

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-87699; File Nos. SR-NYSE-2019-46, SR-NYSE-NAT-2019-19, SR-NYSE-Arca-2019-61, SR-NYSE-AMER-2019-34)

December 9, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE National, Inc.; NYSE Arca, Inc.; NYSE American LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Changes to Amend the Exchanges' Co-Location Price Lists to Offer Co-Location Users Access to the NMS Network and Establish Associated Fees

I. Introduction

On August 22, 2019, New York Stock Exchange LLC, NYSE National, Inc., and NYSE Arca, Inc. each filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend their co-location fee schedules to offer co-location Users<sup>3</sup> access to the “NMS Network”—an alternate, dedicated network providing connectivity to data feeds for the National Market System Plans for which Securities Industry Automation Corporation (“SIAC”) is engaged as the exclusive securities information processor (“SIP”)—and establish associated fees. NYSE American LLC filed with the Commission a substantively identical filing on August 23, 2019.<sup>4</sup> The proposed rule changes were published for comment in the Federal Register on September 10, 2019.<sup>5</sup> On October 24, 2019, the Commission extended the time period

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See infra note 11 defining “Users.”

<sup>4</sup> The New York Stock Exchange LLC, NYSE National, Inc., NYSE Arca, Inc., and NYSE American, LLC are collectively referred to herein as “NYSE” or the “Exchanges.”

<sup>5</sup> See Securities Exchange Act Release Nos. 86865 (September 4, 2019), 84 FR 47592 (SR-NYSE-2019-46); 86869 (September 4, 2019), 84 FR 47600 (SR-NYSE-NAT-2019-19); 86868 (September 4, 2019), 84 FR 47610 (SR-NYSE-Arca-2019-61); 86867 (September 4, 2019), 84 FR 47563 (SR-NYSE-AMER-2019-34) (collectively, the “Notices”). For ease of reference, page citations are to the Notice for SR-NYSE-2019-

within which to approve the proposed rule changes, disapprove the proposed rule changes, or institute proceedings to determine whether to approve or disapprove the proposed rule changes, to December 9, 2019.<sup>6</sup> The Commission received one comment letter on the proposal, a response from the Exchanges, and a subsequent letter from the original commenter.<sup>7</sup> This order institutes proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove File Nos. SR-NYSE-2019-46, SR-NYSENAT-2019-19, SR-NYSEArca-2019-61, SR-NYSEAMER-2019-34.<sup>8</sup>

## II. Description of the Proposed Rule Changes

### A. Background

As more fully set forth in the Notices, the Exchanges' affiliate, SIAC, is engaged as the exclusive SIP for (i) the CTA Plan (providing last-sale price information in Tape A and Tape B-listed securities); (ii) the CQ Plan (providing quotation information in Tape A and B-listed securities) (together, the "CTA/CQ Plans"); and (iii) the Options Price Reporting Authority ("OPRA") Plan (providing quotation and last-sale price information in all exchange options

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<sup>6</sup> See Securities Exchange Act Release Nos. 87399, 84 FR 58189 (October 30, 2019) (SR-NYSE-2019-46); 87402, 84 FR 58187 (October 30, 2019) (SR-NYSENAT-2019-19); 87400, 84 FR 58189 (October 30, 2019) (SR-NYSEArca-2019-61); 87401, 84 FR 58188 (October 30, 2019) (SR-NYSEAMER-2019-34).

<sup>7</sup> See, respectively, letter dated October 24, 2019 from John M. Yetter, Vice President and Senior Deputy General Counsel, Nasdaq Stock Market LLC ("Nasdaq"), to Vanessa Countryman, Secretary, Commission ("Nasdaq Letter"); letter dated November 8, 2019 from Elizabeth K. King, Chief Regulatory Officer, ICE, General Counsel and Corporate Secretary, NYSE to Ms. Vanessa Countryman, Secretary, Commission ("NYSE Response Letter"); and letter dated November 25, 2019 from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, to Vanessa Countryman, Secretary, Commission ("Second Nasdaq Letter").

