

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>26</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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](mailto:rule-comments@sec.gov). Please include file number SR-NASDAQ-2024-012 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-NASDAQ-2024-012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE,

Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-012 and should be submitted on or before April 16, 2024.

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

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99810; File No. SR-NYSE-NAT-2024-09]

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

March 20, 2024.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on March 8, 2024, NYSE National, Inc. ("NYSE National" 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 the Connectivity Fee Schedule ("Fee Schedule") regarding colocation services and fees to provide Users with wireless connectivity to MEMX market data. 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 the Connectivity Fee Schedule ("Fee Schedule") regarding colocation services and fees to provide Users<sup>4</sup> with wireless connectivity to MEMX LLC ("MEMX") market data.

The Exchange currently provides Users with wireless connections to nine market data feeds or combinations of feeds from third-party markets (the "Existing Third Party Data"),<sup>5</sup> and wired connections to more than 45 market data feeds or combinations of feeds.<sup>6</sup> The Exchange proposes to add to the Fee Schedule wireless connections to the MEMX Memoir Depth market data feed<sup>7</sup> ("MEMX Data" and, together with the Existing Third Party Data, the "Third Party Data"). Users would be offered the proposed wireless connection to the MEMX Data through connections into the colocation center

<sup>4</sup> 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. 83351 (May 31, 2018), 83 FR 26314 at n.9 (June 6, 2018) (SR-NYSE-NAT-2018-07). 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 American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. (together, the "Affiliate SROs"). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2024-15, SR-NYSEAMER-2024-18, SR-NYSEARCA-2024-26, and SR-NYSECHX-2024-11.

<sup>5</sup> See 83 FR 26314, *supra* note 4, at 26319-20.

<sup>6</sup> See *id.* at 26322-23.

<sup>7</sup> MEMX Data would also include the test feed for MEMX Memoir market data.

<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.

<sup>26</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

in the Mahwah, New Jersey data center (“MDC”).<sup>8</sup>

The Exchange expects that the proposed rule change would become operative in the second quarter of 2024. The Exchange will announce the date that the wireless connection to the MEMX Data will be available through a customer notice.

As requested by Users, the Exchange’s proposed wireless connectivity to MEMX Data would be to the MEMX Memoir Depth market data feed. As described by MEMX, “[t]he MEMOIR Depth feed is a MEMX-only market data feed that contains all displayed orders for securities trading on the Exchange (*i.e.*, top and depth-of-book order data), order executions (*i.e.*, last sale data), order cancellations, order modifications, order identification numbers, and administrative messages.”<sup>9</sup>

To receive MEMX Data, the User would enter into an agreement with a third party for permission to receive the data, if required. The User would pay this third party any fees for the data content.

The Exchange proposes to revise the Fee Schedule to reflect fees related to the wireless connection to MEMX Data. For each wireless connection to MEMX Data, a User would be charged a \$5,000 non-recurring initial charge and a monthly recurring charge of \$6,000. If a User were to purchase more than one wireless connection to MEMX Data, it would pay more than one non-recurring initial charge.

Each proposed wireless connection to MEMX Data would include the use of one wireless connection port, and a User would not pay a separate fee for the use of such port, *provided that* if a User already had a port for Existing Third Party Data other than Toronto Stock Exchange data or CME Group data (“Single Port Third Party Data”), it would not receive an additional port for the MEMX Data, as one would not be needed.<sup>10</sup> Rather, the User would be

<sup>8</sup> Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed service would be provided by FIDS pursuant to an agreement with a non-ICE entity. FIDS does not own the wireless network that would be used to provide the service.

<sup>9</sup> Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491, 16492 (March 17, 2023) (SR–MEMX–2023–04).

<sup>10</sup> Similarly, if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. Connection to Toronto Stock Exchange data and CME Group data are excepted because they each require their own port. *See* Securities Exchange Act Release Nos. 80215 (February 28,

able to connect to MEMX Data using the same port that it already had, as a User would only require one port to connect to MEMX Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

#### Application and Impact of the Proposed Changes

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 Third Party Data, is completely voluntary and the Fee Schedule is applied uniformly to all Users.

#### Competitive Environment

The Exchange operates in a highly competitive market in which other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>11</sup>

The Exchange understands that the third party Quincy Data LLC (“Quincy”) <sup>12</sup> already provides wireless connectivity to MEMX market data in the MDC. As explained below in this filing, the Exchange’s proposed wireless connection to MEMX Data would compete with the wireless connection to MEMX market data provided by Quincy. Third-party vendors such as Quincy are not at any competitive disadvantage created by the Exchange.

