

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on 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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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 Act¹² and Rule 19b-4(f)(6)(iii) thereunder.¹³

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative by July 31, 2020. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it implements an amendment to the CAT NMS Plan approved by the Commission.¹⁶ Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative as of July 31, 2020.¹⁷

At any time within 60 days of the filing of this 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 will institute proceedings 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. Please include File Number SR-CboeBZX-2020-061 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-CboeBZX-2020-061. 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-CboeBZX-2020-061 and should be submitted on or before August 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89456; File No. SR-NYSECHX-2020-02]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing of Partial Amendment No. 1 to Proposed Rule Change To Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Associated Fees

August 3, 2020.

I. Introduction

On January 30, 2020, NYSE Chicago, Inc. ("NYSE Chicago" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")¹ and Rule 19b-4 thereunder,² a proposed rule change (SR-NYSECHX-2020-02) to establish a schedule of Wireless Connectivity Fees and Charges ("Wireless Fee Schedule") listing available wireless bandwidth connections between the Mahwah, New Jersey data center and other data centers.

The Commission published the proposed rule change for public comment in the **Federal Register** on February 18, 2020.³ The Commission

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 88172 (February 11, 2020), 85 FR 8923 (February 18, 2020) (SR-NYSECHX-2020-02) ("Wireless I Notice"). See also Securities Exchange Act Release Nos. 88168 (February 11, 2020), 85 FR 8938 (February 18, 2020) (SR-NYSE-2020-05); 88169 (February 11, 2020), 85 FR 8946 (February 18, 2020) (SR-NYSEAMER-2020-05); 88170 (February 11, 2020), 85 FR 8956 (February 18, 2020) (SR-NYSEArca-2020-08); and 88171 (February 11, 2020), 85 FR 8930 (February 18, 2020) (SR-NYSEAT-2020-03).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ See Securities Exchange Act Release No. 89397 (July 24, 2020) (**Federal Register** publication pending).

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the

proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

received several comments on the proposed rule change, and a response from the Exchange.⁴ On April 1, 2020, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁶ On May 18, 2020, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁷ The Commission received additional comments in response to the Order Instituting Proceedings.⁸

On July 27, 2020, the Exchange filed Partial Amendment No. 1 to the proposed rule change in response to certain comments on the proposed rule change. Partial Amendment No. 1 is described in Item II below, which has been substantially prepared by the Exchange.⁹ The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons.¹⁰

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Amendment

NYSE Chicago, Inc. ("NYSE Chicago" or the "Exchange") hereby submits this Partial Amendment No. 1 to the above-referenced filing ("Filing"), in

connection with the proposed rule change to establish a schedule of Wireless Connectivity Fees and Charges (the "Wireless Fee Schedule") with wireless connections between the Mahwah, New Jersey data center and other data centers. With this Partial Amendment No. 1, the Exchange proposes a new rule to place restrictions on the use of a pole on the grounds of the Mahwah, New Jersey data center that is used for such wireless connections.

The Exchange proposes the following amendments to the Filing:

1. *The Exchange proposes to amend the first paragraph in Item 1(a) on page 3 of the Filing:*

The Exchange proposes to amend the first paragraph of Item 1(a) on page 3 of the Filing to add "(a)" before "establish" and add new text at the end of the paragraph to describe the proposed rule change, as follows (new text italicized):

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² NYSE Chicago, Inc. ("NYSE Chicago" or the "Exchange") proposes to (a) establish a schedule of Wireless Connectivity Fees and Charges (the "Wireless Fee Schedule") with wireless connections between the Mahwah, New Jersey data center and other data centers, and (b) add a new rule to place restrictions on the use of a pole on the grounds of the Mahwah, New Jersey data center that is used for such wireless connections.

