges, two options markets, and a fixed income market); and
3. Connect to the NMS feeds.

A User may connect to the NMS feeds through the IP network or LCN. Until recently the operating committee for the CTA and CQ Plans (“CTA/CQ Plans”) mandated use of the IP network to access the NMS feeds.<sup>20</sup> As a result, all LCN connections to the NMS feeds go through the IP network before reaching the NMS feeds,<sup>21</sup> and so using the LCN to connect to an NMS feed is slower than using the IP network.<sup>22</sup>

#### Alternate, Dedicated Network Connection for NMS Feeds

As the SIP for the NMS Plans, SIAC continually assesses the services it provides and has been working with the operating committees of the NMS Plans and the industry-based advisory committee to the CTA/CQ Plans to identify potential performance enhancements. Among other initiatives, this group identified that, because the IP network was not designed as a low-latency network, the requirement to use the IP network to access the NMS feeds introduces a layer of latency.

To reduce network latency, the Exchange sought and received approval from the operating committees for the CTA/CQ Plans to build an alternate to the LCN and IP network to connect to the NMS feeds.<sup>23</sup> As approved by the CTA/CQ Plans, the Exchange is building a low-latency network in the data center that will provide Users with dedicated

access to the NMS feeds (the “NMS network”).<sup>24</sup>

The Exchange currently anticipates that the low-latency network will have a one-way reduction in latency to access the NMS feeds from the IP network and LCN of over 140 microseconds.

Consistent with the current bandwidth needs to connect to the NMS feeds, connections to the NMS network will be available in 10 Gb and 40 Gb circuits. Because the NMS network will be an alternate network to access the NMS feeds, once it is available, Users would have the choice between continuing to use the LCN or IP network to connect to NMS feeds or switching to the NMS network.

Even though the NMS network will provide access only to the NMS feeds, the Exchange is funding the build of the NMS network and is not being reimbursed for such expenses by either CTA or OPRA. The Exchange’s capital expenditure costs for the build are estimated to be \$3.8 million, which includes procurement of new low-latency network switches, network devices, and analytics tools and the one-time operational expenditures to build this new network. In addition to this initial estimated approximately \$3.8 million outlay, the Exchange anticipates that the ongoing costs to maintain and operate the NMS network will be approximately \$215,000 annually.

#### Proposed Amendment To Add the NMS Network

The proposed structure for the NMS network has been designed so that the services available in co-location would be expanded so that a User can opt to connect to the NMS network at no additional charge.

To effect the proposed change, the Exchange proposes to amend the services available in co-location to provide that if a User purchases a service that includes a 10 Gb or 40 Gb connection to access either local area network, that access would include a connection to the NMS network of the same size. Although the Exchange is funding and expanding the types of local area network connections that

would be available in the data center, the Exchange does not propose to change any of the fees related to purchasing a service that includes a connection to a local area network.

More specifically, the services available in co-location currently include LCN Access, IP Network Access, and Partial Cabinet Solution bundles. In order to implement the proposed change, the Exchange proposes the following amendments to Exchange Rules that describe the following services in co-location:

- In the column titled “Type of Service,” the Exchange proposes to amend the text describing the 10 Gb and 40 Gb LCN and IP Network Access options to include text referencing the NMS network.
- In the column titled “Description,” the Exchange proposes to amend the descriptions of the 10 Gb LX LCN Circuit, 40 Gb LCN Circuit, Partial Cabinet Solution bundle Option C and Option D, 10 Gb IP Network Circuit and 40 Gb IP Network Circuit to include text referencing the specific NMS Network connection that would be part of the service. In addition, because the descriptions of the LCN and IP network services do not currently reference either “LCN” or “IP Network,” respectively, the Exchange proposes to add text references as applicable.
- Finally, the Exchange proposes to amend text in the column titled “Amount of Charge” to specify that the current initial and monthly recurring charges would not change and that for purposes of such charges, the existing local area network connection and NMS network connection would be together considered one connection. These text changes would make clear that Users would not be subject to two initial or two monthly charges. The Partial Cabinet Solution bundle description already indicates that the charges are “per bundle” and therefore no similar clarifying language is proposed.