<sup>8</sup> 15 U.S.C. 78(s)(b)(2)(B).

trading).<sup>9</sup> SIAC operates in the same data center (“Data Center”) in Mahwah, New Jersey where the Exchanges operate and also offer co-location services.<sup>10</sup> The Exchanges make co-location services available to market participants (“Users”) upon request for fees set forth on price lists filed with the Commission.<sup>11</sup> In the Data Center, Users currently can connect to the CTA Plan, CQ Plan, and OPRA Plan data feeds (the “SIAC NMS Feeds”) over the same network connections through which they access other co-location services.<sup>12</sup> Specifically, a User can connect to any or all of the SIAC NMS Feeds via either the IP network or the Liquidity Center Network (“LCN”), which are the local area networks in the Data Center.<sup>13</sup> When a User purchases access to the LCN or IP network, it receives connectivity to certain market data products (defined in the price lists as the “Included Data Products”) that it selects, subject to technical provisioning requirements and authorization from the provider of the data feed.<sup>14</sup> The SIAC NMS Feeds are among the Included

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<sup>9</sup> See Notices supra note 5, at n. 8.

<sup>10</sup> See Notices, supra note 5, 84 FR at 47593.

<sup>11</sup> As stated in the Notices, for purposes of the Exchanges’ co-location services, a “User” means any market participant that requests to receive co-location services directly from the Exchange. See Notices, supra note 5, at n 5. As stated in the price list of each of the Exchanges, 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 another of the Exchanges. See id.

<sup>12</sup> See id.

<sup>13</sup> The Exchanges offer IP network and LCN access in a variety of ways (e.g., in bandwidths of 1 Gb, 10 Gb, 40 Gb and in packages) for different prices. See NYSE Price List dated November 1, 2019, available at: [https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE\\_Price\\_List.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf). The price lists for the other Exchanges reflect the same fee structure for IP network and LCN access.

<sup>14</sup> See Notices, supra note 5, 84 FR at 47593.

Data Products.<sup>15</sup> As such, the price lists currently do not specify any separate fees for connectivity to the SIAC NMS Feeds.

The Exchanges propose to: (i) offer co-location Users access to the NMS Network as a new service providing dedicated network access for Users to connect to the SIAC NMS Feeds at lower latency than is currently available;<sup>16</sup> and (ii) establish fees for connections to the NMS Network.

B. Access to the NMS Network

As more fully set forth in the Notices, the Exchanges propose to make access to the new NMS Network available to co-location Users. The Exchanges state that the build-out of the NMS Network was approved by the operating committees for the CTA and CQ Plans, which until recently had mandated that the SIAC NMS Feeds be accessed via the IP network – a secure network designed for resiliency and redundancy, but not low latency.<sup>17</sup> The NMS Network would offer an alternative option to Users to connect to the SIAC NMS Feeds in the Data Center with the anticipated benefit of providing a one-way reduction in latency, as compared to the IP

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<sup>15</sup> See id. The other Included Data Products are proprietary feeds of the Exchanges and its affiliate, NYSE Chicago. Id. A User that purchases access to the LCN or IP network also receives the ability to access the trading and execution systems of the Exchanges, and the trading and execution systems of OTC Global, an alternative trading system (“ATS”), subject, in each case, to authorization by the relevant entity. See id. at 47593-47594.

<sup>16</sup> The Exchanges state that the NMS Network would not be available outside of the Data Center. See Notices, supra note 5 at n. 15.

<sup>17</sup> See Notices, supra note 5, 84 FR at 47594. The Exchanges note that Users connecting to the SIAC NMS Feeds through the LCN go through the IP network before reaching those feeds, so the LCN connection to the SIAC NMS Feeds is slower than the IP network connection. See id. The Exchanges also state that the LCN does not connect to the IP network for access to the Exchanges’ systems or connectivity to the other Included Data Products. See Notices, supra note 5 at n. 13.

network and LCN, of over 140 microseconds.<sup>18</sup> As proposed, connections to the NMS Network would be available over 10 Gb and 40 Gb circuits only.<sup>19</sup> The Exchanges state that access to the NMS Network as a service available in co-location would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest as required by Section 6(b)(5) of the Act because offering access to the dedicated, low-latency NMS Network would provide Users with an additional option to connect to the SIAC NMS Feeds, giving them greater choice consistent with the directive of the operating committees for the CTA/CQ Plans.<sup>20</sup>