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

2017), 82 FR 12658 (March 6, 2017) (SR–NYSE–2017–05); and 98966 (November 16, 2023), 88 FR 81476 (November 22, 2023) (SR–NYSE–2023–26).

<sup>11</sup> *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>12</sup> The Exchange understands that Quincy is an affiliate of McKay Brothers LLC.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>14</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 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,<sup>15</sup> 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. In considering the reasonableness of proposed services and fees, the Commission’s market-based test considers “whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees.”<sup>16</sup> If the Exchange meets that burden, “the Commission will find that its proposal is consistent with the Act unless ‘there is a substantial countervailing basis to find that the terms’ of the proposal violate the Act or the rules thereunder.”<sup>17</sup> Here, the

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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

<sup>16</sup> *See* Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEARCA–2020–08, SR–NYSECHX–2020–02, SR–NYSESENAT–2020–03, SR–NYSE–2020–11, SR–NYSEAMER–2020–10, SR–NYSEARCA–2020–15, SR–NYSECHX–2020–05, SR–NYSESENAT–2020–08) (“Wireless Approval Order”), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (“2008 ArcaBook Approval Order”). *See NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

<sup>17</sup> *See* Wireless Approval Order, *supra* note 16, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 16, at 74781.

Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the Exchange has not placed the third party vendors at a competitive disadvantage created by the Exchange.

#### Substantially Similar Substitutes Are Available

The Exchange's proposed wireless connection to MEMX Data would compete with other methods by which both the Exchange and various third parties already provide connectivity to MEMX market data to Users.

Quincy already provides wireless connectivity to MEMX market data in the MDC. The Exchange believes that the Quincy wireless connection to MEMX market data is to the same MEMX data feed, and at a same or similar speed as the Exchange's proposed connection.<sup>18</sup> Accordingly, the Quincy wireless connection to MEMX market data would compete with the Exchange's proposed wireless connection and would exert significant competitive forces on the Exchange in setting the terms of its proposal, including the level of the Exchange's proposed fees.<sup>19</sup> If the Exchange were to set its proposed fees too high, Users could respond by instead selecting Quincy's substantially similar wireless connectivity to MEMX market data.<sup>20</sup>

#### Third Party Competitors Are Not at a Competitive Disadvantage Created by the Exchange

The Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party provider or any future providers of wireless connectivity to MEMX market data. The Exchange's proposed service for connectivity to MEMX Data does not have any special access to or advantage within the MDC. More specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds of the MDC, but pursuant to Exchange rule the distance from such pole to the patch panel where fiber connections for

wireless services connect to the network row in the space used for co-location in the MDC (the "Patch Panel Point") is normalized.<sup>21</sup> Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.<sup>22</sup> Further, all distances in the MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Nor does the Exchange have a competitive advantage over the third-party competitors offering wireless connectivity to MEMX market data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to MEMX market data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party telecommunications service providers that have installed their equipment in the MDC's two meet-me-rooms ("Telecoms").<sup>23</sup> Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level<sup>24</sup> so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and

because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.<sup>25</sup> Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange is subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to MEMX market data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because a substantially similar substitute is available, and the Exchange has not placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the Exchange's wireless connectivity to MEMX Data are reasonable.<sup>26</sup> If the Exchange were to set its prices for wireless connectivity to MEMX Data at a level that Users found to be too high, Users could easily choose to connect to MEMX market data in colocation at the MDC through the competing Quincy wireless connection, as detailed above.

#### Additional Considerations

The Exchange believes it is reasonable that if a User already had a wireless connection port for Single Port Third Party Data, it would not receive an additional port for the MEMX Data. In such a case, no additional port would be needed, as the User would be able to connect to MEMX Data using the port it already had. Similarly, the Exchange

<sup>18</sup> Because Quincy is not a regulated entity, it is not obligated to make its fees publicly available or make latency or fees the same for all entities. The Exchange believes that Quincy may offer connectivity to MEMX data in the MDC, Carteret data center, and Secaucus data center as a bundle.

<sup>19</sup> See 2008 ArcaBook Approval Order, *supra* note 16, at 74789 and n.295 (recognizing that products need not be identical to be substitutable).

<sup>20</sup> The Exchange believes that at least three third-party market participants offer fiber connections to MEMX market data in colocation.