2. *The Exchange proposes to amend the carryover paragraph on pages 3 and 4 of the Filing (second full paragraph on page 24 of the Exhibit 1):*

The Exchange proposes to add a sentence at the end of the carryover paragraph on pages 3 and 4 of the Filing (second full paragraph on page 24 of the Exhibit 1) to describe the proposed rule change, as follows (new text italicized):

The Exchange proposes to establish the Wireless Fee Schedule with wireless connections between the Mahwah, New Jersey data center and three data centers that are owned and operated by third parties unaffiliated with the Exchange: (1) Carteret, New Jersey, (2) Secaucus, New Jersey, and (3) Markham, Canada (collectively, the "Third Party Data Centers"). Market participants that purchase such a wireless connection (a "Wireless Connection") are charged an initial and monthly fee. In addition, the Exchange proposes to include a General Note to the Wireless Fee Schedule. *The Exchange proposes to add a new rule to place restrictions on the use of a pole on the grounds of the Mahwah, New Jersey data center that is used for the Wireless Connections.*

3. *The Exchange proposes to add a new section titled "Proposed New*

Rule" and accompanying footnotes after the second full paragraph on page 14 of the Filing (first full paragraph on page 40 of the Exhibit 1):

The Exchange proposes a new rule to place restrictions on the use of a pole on the grounds of the Mahwah, New Jersey data center that is used for wireless connectivity services. Accordingly, the Exchange proposes to add a new section titled "*Proposed New Rule*" with accompanying footnotes (subsequent footnotes would be renumbered in a conforming change) after the second full paragraph on page 14 of the Filing (first full paragraph on page 40 of the Exhibit 1), after the end of the section titled "*Proposed General Note*," as follows (all text is new):

Proposed New Rule

Since 2016, IDS has had the use of a pole on the grounds of the Mahwah data center.^{25/26} The data center pole is part of the network utilized for the Wireless Connections to the Carteret and Secaucus Third Party Data Centers.^{26/27} At the data center pole, the wireless connection to the Third Party Data Centers converts to a fiber connection, and the fiber connection travels from the data center pole into the Mahwah data center.^{27/28} The equipment on the data center pole belongs to IDS and Anova Technologies, LLC ("Anova"), the non-ICE entity that owns the wireless network used for the Wireless Connections to Secaucus and Carteret.^{28/29}

Other third parties that offer wireless services utilize commercial poles located outside the grounds of the Mahwah, New Jersey data center for their wireless networks. A third party's wireless connections to the Third Party Data Center convert to fiber connections at the commercial pole, and the fiber connects the commercial pole to the Mahwah data center.

Several such third parties have objected to the use of the data center pole for the Wireless Connections. They argue that IDS has an advantage over its competitors because third parties are not allowed access to the data center pole,^{29/30} and the data center pole is closer to the Mahwah data center than any commercial pole.^{30/31} At least one third party has raised the additional concern that the Wireless Connections may benefit from "less obvious and more discreet types of latency advantages" due to infrastructure inside the Mahwah data center, noting that "some connections may have a longer fiber route than others within a data center or may have to go through various equipment or meet me rooms that an affiliate or preferred provider of an exchange do not."^{31/32}

The Exchange is proposing a new Rule 3.13 (Data Center Pole Latency Restrictions—Connectivity to Co-Location Space) that would require that the length of the connection from the data center pole to the network row in the space used for co-location in the Mahwah data center (i.e., the point where the Wireless Connections lead) be no less than the length of the connection from

⁴ Comments received on the Wireless I Notice and the Exchange's response are available on the Commission's website at: <https://www.sec.gov/comments/sr-nysechx-2020-02/srnysechx202002.htm>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 88539 (April 1, 2020), 85 FR 19553 (April 7, 2020). The Commission designated May 18, 2020, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule changes.

⁷ See Securities Exchange Act Release No. 88901 (May 18, 2020), 85 FR 31273 (May 22, 2020) in which the Commission instituted proceedings ("Order Instituting Proceedings" or "OIP").

⁸ Comments received on the Wireless I Notice following the OIP also are available on the Commission's website at: <https://www.sec.gov/comments/sr-nysechx-2020-02/srnysechx202002.htm>.

⁹ The Commission has reformatted the Exchange's presentation of the footnotes.