The Exchange proposes to set forth these changes as follows (proposed new text italicized and proposed text for deletion in brackets):

<sup>19</sup> See 82 FR 3045, note 12, *supra*, and Securities Exchange Release No. 85952 (May 29, 2019), 84 FR 25884 (June 4, 2019) (SR–NYSE–2019–31). Information regarding the Included Data Products is currently set forth in the second paragraph of General Note 4.

<sup>20</sup> The Operating Committee of the CTA/CQ Plans mandated the use of the IP network to access the NMS feeds because the IP network was built as a secure network designed for resiliency and redundancy.

<sup>21</sup> By contrast, the LCN does not connect to the IP network for access to the Exchange Systems or connectivity to the other Included Data Products.

<sup>22</sup> A User that uses the LCN to connect to an NMS feed does not need to separately purchase an IP network connection.

<sup>23</sup> The alternate network to access the NMS feeds will not be available outside of the data center.

<sup>24</sup> Because SIAC, as the SIP for the NMS Plans, is also responsible for collecting data from the

participants of the CTA/CQ Plans and members of the OPRA Plan, Users that are participants of the applicable NMS Plans could use this alternate network connection for purposes of both transmitting and receiving data. Users that are not participants of the NMS Plans could use this alternate network connection for purposes of receiving data. This alternate network would not be available to connect to the other Included Data Products or to access the Exchange Systems or Global OTC.

Type of service	Description	Amount of charge
LCN and NMS Network Access .....	10 Gb LX LCN Circuit and 10 Gb NMS Network Circuit.	\$15,000 <i>initial charge</i> per connection [initial charge] to both the LCN and NMS Network plus \$22,000 <i>monthly charge</i> per connection to both the LCN and NMS Network. <i>For purposes of these charges, the LCN Circuit and NMS Network Circuit are together considered to be one connection, and so Users are not subject to two initial or two monthly charges.</i>
LCN and NMS Network Access .....	40 Gb LCN Circuit and 40 Gb NMS Network Circuit.	\$15,000 <i>initial charge</i> per connection [initial charge] to both the LCN and NMS Network plus \$22,000 <i>monthly charge</i> per connection to both the LCN and NMS Network. <i>For purposes of these charges, the LCN Circuit and NMS Network Circuit are together considered to be one connection, and so Users are not subject to two initial or two monthly charges.</i>
Partial Cabinet Solution bundles. <i>Note:</i> 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 2 under "General Notes".	No change .....	No change.
	No change ..... Option C: 1 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), 2 NMS Network connections (10 Gb each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	No change. No change.
	Option D: 2 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), 2 NMS Network connections (10 Gb each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	No change.
IP Network and NMS Network Access	10 Gb IP Network Circuit and 10 GB NMS Network Circuit.	\$10,000 <i>initial charge</i> per connection [initial charge] to both the IP Network and NMS Network plus \$11,000 <i>monthly charge</i> per connection to both the IP Network and NMS Network. <i>For purposes of these charges, the IP Network Circuit and NMS Network Circuit are together considered to be one connection, and so Users are not subject to two initial or two monthly charges.</i>
IP Network and NMS Network Access	40 Gb IP Network Circuit and 40 Gb NMS Network Circuit.	\$10,000 <i>initial charge</i> per connection [initial charge] to both the IP Network and NMS Network plus \$18,000 <i>monthly charge</i> per connection to both the IP Network and NMS Network. <i>For purposes of these charges, the IP Network Circuit and NMS Network Circuit are together considered to be one connection, and so Users are not subject to two initial or two monthly charges.</i>

As noted above, Users that purchase access to the LCN or IP Network currently can use such networks to connect to the NMS feeds. Once the NMS Network is available, Users can continue to use either their existing LCN or IP Network connection or the new NMS network connection to connect to the NMS feeds.

The Exchange proposes to amend the current General Note 4 to describe what a User obtains when it purchases a service that includes access to the LCN, IP network, or NMS Network.