<sup>21</sup> See NYSE Rule 3.13, NYSE American Rule 3.13E, NYSE Arca Rule 3.13, NYSE Chicago Rule 3.13, and NYSE National Rule 3.13 (Data Center Pole Restrictions—Connectivity to Co-Location Space) (placing restrictions on use of the data center pole designed to address any advantage that the wireless connections have by virtue of a data center pole).

<sup>22</sup> *Id.*

<sup>23</sup> Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

<sup>24</sup> See Securities Exchange Act Release No. 98002 (July 26, 2023), 88 FR 50232 (August 1, 2023) (SR-NYSE/2023-12) ("MMR Notice").

<sup>25</sup> See *id.* at 50235. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

<sup>26</sup> See Wireless Approval Order, *supra* note 16.

believes it is reasonable that if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to MEMX and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

The Exchange believes it is reasonable for the MEMX Data to include the MEMX Memoir Depth feed and its related test feed, as that is responsive to User requests. The Exchange believes that it is the same feed that the competing Quincy wireless connection offers.

#### The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users. Without this proposed rule change, Users would have fewer options for connectivity to MEMX market data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive MEMX market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain MEMX market data wirelessly using Quincy's wireless connection.

The Exchange believes that the proposed change is equitable because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select the Exchange's proposed wireless connections to MEMX Data would be charged the same amount for the same services.

The Exchange believes that it is equitable that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the MEMX Data. Similarly, the Exchange believes it is equitable that if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is

because a User would only require one port to connect to MEMX and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

#### The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory, for the following reasons. Without this proposed rule change, Users would have fewer options for connectivity to MEMX Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive MEMX market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain MEMX market data wirelessly using Quincy's wireless connection.

The Exchange believes that the proposed change is not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily select wireless connections to MEMX Data would be charged the same amount for the same services. Users that opt to use wireless connections to MEMX Data would receive the MEMX Data that is available to all Users, as all market participants that contract with MEMX or its affiliate for MEMX Data, as required, may receive it.

The Exchange believes that it is not unfairly discriminatory that if a User already had a port for Single Port Third Party Data, it would not receive an additional port for the MEMX Data. Similarly, the Exchange believes it is not unfairly discriminatory that if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. This is because a User would only require one port to connect to MEMX and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

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

#### 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.<sup>27</sup>

The proposed change would not affect competition among national securities exchanges or among members of the Exchange, but rather between FIDS and its commercial competitors. The proposed wireless connection would provide Users with an alternative means of connectivity to MEMX Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive MEMX market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations.

Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain MEMX market data wirelessly using Quincy's wireless connection. The Exchange's proposed wireless connection and the existing Quincy wireless connection to MEMX market data are sufficiently similar substitutes and thus provide market participants with choices to meet their wireless connectivity needs.

In addition, the Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party provider or any future providers of wireless connectivity to MEMX market data. The Exchange's proposed service for connectivity to MEMX Data does not have any special access to or advantage within the MDC. More specifically, the Exchange's proposed wireless connection would lead to the data center pole, from which a fiber connection would lead into the MDC. The data center pole is on the grounds of the MDC, but pursuant to Exchange rule, the distance from such pole to the Patch Panel Point is normalized.<sup>28</sup> Exchange rules also require that the distance from the Patch Panel Point to each User cabinet in

<sup>27</sup> 15 U.S.C. 78f(b)(8).

<sup>28</sup> See supra note 21.

colocation be the same.<sup>29</sup> Further, all distances in the MDC are normalized. Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Nor does the Exchange have a competitive advantage over the third-party competitors offering wireless connectivity to MEMX market data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to MEMX market data—like Users of any other colocation service—would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party Telecoms that have installed their equipment in the MDC's two meet-me-rooms.<sup>30</sup> Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level<sup>31</sup> so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.<sup>32</sup> Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to

provide services to compete with the Exchange's services.

If anything, the Exchange is subject to a competitive disadvantage vis-à-vis third party competitors offering wireless connectivity to MEMX market data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

### *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 Act<sup>33</sup> and Rule 19b-4(f)(6) thereunder.<sup>34</sup> 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.

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>35</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 (<https://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-NYSENAT-2024-09 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-NYSENAT-2024-09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSENAT-2024-09 and should be submitted on or before April 16, 2024.

<sup>29</sup> See *id.*

<sup>30</sup> See *supra* note 23.

<sup>31</sup> See MMR Notice, *supra* note 24.

<sup>32</sup> See *supra* note 25.