### C. Proposed Fees for NMS Network Connections

As more fully set forth in the Notices, the Exchanges propose associated fees for connectivity to the SIAC NMS Feeds. As proposed, a User could connect to the SIAC NMS Feeds via the new NMS Network at no additional charge over and above their current fees if they purchase a 10 Gb or 40 Gb connection to either the IP network or the LCN, subject to certain limits.<sup>21</sup> Specifically, the Exchanges' price lists would be amended to state that if a User purchases access to the LCN or IP network and requests a connection to the NMS Network, that User and its Affiliates,<sup>22</sup> taken together, would not be charged for up to eight corresponding

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<sup>18</sup> See Notices, supra note 5, 84 FR at 47594.

<sup>19</sup> See id. and proposed General Note 5 to price lists. As is currently the case to connect to the SIAC NMS Feeds via the LCN or IP networks, connection to the SIAC NMS Feeds via the new NMS Network would require that a User separately be authorized to receive those data feeds (i.e., by virtue of separately purchasing the data feed content). See id. at 47593.

<sup>20</sup> See Notices, supra note 5, 84 FR at 47597.

<sup>21</sup> See id. at 47594-47595.

<sup>22</sup> See Notices, supra note 5, at n. 17, noting that "Affiliate" of a User is defined in the price list as "any other User or Hosted Customer that is under 50% or greater common ownership or control of the first User;" that a "Hosted Customer" is a customer of a

NMS Network connections (each a “No Additional Fee NMS Network Connection”), if such User, together with its Affiliates, purchases access to the LCN or IP Network and:

- (i) Designates no more than four No Additional Fee NMS Network Connections as corresponding to the LCN connections of the User, together with its Affiliates, on a one-to-one basis;
- (ii) Designates no more than four No Additional Fee NMS Network Connections as corresponding to the IP network connections of the User, together with its Affiliates, on a one-to-one basis;
- (iii) Does not use the LCN or IP network connections that correspond to the No Additional Fee NMS Network Connections to access the SIAC NMS Feeds;<sup>23</sup> and
- (iv) Each of the No Additional Fee NMS Network Connections is of equal size or smaller than the associated LCN or IP network connection purchased by it or its Affiliates.<sup>24</sup>

To help implement the limitation on the number of No Additional Fee NMS Network Connections available to a User together with its Affiliates, the Exchanges propose that a User must certify whether any other Users or Hosted Customers are Affiliates of the certifying User.<sup>25</sup>

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Hosting User that is hosted in a Hosting User’s co-location space; and a “Hosting User” is a User of colocation services that hosts a Hosted Customer in the User’s co-location space. Hosting Users are subject to Hosting fees.

<sup>23</sup> Users would still have the option to connect to the SIAC NMS Feeds using their LCN or IP network connections, but they would be charged the proposed fee for the NMS Network connection, as described below.

<sup>24</sup> See Notices supra note 5, 84 FR at 47594. Accordingly, a User’s access to a 1 Gb connection would not entitle a User to a No Additional Fee NMS Network Connection.

<sup>25</sup> See id. The Exchanges state that this proposed requirement would avoid disparate treatment of Users that have divided their various business activities between separate corporate entities, as compared to Users that operate those business activities within a single corporate entity. Id. at 47598.

In addition to the “No Additional Fee NMS Network Connections,” the Exchanges propose that an NMS Network Connection could be purchased separately for a charge (each a “Charged NMS Connection”), which typically would apply to Users that (i) would like to purchase access to the NMS Network and have not purchased a 10 Gb or 40 Gb LCN or IP network connection; (ii) have purchased an LCN or IP connection but would like NMS Network connections in excess of permitted number of corresponding No Additional Fee NMS Network Connections; and/or (iii) would like to use their LCN and IP connections to continue to access the SIAC NMS Feeds.<sup>26</sup> The proposed charge is the same as that assessed for the same-sized 10 Gb or 40 Gb IP network connection: (i) \$10,000 per connection initial charge and \$11,000/month for a 10 Gb connection; or (ii) \$10,000 per connection initial charge and \$18,000/month for a 40 Gb connection.<sup>27</sup>