First, the Exchange proposes to split current Note 4 into three separate notes. The first paragraph of current Note 4 would continue to be numbered Note 4, and would specify which trading and execution services a User can access when it purchases a service that includes access to the LCN or IP network, which are not changing. Because the services that a User purchases may include access to the NMS network in addition to access to the LCN or IP network, the Exchange proposes a non-substantive amendment

to the first sentence of this note to add the phrase "a service that includes."

Second, the Exchange proposes that the current second paragraph of Note 4 and following table would be renumbered as Note 5. As the paragraph does currently, Note 5 would specify the Included Data Products that a User can connect to if it purchases a service that includes access to the LCN or IP network. Similar to the proposed amendment to the first sentence of Note 4, the Exchange proposes a non-substantive amendment to add the phrase "a service that includes" to the

first sentence of new Note 5. In addition, the Exchange proposes a non-substantive amendment to the table to clarify that the NMS feeds are the CTA, CQ, and OPRA feeds.

Finally, the Exchange proposes new Note 6, which would describe in more detail the NMS network. As proposed, Note 6 would provide that when a User purchases a service that includes access to the NMS Network, upon its request it would receive connectivity to the NMS network and any of the NMS feeds that it selects, subject to any technical provisioning requirements and authorization from the provider of the data feed. Consistent with existing Note 4 (proposed Note 5), Note 6 would provide that market data fees for the NMS feeds would be charged by the provider of the NMS data feed. The proposed note would further state that the NMS Network would provide connectivity to the NMS feeds only.

#### Expected Application of the Proposed Change

The proposed NMS network would be available to all Users that purchase a service that includes a 10 Gb or 40 Gb connection to access either the LCN or IP network, which are the networks currently available to provide connections to the NMS feeds.

#### General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (e.g., a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;<sup>25</sup> and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.<sup>26</sup>

<sup>25</sup> As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

<sup>26</sup> See 78 FR 51765, *supra* note 9, at 51766. NYSE American, NYSE Arca and NYSE National have submitted substantially the same proposed rule

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>27</sup> in general, and furthers the objectives of Sections 6(b)(5) of the Act,<sup>28</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 mechanisms 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 also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,<sup>29</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

#### The Proposed Rule Change Would Remove Impediments to and Perfect the Mechanism of a Free and Open Market and a National Market System

The Exchange believes that the proposed change to include access to the NMS network as part of existing services available in co-location would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering access to the dedicated, low-latency NMS network, the Exchange will be providing Users with an additional option to connect to the NMS feeds. Until recently, SIAC was required to provide connectivity to the NMS feeds via only the IP network. As recently approved by the operating committees for the CTA/CQ Plans, SIAC is now authorized to offer connectivity to the NMS feeds in the data center via an alternate,

change to propose the changes described herein and will be amending their respective filings in substantially the same manner. See Securities Exchange Act Release Nos. 86867 (September 4, 2019), 84 FR 47563 (September 10, 2019) (SR-NYSEAmer-2019-34) (Notice); 86868 (September 4, 2019), 84 FR 47610 (September 10, 2019) (SR-NYSEArca-2019-61) (Notice); and 86869 (September 4, 2019), 84 FR 47600 (September 10, 2019) (SR-NYSENAT-2019-19) (Notice).

<sup>27</sup> 15 U.S.C. 78f(b).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>29</sup> 15 U.S.C. 78f(b)(4).

dedicated, low-latency NMS network. The proposed NMS network has been designed consistent with this directive and will provide greater choice to Users that are seeking a low-latency network to connect to the NMS feeds.

#### The Proposed Rule Change Is Reasonable

As an initial matter, as required by Rule 603(b) of Regulation NMS, SIAC disseminates quotation and transaction information as the single plan processor for all Tape A and Tape B-listed securities and is also the single plan processor for all options exchanges. As the single plan processor, the pricing decisions relating to the dedicated NMS network are not constrained by competitive market forces.