<sup>33</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>34</sup> 17 CFR 240.19b-4(f)(6).

<sup>35</sup> 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99806; File No. SR-NYSE-2024-15]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

March 20, 2024.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on March 8, 2024, 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 amend the Connectivity Fee Schedule (“Fee Schedule”) regarding colocation services and fees to provide Users with wireless connectivity to MEMX market data. 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 the Connectivity Fee Schedule (“Fee Schedule”) regarding colocation services and fees to provide Users<sup>4</sup> with wireless connectivity to MEMX LLC (“MEMX”) market data.

The Exchange currently provides Users with wireless connections to nine market data feeds or combinations of feeds from third-party markets (the “Existing Third Party Data”),<sup>5</sup> and wired connections to more than 45 market data feeds or combinations of feeds.<sup>6</sup> The Exchange proposes to add to the Fee Schedule wireless connections to the MEMX Memoir Depth market data feed<sup>7</sup> (“MEMX Data” and, together with the Existing Third Party Data, the “Third Party Data”). Users would be offered the proposed wireless connection to the MEMX Data through connections into the colocation center in the Mahwah, New Jersey data center (“MDC”).<sup>8</sup>

The Exchange expects that the proposed rule change would become operative in the second quarter of 2024.

<sup>4</sup> 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. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR-NYSE-2015-40). 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 NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSEAMER-2024-18, SR-NYSEARCA-2024-26, SR-NYSECHX-2024-11, and SR-NYSEENAT-2024-09.

<sup>5</sup> See Securities Exchange Act Release Nos. 76748 (December 23, 2015), 80 FR 81609 (December 30, 2015) (SR-NYSE-2015-52); 78378 (July 21, 2016), 81 FR 49315 (July 27, 2016) (SR-NYSE-2016-49); and 80215 (February 28, 2017), 82 FR 12658 (March 6, 2017) (SR-NYSE-2017-05).

<sup>6</sup> See Securities Exchange Act Release No. 80311 (March 24, 2017), 82 FR 15741 (March 30, 2017) (SR-NYSE-2016-45).

<sup>7</sup> MEMX Data would also include the test feed for MEMX Memoir market data.

<sup>8</sup> Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed service would be provided by FIDS pursuant to an agreement with a non-ICE entity. FIDS does not own the wireless network that would be used to provide the service.

The Exchange will announce the date that the wireless connection to the MEMX Data will be available through a customer notice.

As requested by Users, the Exchange’s proposed wireless connectivity to MEMX Data would be to the MEMX Memoir Depth market data feed. As described by MEMX, “[t]he MEMOIR Depth feed is a MEMX-only market data feed that contains all displayed orders for securities trading on the Exchange (*i.e.*, top and depth-of-book order data), order executions (*i.e.*, last sale data), order cancellations, order modifications, order identification numbers, and administrative messages.”<sup>9</sup>

To receive MEMX Data, the User would enter into an agreement with a third party for permission to receive the data, if required. The User would pay this third party any fees for the data content.

The Exchange proposes to revise the Fee Schedule to reflect fees related to the wireless connection to MEMX Data. For each wireless connection to MEMX Data, a User would be charged a \$5,000 non-recurring initial charge and a monthly recurring charge of \$6,000. If a User were to purchase more than one wireless connection to MEMX Data, it would pay more than one non-recurring initial charge.

Each proposed wireless connection to MEMX Data would include the use of one wireless connection port, and a User would not pay a separate fee for the use of such port, *provided that* if a User already had a port for Existing Third Party Data other than Toronto Stock Exchange data or CME Group data (“Single Port Third Party Data”), it would not receive an additional port for the MEMX Data, as one would not be needed.<sup>10</sup> Rather, the User would be able to connect to MEMX Data using the same port that it already had, as a User would only require one port to connect to MEMX Data and Single Port Third Party Data, irrespective of how many of the wireless connections it orders.

#### Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or

<sup>9</sup> Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491, 16492 (March 17, 2023) (SR-MEMX-2023-04).

<sup>10</sup> Similarly, if a User connected to MEMX Data on a port for which it did not pay a separate fee for its use, it would not receive a new port if it subsequently connected to Single Port Third Party Data. Connection to Toronto Stock Exchange data and CME Group data are excepted because they each require their own port. See 82 FR 12658, *supra* note 5, at note 8, and Securities Exchange Act Release No. 98962 (November 16, 2023), 88 FR 81485 (November 22, 2023) (SR-NYSE-2023-44).

<sup>36</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.