¹⁰ Partial Amendment No. 1 is also available on the Commission's website at: <https://www.sec.gov/comments/sr-nysechx-2020-02/srnysechx202002.htm>. The Commission also refers interested persons to Securities Exchange Act Release No. 88240 (February 19, 2020), 85 FR 10795 (February 25, 2020) (SR-NYSECHX-2020-05) (wherein the Exchange filed a proposed rule change to amend the proposed Wireless Fee Schedule to add "Wireless Market Data Connections" and associated fees ("Wireless II") and concurrently proposes to partially amend Wireless II). Partial Amendment No. 1 to Wireless II is available on the Commission's website at: <https://www.sec.gov/comments/sr-nysechx-2020-05/srnysechx202005.htm>.

the closest commercial pole to the same point. By requiring that the compared connections both extend to the network row in the space used for co-location, the proposed rule would take distances within the Mahwah data center into account.

The proposed rule would include the following definitions:

- “Commercial Pole” would mean a pole (a) on which one or more third parties locate wireless equipment used to offer wireless connectivity to other third parties, and (b) from which a fiber connection extends from third party equipment on the pole to the Data Center.

- “Data Center” would mean the Mahwah, New Jersey data center where the Exchange’s matching engine is located, or its successor.

- “Data Center Pole” would mean a pole that (a) holds wireless equipment, (b) is located within the grounds of the Data Center, and (c) cannot be used by third parties other than third parties with which the Exchange or an ICE Affiliate has an agreement to provide services in the name of the Exchange or an ICE Affiliate.

- “ICE Affiliate” would mean Intercontinental Exchange, Inc. (“ICE”) and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with ICE, where “control” means that one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.

The proposed rule would require that:

the length of the connection between (a) the base of the Data Center Pole and (b) the network row in the space used for co-location in the Data Center shall be no less than the length of the connection between (x) the base of the closest Commercial Pole and (y) the network row in the space used for co-location in the Data Center.

In a conforming change, the Exchange proposes to add a new Rule 3.12, marked “Reserved.” The addition would allow the numbering of the proposed Rule 3.13 to be consistent with changes proposed by the Affiliate SROs to their rules.^{25/26}

^{25/26} See Securities Exchange Act Release No. 76748 (December 23, 2015), 80 FR 81609 (December 30, 2015) (SR–NYSE–2015–52) (order approving proposed rule change to the co-location services offered by the NYSE (the offering of a wireless connection to allow users to receive market data feeds from third party markets) and to reflect changes to the NYSE’s price list related to these services).

^{26/27} The Wireless Connections with Markham, Canada do not use equipment on the data center pole.

^{27/28} The wireless network similarly converts to a fiber connection for its connection into the Third Party Data Centers.

^{28/29} Equipment for services Anova offers under its own name is not allowed on the data center pole.

^{29/30} IDS does not sell rights to third parties to operate wireless equipment on the data center pole due to space limitations, security concerns, and the interference that would arise between equipment placed too closely together.

^{30/31} See letter from Gregory Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., to Ms. Vanessa Countryman, Secretary, Securities and Exchange Commission (“Commission”), dated June 12, 2020; letter from Stephen John Berger, Managing Director, Global Head of Government and Regulatory Policy, Citadel Securities, to Ms. Vanessa Countryman, Secretary, Commission, dated June 12, 2020; letter from Jim Considine, Chief Financial Officer, McKay Brothers LLC (“McKay Brothers”), to Ms. Vanessa Countryman, Secretary, Commission, dated June 12, 2020 (“McKay Letter”); and letter from Thomas M. Merritt, Deputy General Counsel, Virtu Financial, Inc. to Ms. Vanessa Countryman, Secretary, Commission, dated March 10, 2020.

^{31/32} McKay Letter, *supra* note 30/31, at 9.

^{32/33} See Securities Exchange Act Release Nos. 88168 (February 11, 2020), 85 FR 8938, (February 18, 2020) (SR–NYSE–2020–05); 88169 (February 11, 2020), 85 FR 8946 (February 18, 2020) (SR–NYSEAMER–2020–05); 88170 (February 11, 2020), 85 FR 8956 (February 18, 2020) (SR–NYSEArca–2020–08); and 88171 (February 11, 2020), 85 FR 8930 (February 18, 2020) (SR–NYSENAT–2020–03); (notice of filing of proposed rule change to establish a Schedule of Wireless Connectivity Fees and Charges with wireless connections).