Instead, as described above, the Exchange is funding the capital and operational expenses to build and operate the NMS network. The implementation costs of approximately \$3.8 million are applicable only to the NMS network, which will be used for the sole purpose of providing access to the NMS feeds. Simply put, none of the implementation costs are applicable to any other Exchange services. The Exchange has based its procurement needs—which correlate to the Exchange's estimated costs to build the NMS network—based on the Current Users' usage of the LCN or IP networks to connect to the NMS feeds, with some room for additional growth.

The Exchange believes that adding the NMS network as a service that would be included when a User purchases either a 10 Gb or 40 Gb connection to access a local area network is reasonable because the amended service is designed to make the NMS network available at no additional cost to Users. Specifically, as proposed, the NMS network would be included as part of specified existing LCN and IP network services that Users can already purchase, and are already used to connect to the NMS feeds.

Because the fees for LCN and IP network services relate to charges for services either other than or in addition to connectivity to the NMS feeds, the Exchange currently does not assess any fees that are specific to connectivity to the NMS feeds. Accordingly, if a User purchases a service that includes either a 10 Gb or 40 Gb connection to access either local area network, such User can use such local area network to connect to the NMS feeds at no additional charge. By adding access to the NMS network to these existing services, the Exchange proposes to offer an additional choice to such Users for how they could connect to the NMS feeds.

By not changing the existing fees for such expanded service, Users would not incur any additional charges if they choose to use to the new low-latency, dedicated alternate network to connect to the NMS feeds instead of using a connection to one of the existing local area networks.

The Exchange further believes that expanding the existing services that include access to a 10 Gb and 40 Gb connection to either local area network to also include access to a same-size connection to the NMS network would be reasonable because there would be no differences in fees charged to either current or prospective Users that seek to use co-location services to connect to the NMS feeds. Currently, a User would need to purchase a service that includes either a 10 Gb or 40 Gb connection to access a local area network in order to connect to the NMS feeds. As proposed, when such service is purchased, a User would continue to receive the same local area network service currently available, and would also have the option to connect to the NMS feeds via the NMS network.

The Exchange believes that the proposed changes to describe the NMS network are reasonable because they to promote clarity and transparency regarding which services would be available to Users and the charges for such services. As noted above, the Exchange proposes that if a User purchases a service that includes a 10 Gb or 40 Gb connection to access either local area network, that service would include access to a same-size connection to the NMS network. The Exchange believes that the text changes to Exchange's rules for such services is reasonable because the amendments would provide specificity regarding which specific services would include access to the NMS network. The proposed amendments would also provide specificity that the existing initial and monthly charges would be charged only once, and that a connection to an existing local area network and an NMS network would be considered a single connection for purposes of such charges.

The Exchange also believes that the proposed non-substantive amendment to split Note 4 into three separate Notes is reasonable because it would promote clarity and transparency regarding how services that include a connection to an LCN or IP network could be used. As now, Note 4 would describe the trading and execution services that a User may access if it purchases a service that includes access to the LCN or IP network. Proposed Note 5 would describe the Included Data Products that

a User can connect to if it purchases a service that includes access to the LCN or IP network. Proposed Note 6 would be new and is designed to promote clarity and transparency by (a) describing the connectivity that the User would obtain if it purchased service that included access to the NMS Network, subject to any technical provisioning requirements and authorization from the provider of the data feed, and (b) specifying that the NMS network would provide connectivity to the NMS feeds only. The Exchange further believes it is reasonable to identify the specific NMS feeds that are available, which are the CTA, CQ, and OPRA feeds, as this proposed amendment to Note 4 and proposed Note 6 would promote clarity and transparency in Exchange rules.

#### The Proposed Rule Change Is Equitably Allocated

The Exchange believes that the proposed rule change is equitably allocated. As described above, the proposed amendment to include the NMS network as a service available in co-location has been designed so that Users would not have any new or different charges if they opt to connect to the NMS network. Rather, because the NMS network would be included as part of services that include access to a 10 Gb or 40 Gb connection to either local area network, Users will have a choice whether to use an IP network, LCN or NMS network connection to connect to the NMS feeds. A User that voluntarily chooses to exercise the choice to connect with the NMS network would receive the benefit of a low-latency connection without any additional charges.

