

to make available publicly. All submissions should refer to File No. SR-NYSEAMER-2020-16, and should be submitted on or before April 13, 2020.

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

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88397; File No. SR-NYSE-2020-18]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change of a Temporary Waiver of the Co-Location Hot Hands Fee

March 17, 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 March 16, 2020, New York Stock Exchange LLC (“NYSE” 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 a temporary waiver of the co-location “Hot Hands” fee beginning on March 16, 2020 through March 29, 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 a temporary suspension of the co-location<sup>4</sup> “Hot Hands” fee beginning on March 16, 2020 through March 29, 2020, after which the Mahwah, New Jersey data center (“Data Center”) is scheduled to reopen to third parties.

The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (“ICE”). Through its ICE Data Services (“IDS”) business, ICE operates the Data Center, from which the Exchange provides co-location services to Users.<sup>5</sup>

Among those services is a “Hot Hands” service, which allows Users to use on-site Data Center personnel to maintain User equipment, support network troubleshooting, rack and stack a server in a User’s cabinet; power recycling; and install and document the fitting of cable in a User’s cabinet(s).<sup>6</sup> The Hot Hands fee is \$100 per half hour.

ICE has announced to each User that, starting March 16, 2020, the Data Center will be closed to third parties through March 29, 2020. Pursuant to the ICE contingency plan, the Data Center is

<sup>4</sup> The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (“Commission”) in 2010. See Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56).

<sup>5</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”), NYSE Chicago, Inc. (“NYSE Chicago”), 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). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSEamer-2020-19, SR-NYSEArca-2020-22, SR-NYSECHX-2020-07, and SR-NYSEAT-2020-10.

<sup>6</sup> See Securities Exchange Act Release No. 72721 (July 30, 2014), 79 FR 45562 (August 5, 2014) (SR-NYSE-2014-37).

being closed to third parties to help avoid the spread of COVID-19, which could negatively impact Data Center functions. The Chief Executive Officer of the Exchange has taken the actions required under NYSE Rule 7.1 to close the co-location facility of the Exchange to third parties.<sup>7</sup> While the Rule 7.1 closure is in effect, User representatives will not be allowed access to the Data Center.

If a User’s equipment requires work while the Rule 7.1 closure is in effect, the User will have no option but to use the Hot Hands service and, absent the proposed waiver, would incur Hot Hands fees for the work. Given that, the Exchange proposes to waive all Hot Hands fees from the date of the closing through March 29, 2020, and to add text to the Hot Hands Fee in the Price List noting the waiver. The Exchange believes that there will be sufficient Data Center staff on-site to comply with User requests for Hot Hands service.

The proposed waiver would apply equally to all Users. The proposed fee waiver would not apply differently to distinct types or sizes of market participants. Rather, it would apply uniformly to all Users.

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

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>9</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. In addition, it is designed 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

<sup>7</sup> See NYSE Rule 7.1(c) through (e). See also NYSE Arca Rules 7.1-E and 7.1-O, NYSE American Rules 7.1E and 901NY, NYSE Chicago Rule 7.1, and NYSE National Rule 7.1.

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

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>27</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.

discrimination between customers, issuers, brokers, or dealers.

#### The Proposed Rule Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable for the following reasons.

While the Rule 7.1 closure is in effect, User representatives will not be allowed access to the Data Center. If a User's equipment requires work during such period, the User will have to use the Hot Hands service and, absent a waiver, would incur Hot Hands fees for the work. The Exchange believes that it is reasonable to grant the proposed waiver because Users would have no option other than using the Hot Hands service.

The proposed relief would allow a User to have work carried out on its equipment notwithstanding the closure of the Data Center without incurring Hot Hands fees.

#### The Proposed Rule Change Is Equitable

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits for the following reasons.

The proposed waiver would apply equally to all Users. The proposed fee waiver would not apply differently to distinct types or sizes of market participants. Rather, it would apply uniformly to all Users.

The Exchange believes that the proposal is equitable because all similarly-situated Users would not be charged a fee to use the Hot Hands service that the User would have to use because of the Data Center closure.