4. *The Exchange proposes to add new text after the carryover paragraph on pages 15 and 16 of the Filing (first full paragraph on page 42 of the Exhibit 1):*

The Exchange proposes to amend the Filing to include additional analysis of the competitive environment for wireless connections. Accordingly, the Exchange proposes to add a paragraph and accompanying footnote (subsequent footnotes would be renumbered in a conforming change) after the carryover paragraph on pages 15 and 16 of the Filing (first full paragraph on page 42 of the Exhibit 1) as follows (all text new):

The Exchange believes that its competitors’ wireless connections provide connectivity at the same or similar speed as the Wireless Connections, and at the same or similar cost. Indeed, the McKay Letter acknowledges that McKay Brothers has the fastest wireless network.^{34/35}

^{34/35} McKay Letter, *supra* note 30/31, at 4.

5. *The Exchange proposes to amend the Statutory Basis section of the Filing after the third full paragraph on page 18 of the Filing (second full paragraph on page 46 of the Exhibit 1):*

The Exchange proposes to include information in the Filing regarding why it believes the proposed new rule is reasonable. The Exchange proposes to

amend the Statutory Basis section of the Filing to add new paragraphs and accompanying footnotes (subsequent footnotes would be renumbered in a conforming change) after the third full paragraph on page 18 of the Filing (second full paragraph on page 46 of the Exhibit 1), at the end of the section titled “*The Proposed Change is Reasonable*,” as follows (all text is new):

The Exchange believes that the proposed new Rule 3.13 would be reasonable as, pursuant to the rule, the networks for the Wireless Connections, and future wireless connections that use a Data Center Pole, would “operat[e] in the same manner as competitors do today without a latency subsidy or other advantage provided by the Exchanges”^{39/40} Accordingly, the proposed new rule would promote just and equitable principles of trade and, in general, protect investors and the public interest by ensuring that the subscribers to services using the IDS wireless network do not benefit from any physical proximity “on the segment [of the network] closest to the Exchanges’ data center that no competitor can replicate.”^{40/41} By ending both of the compared connections at the network row in the space used for co-location, the proposed rule would take distances within the Mahwah data center into account.

The proposed new rule would not apply differently to distinct types or sizes of market participants. The Exchange would be required to ensure that the length of the connection between (a) the base of the Data Center Pole and (b) the network row in the space used for co-location in the Data Center, would be no less than the length of the connection between (x) the base of the closest Commercial Pole and (y) the network row in the space used for co-location in the Data Center.

The Exchange believes that the proposed definition of “Commercial Pole” is reasonable and would promote just and equitable principles of trade because it would encompass any pole on which a third party locates its wireless equipment in order to offer wireless connectivity to customers. The Exchange believes that such third parties are the direct competitors for the Wireless Connections, as they also offer wireless connections to customers. If a third party used a pole for a proprietary wireless network and that pole does not have one or more third parties’ wireless equipment used to offer wireless connectivity to other third parties, that pole would not fall within the scope of the definition of Commercial Pole.

The Exchange believes that the proposed definition of “Data Center” is reasonable and would promote just and equitable principles of trade because it would capture any data center to which the Exchange locates its matching engine.

The Exchange believes that the proposed definition of “Data Center Pole” is reasonable and would promote just and equitable principles of trade because it would encompass not just the current pole, but also any additional or successor pole on the grounds of the Data Center, so long as such pole could not be used by third parties other

than third parties with which the Exchange or an ICE Affiliate had an agreement to provide services in the name of the Exchange or an ICE Affiliate, such as Anova.

The Exchange believes that the definition of “ICE Affiliate” is reasonable and would promote just and equitable principles of trade because the same definition is used in Article 22, Rule 28 (Additional Requirements for Listed Securities Issued by Intercontinental Exchange, Inc. or its Affiliates), and so using it would add transparency, clarity and internal consistency to Exchange rules.

^{39/40} McKay Letter, *supra* note 30/31, at 7.
^{40/41} *Id.*, at note 33.