As noted above, because a User that purchases access to the LCN or IP network receives connectivity to the NMS feeds, the Exchange currently does not assess any fees that are specific to connectivity to the NMS feeds. By offering the NMS network as part of these existing services, the Exchange proposes to offer an additional choice to such Users for how they could connect to the NMS feeds. By not charging different fees for such expanded services, all Users will be treated equally and charged no differently than how fees are currently charged for access to a 10 Gb or 40 Gb connection to a local area network service.

#### The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory. As described above, the proposed amendment to include the NMS network as a service available in

co-location has been designed so that Users would not have any new or different charges if they opt to connect to the NMS network. Rather, because access to the NMS network would be included as part of access to the 10 Gb and 40 Gb connection to either local area network, all Users will have a choice whether to use an IP network, LCN or NMS network connection to connect to the NMS feeds. The proposed change in services available in co-location therefore would not impose any meaningful differences to different types of Users. Any User that voluntarily chooses to exercise the choice to connect with the NMS network would receive the benefit of a low-latency connection without any additional charges.

As noted above, because a User that purchases access to the LCN or IP network receives connectivity to the NMS feeds, the Exchange currently does not assess any fees that are specific to connectivity to the NMS feeds. Accordingly, if a User purchases a service that includes either a 10 Gb or 40 Gb connection to access either local area network, such User can use such local area network to connect to the NMS feeds at no additional charge. By offering the NMS network as part of these existing services, the Exchange proposes to offer an additional choice to such Users for how they could connect to the NMS feeds. By not charging any different fees for such expanded service, all Users will be treated equally and no differently than how fees are currently charged for a 10 Gb or 40 Gb connection to a local area network service.

For the reasons above, the proposed changes would 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 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would not impose any burden on competition because it is not designed to address any competitive issues. As described above, SIAC is the single plan processor for Tape A and B equities securities and all options securities and does not currently

compete with any other providers for these processor services. The proposed rule change would amend the services available in co-location to include the NMS network when a User purchases a 10 Gb or 40 Gb connection to access either local area network service. Accordingly, the proposed rule change would expand the services available in co-location without changing any fees for the existing services, or adding fees for the expanded services. All Users would have access to the NMS network and it would be their choice of whether and at what level to subscribe to such services, including whether to utilize the NMS network connection. Accordingly, the Exchange does not believe that the proposed rule change would place any User at a relative disadvantage compared to other Users.

*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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2019-46 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-NYSE-2019-46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2019-46 and should be submitted on or before February 5, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-00482 Filed 1-14-20; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87917; File No. SR-NYSEArca-2019-93]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Charges To Modify the Annual Fees Applicable To Exchange Traded Products and Managed Fund Shares and Managed Trust Securities

January 9, 2020.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 31, 2019, 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, II, and III 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 its Schedule of Fees and Charges to (1) modify the annual fees applicable to Exchange Traded Products ("ETPs") and Managed Fund Shares and Managed Trust Securities, (2) introduce annual fee discounts for ETPs and Structured Products, and (3) offer an alternate way for issuers of multiple series of securities listed under Rule 5.2-E(j)(6) to qualify for the current discount. The Exchange proposes to implement the fee changes effective January 1, 2020. 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 its Schedule of Fees and Charges to (1) modify the annual fee applicable to ETPs and Managed Fund Shares and Managed Trust Securities, (2) introduce annual fee discounts for ETPs and Structured Products, and (3) offer an alternate way for issuers of multiple series of securities listed under Rule 5.2-E(j)(6) to qualify for the current discount.

The proposed changes respond to the current extremely competitive environment for ETP listings in which issuers can readily favor competing venues or transfer their listings if they deem fee levels at a particular venue to be excessive, or discount opportunities available at other venues to be more favorable. The Exchange's current annual fees for ETPs are based on the

<sup>30</sup> 17 CFR 200.30-3(a)(12).

<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.