#### The Proposed Change Is Not Unfairly Discriminatory and Would Protect Investors and the Public Interest

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

The proposed waiver would not apply differently to distinct types or sizes of market participants. Rather, all Users whose equipment requires work during the Data Center closure would have the resulting fees waived, and the waiver would apply uniformly to all Users from March 16, 2020 through March 29, 2020. For the reasons above, the proposed changes do not unfairly discriminate between or among market participants.

In addition, the Exchange believes that the proposed rule change 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 allow a User to have work carried out on its equipment notwithstanding the

closure of the Data Center pursuant to Rule 7.1 without incurring Hot Hands fees. Accordingly, the Exchange believes that the requested relief is designed to perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest by facilitating the uninterrupted availability of Users' equipment.

For all of the above reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,<sup>10</sup> the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

##### Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate.

The proposal it is not designed to affect competition, but rather to provide relief to Users that, while the Rule 7.1 closure is in effect, have no option but to use the Hot Hands service.

The proposed waiver would not apply differently to distinct types or sizes of market participants. All Users who use the Hot Hands service from March 16, 2020 through March 29, 2020 would have the resulting fees waived.

##### Intermarket Competition

The Exchange does not believe that the proposed change would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange believes that the proposed change would not affect the competitive landscape among the national securities exchanges, as the Hot Hands service is solely charged within co-location to existing Users, and would be temporary.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

#### 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.

<sup>10</sup> 15 U.S.C. 78f(b)(8).

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>11</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>12</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>13</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### IV. Solicitation of Comments

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

#### Electronic Comments

- Use the Commission's internet comment form (<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-2020-18 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-2020-18. 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

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

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-2020-18 and should be submitted on or before April 13, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88406; File No. 4-631]

### Joint Industry Plan; Notice of Filing of the Twentieth Amendment to the National Market System Plan To Address Extraordinary Market Volatility by Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, NASDAQ BX, Inc., NASDAQ PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc.

March 17, 2020.

#### I. Introduction

On February 13, 2020, NYSE Group, Inc., on behalf of the following parties to the National Market System Plan to Address Extraordinary Market Volatility ("the Plan"): <sup>1</sup> Cboe BZX Exchange, Inc.,

Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Chicago Stock Exchange, Inc., the Financial Industry Regulatory Authority, Inc. ("FINRA"), Investors Exchange LLC, Long-Term Stock Exchange ("LTSE"), NASDAQ BX, Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC ("Nasdaq"), New York Stock Exchange LLC ("NYSE"), NYSE Arca, Inc., NYSE National Inc., and NYSE American LLC (collectively, the "Participants") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 11A(a)(3) of the Securities Exchange Act

noticed for immediate effectiveness the Second Amendment to the Plan. *See* Securities Exchange Act Release No. 68953, 78 FR 13113 (February 26, 2013). On April 3, 2013, the Commission approved the Third Amendment to the Plan. *See* Securities Exchange Act Release No. 69287, 78 FR 21483 (April 10, 2013). On August 27, 2013, the Commission noticed for immediate effectiveness the Fourth Amendment to the Plan. *See* Securities Exchange Act Release No. 70273, 78 FR 54321 (September 3, 2013). On September 26, 2013, the Commission approved the Fifth Amendment to the Plan. *See* Securities Exchange Act Release No. 70530, 78 FR 60937 (October 2, 2013). On January 7, 2014, the Commission noticed for immediate effectiveness the Sixth Amendment to the Plan. *See* Securities Exchange Act Release No. 71247, 79 FR 2204 (January 13, 2014). On April 3, 2014, the Commission approved the Seventh Amendment to the Plan. *See* Securities Exchange Act Release No. 71851, 79 FR 19687 (April 9, 2014). On February 19, 2015, the Commission approved the Eight Amendment to the Plan. *See* Securities Exchange Act Release No. 74323, 80 FR 10169 (February 25, 2015). On October 22, 2015, the Commission approved the Ninth Amendment to the Plan. *See* Securities Exchange Act Release No. 76244, 80 FR 66099 (October 28, 2015). On April 21, 2016, the Commission approved the Tenth Amendment to the Plan. *See* Securities Exchange Act Release No. 77679, 81 FR 24908 (April 27, 2016). On August 26, 2016, the Commission noticed for immediate effectiveness the Eleventh Amendment to the Plan. *See* Securities Exchange Act Release No. 78703, 81 FR 60397 (September 1, 2016). On January 19, 2017, the Commission approved the Twelfth Amendment to the Plan. *See* Securities Exchange Act Release No. 79845, 82 FR 8551 (January 26, 2017). On April 13, 2017, the Commission approved the Thirteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 80455, 82 FR 18519 (April 19, 2017). On April 28, 2017, the Commission noticed for immediate effectiveness the Fourteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 80549, 82 FR 20928 (May 4, 2017). On September 26, 2017, the Commission noticed for immediate effectiveness the Fifteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 81720, 82 FR 45922 (October 2, 2017). On March 15, 2018, the Commission noticed for immediate effectiveness the Sixteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 82887, 83 FR 12414 (March 21, 2018). On April 12, 2018, the Commission approved the Seventeenth Amendment to the Plan. *See* Securities Exchange Act Release No. 83044, 83 FR 17205 (April 18, 2018). On April 11, 2019, the Commission approved the Eighteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019). On February 5, 2020, the Commission noticed for immediate effectiveness the Nineteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 88122 (February 5, 2020), 85 FR 7805 (February 11, 2020).