6. *The Exchange proposes to amend the Statutory Basis section of the Filing after the second full paragraph on page 20 of the Filing (second full paragraph on page 49 of the Exhibit 1):*

The Exchange proposes to include information in the Filing regarding why it believes the proposed new rule is not unfairly discriminatory. The Exchange proposes to amend the Statutory Basis section of the Filing to add new paragraphs and accompanying footnotes (subsequent footnotes would be renumbered in a conforming change) after the second full paragraph on page 20 of the Filing (second full paragraph on page 49 of the Exhibit 1), immediately prior to the last paragraph of the section titled “*The Proposed Change is Not Unfairly Discriminatory*,” as follows (all text is new):

The Exchange believes that the proposed new Rule 3.13 would not be unfairly discriminatory, as pursuant to the rule, the networks for the Wireless Connections, and future wireless connections that use the Data Center Pole, would “operat[e] in the same manner as competitors do today without a latency subsidy or other advantage provided by the Exchanges”^{41/42} Accordingly, the proposed new rule would ensure that the IDS wireless network does not benefit from physical proximity “on the segment [of the network] closest to the Exchanges’ data center that no competitor can replicate.”^{42/43} By ending both of the compared connections at the network row in the space used for co-location inside the Data Center, the proposed rule would take distances within the Mahwah data center into account.

The proposed new rule would not apply differently to distinct types or sizes of market participants. The Exchange would be required to ensure that the length of the connection between (a) the base of the Data Center Pole and (b) the network row in the space used for co-location in the Data Center, would be no less than the length of the connection between (x) the base of the closest Commercial Pole and (y) the network row in the space used for co-location in the Data Center.

The Exchange believes that the proposed definition of “Commercial Pole” would not be unfairly discriminatory because it would encompass any pole on which a third party locates its wireless equipment in order to offer wireless connectivity to customers. The

Exchange believes that such third parties are the direct competitors for the Wireless Connections, as they also offer wireless connections to customers. If a third party used a pole for a proprietary wireless network and that pole does not have one or more third parties’ wireless equipment used to offer wireless connectivity to other third parties, that pole would not fall within the scope of the definition of Commercial Pole.

The Exchange believes that the proposed definition of “Data Center” would not be unfairly discriminatory because it would capture any data center to which the Exchange locates its matching engine.

The Exchange believes that the proposed definition of “Data Center Pole” would not be unfairly discriminatory because it would encompass not just the current pole, but also any additional or successor pole on the grounds of the Data Center, so long as such pole could not be used by third parties other than third parties with which the Exchange or an ICE Affiliate had an agreement to provide services in the name of the Exchange or an ICE Affiliate, such as Anova.

The Exchange believes that the definition of “ICE Affiliate” would not be unfairly discriminatory because the same definition is used in Article 22, Rule 28, and so using it would add transparency, clarity and internal consistency to Exchange rules.

^{41/42} McKay Letter, *supra* note 30/31, at 7.
^{42/43} *Id.*, at note 33.

7. *The Exchange proposes to amend the section of the Filing titled “Self-Regulatory Organization’s Statement on Burden on Competition” in the following two ways:*

The Exchange proposes to include information in the Filing regarding why it believes the proposed new rule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Securities Exchange Act of 1934 (the “Act”).¹¹ Accordingly, the Exchange proposes to amend the section of the Filing titled “*Self-Regulatory Organization’s Statement on Burden on Competition*” in the following two ways.

First, to set the new text apart from the previous discussion regarding the burden on competition, the Exchange proposes to add the heading “*Wireless Market Data Connectivity*” immediately before the first full paragraph under the heading on page 20 of the Filing (page 49 of the Exhibit 1). The new heading would apply to the current text of the Filing.

Second, after the first full paragraph on page 22 of the Filing (second full paragraph on page 51 of the Exhibit 1), the Exchange proposes to add the heading “*Proposed New Rule*” and new paragraphs and accompanying footnotes (subsequent footnotes would be

renumbered in a conforming change), as follows (all text is new):

Proposed New Rule

The Exchange does not believe that the proposed new rule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.^{46/47}

With the exception of Anova, third parties do not have access to the data center pole. Under the proposed rule, the Exchange would always be obligated to ensure that the length of the connection between (a) the base of the Data Center Pole and (b) the network row in the space used for co-location in the Data Center, would be no less than the length of the connection between (x) the base of the closest Commercial Pole and (y) the network row in the space used for co-location in the Data Center.

IDS, not the Exchange, provides the Wireless Connections to market participants, and so it would be IDS that would have to slow its connection down as required by the rule. Accordingly, the Exchange believes that the only burden on competition of the proposed change would be on IDS.

Nonetheless, the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate because the proposed change would ensure that the IDS wireless network did not benefit from physical proximity “on the segment [of the network] closest to the Exchanges’ data center that no competitor can replicate.”^{47/48} The networks for the Wireless Connections, and future wireless connections that use the Data Center Pole, would “operat[e] in the same manner as competitors do today without a latency subsidy or other advantage provided by the Exchanges”^{48/49}

The proposed rule would not otherwise put a burden on competition. As noted above, access to the data center pole is not required for third parties to establish wireless networks that can compete with the Wireless Connections to the Carteret and Secaucus Third Party Data Centers, as evidenced by the existing wireless connections offered by non-ICE entities.^{49/50} Indeed, the Exchange believes that its competitors’ wireless connections provide connectivity at the same or similar speed as the Wireless Connections, and at the same or similar cost. The McKay Letter acknowledges that McKay Brothers has the fastest wireless network.^{50/51}

The Exchange notes that proximity to a data center is not the only determinant of a wireless network’s latency. Rather, the latency of a wireless network depends on several factors. Variables include the wireless equipment utilized; the route of, and number of towers or buildings in, the network; and the fiber equipment used at either end of the connection. Moreover, latency is not the only consideration that a customer may have in selecting a wireless network to connect to for market data. Other considerations may include the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions.

The proposed change does not affect competition among national securities

¹¹ 15 U.S.C. 78f(b)(8).

exchanges or among members of the Exchange, but rather between IDS and its commercial competitors.

^{46/47} 15 U.S.C. 78f(b)(8).

^{47/48} McKay Letter, *supra* note 30/31, at note 33.

^{48/49} *Id.*, at 7.

^{49/50} A market participant in any of the Third Party Data Centers or the Mahwah data center also may create a proprietary wireless market data connection, connect through another market participant, or utilize fiber connections offered by the Exchange, ICE Affiliates, and other service providers and third party telecommunications providers.

^{50/51} *Id.*, at 4.

8. *The Exchange proposes to add a list under “Exhibit 5—Text of the Proposed Rule Change” on page 23 of the Filing:*

The Exchange proposes to add a new Exhibit 5B. Accordingly, the Exchange proposes to add a list under “Exhibit 5—Text of Proposed Rule Change” on page 23 of the Filing, as follows (new text italicized):

Exhibit 5—Text of the Proposed Rule Change

A. *Text of the Proposed Schedule of Wireless Connectivity Fees and Charges*

B. *Text of the Proposed Rule*

9. *The Exchange proposes to add new text to the first full paragraph of Section I on page 24 of the Exhibit 1:*

The Exchange proposes to add new text to the first full paragraph of Section I on page 24 of the Exhibit 1, as follows (new text italicized):

The Exchange proposes to establish a schedule of Wireless Connectivity Fees and Charges (the “Wireless Fee Schedule”) with wireless connections between the Mahwah, New Jersey data center and other data centers and add a new rule to place restrictions on the use of a pole on the grounds of the Mahwah, New Jersey data center that is used for such wireless connections. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

10. *The Exchange proposes to amend “Exhibit 5” to “Exhibit 5A” on page 55 of the Exhibit 5:*

To reflect the addition of a new Exhibit 5B, the Exchange proposes to add “A” to “EXHIBIT 5” on page 55 of the Exhibit 5, to make it to “EXHIBIT 5A”.

* * * * *

All other representations in the Filing remain as stated therein and no other changes are being made.

III. Date of Effectiveness of the Proposed Rule Change As Modified By Partial Amendment No. 1 and Timing for Commission Action

Within 180 days after the date of publication of the initial Notice of Filing

in the **Federal Register** or within such longer period up to an additional 60 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will issue an order approving or disapproving such proposed rule change, as amended.

IV. 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 Partial 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. Please include File Number SR–NYSECHX–2020–02 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–NYSECHX–2020–02. 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–NYSECHX–2020–02, and should be submitted on or before August 28, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Wednesday, August 12, 2020.

PLACE: The meeting will be held via remote means and/or at the Commission’s headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission’s website at <https://www.sec.gov>.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topic:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings;
Resolution of litigation claims; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory,

¹² 17 CFR 200.30–3(a)(12).