of 1934 ("Exchange Act")<sup>2</sup> and Rule 608 thereunder,<sup>3</sup> a proposal to amend the Plan ("Twentieth Amendment").<sup>4</sup> The proposal reflects changes unanimously approved by the Participants. The Twentieth Amendment proposes to: (i) Amend Section II.B of Appendix B, concerning the quarterly reports provided by the Operating Committee to the Commission; and amend the Plan to reflect the name change of the Chicago Stock Exchange, Inc. to NYSE Chicago, Inc. The Commission is publishing this notice to solicit comments from interested persons on the Twentieth Amendment.<sup>5</sup>

#### II. Description of the Plan

Set forth in this Section II is the statement of the purpose and summary of the Eighteenth Amendment, along with the information required by Rule 608(a)(4) and (5) under the Exchange Act,<sup>6</sup> substantially prepared and submitted by the Participants to the Commission.<sup>7</sup>

##### A. Statement of Purpose and Summary of the Plan Amendment

The Participants filed the Plan with the Commission on April 5, 2011 to create a market-wide limit up-limit down mechanism intended to address extraordinary market volatility in NMS Stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Exchange Act.<sup>8</sup> The Plan sets forth procedures that provide for market-wide limit up-limit down requirements to prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands. These limit up-limit down requirements are coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves. In particular, the Participants adopted this Plan to address extraordinary volatility in the securities markets, *i.e.*, significant fluctuations in individual securities' prices over a short period of time, such as those experienced during the "Flash Crash" on the afternoon of May 6, 2010.

As detailed above, the Plan was amended numerous times between 2011

<sup>2</sup> 15 U.S.C. 78k-1(a)(3).

<sup>3</sup> 17 CFR 242.608.

<sup>4</sup> *See* Letter from Elizabeth King, General Counsel and Corporate Secretary, NYSE, to Vanessa Countryman, Secretary, Commission, dated February 13, 2020 ("Transmittal Letter").

<sup>5</sup> 17 CFR 242.608.

<sup>6</sup> *See* 17 CFR 242.608(a)(4) and (a)(5).

<sup>7</sup> *See* Transmittal Letter, *supra* note 4. The statement of the purpose and summary of the amendment and the information required by Rule 608(a)(4) and (5) is reproduced verbatim from the Transmittal Letter unless otherwise noted; cross-references have been revised to conform with the footnote sequencing of this notice.

<sup>8</sup> 17 CFR 242.600(b)(47).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> On May 31, 2012, the Commission approved the Plan, as modified by Amendment No. 1. *See* Securities Exchange Act Release No. 67091, 77 FR 33498 (June 6, 2012) (File No. 4-631) ("Approval Order"). On February 20, 2013, the Commission