The Exchanges state that the proposed fee structure is consistent with Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act principally because current Users will have an improved service at no additional cost; the fee structure is anticipated to be revenue neutral; there are unlikely to be any Users requiring Charged NMS Connections (and if there are, they would not pay more than Users must currently pay to access the SIAC NMS Feeds); and all Users are treated equally.<sup>28</sup>

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<sup>26</sup> See id. at 47595.

<sup>27</sup> See id.

<sup>28</sup> See Notices supra note 5, 84 FR at 47597-47600. The Exchanges state that there are currently 48 Users would benefit from the No Additional Fee NMS Network Connections and they estimate hypothetically five new Charged NMS Connections. See Notices supra note 5, 84 FR at 47595, 47597.

More specifically, in support of their justification that the proposed fee structure is reasonable, the Exchanges acknowledge that the pricing decisions relating to the dedicated NMS Network are not constrained by competitive market forces.<sup>29</sup> The Exchanges provide information on the costs and expected revenue associated with establishment of the NMS Network: they estimate the cost to provide the NMS Network to be \$3.8 million initially, and \$215,000 annually for ongoing maintenance and operation, with refresh expenses to be necessary in three to four years; and they estimate no net revenue gain, assuming revenue from five new Charged NMS Connections.<sup>30</sup> In addition, they state that the proposed No Additional Fee NMS Network Connections would free up bandwidth over Users' current LCN and IP connections, so that Users may lower the number of LCN or IP network connections they purchase and a net decline in revenue is therefore possible.<sup>31</sup>

In support of their justification that the proposed fee structure is equitably allocated and not unfairly discriminatory, the Exchanges emphasize that it has been designed so that the majority of Users would not have any new or different charges if they connect to the NMS Network.<sup>32</sup> They state further, that they believe that none of the Current Users will have to pay to connect to the NMS Network, so that the proposed \$11,000 and \$18,000 monthly recurring charges are "largely theoretical."<sup>33</sup> They argue that the fee for the Charged NMS Connections would encourage Users to not subscribe to more NMS Network connections than needed, which

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<sup>29</sup> See id. at 47596.

<sup>30</sup> See id. at 47597.

<sup>31</sup> Id.

<sup>32</sup> See id. at 47598-47599.

<sup>33</sup> See id. at 47595.



would reduce the burden on the network infrastructure and result in lower costs to the Exchanges.<sup>34</sup>

In addition, the Exchanges state that the proposed fee structure would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because SIAC is the single plan processor for Tape A and B equity securities and all options securities, and therefore does not currently compete with any other provider in delivering these services, and further, all Users are treated equally.<sup>35</sup>

### III. Summary of Comments

The Commission received one comment letter on the proposal from Nasdaq, a response from the Exchanges, and a second letter from Nasdaq.<sup>36</sup> In its original comment letter, Nasdaq observes that the Exchanges' proposal would permit market participants who separately pay the Exchanges to connect to their trading venue(s) to receive up to eight free connections to the faster NMS Network; whereas market participants who elect a stand-alone connection to the SIAC NMS Feeds will be charged.<sup>37</sup> The commenter expresses concern that the proposal is potentially anti-competitive.<sup>38</sup> According to the commenter, the proposed "commingling" of pricing for NMS Network connectivity with connectivity to the NYSE venues, including access to NYSE proprietary data feeds, creates a burden on inter-market competition, and also hinders potential providers from competing to serve as network processor in place of SIAC.<sup>39</sup> Nasdaq

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<sup>34</sup> See id. at 47598.

<sup>35</sup> See id. 47599-47600.

<sup>36</sup> See Nasdaq Letter, NYSE Response Letter, and Second Nasdaq Letter, supra note 7.

<sup>37</sup> See Nasdaq Letter at 1.

<sup>38</sup> Id.

<sup>39</sup> Id. at 1-2.

states that the proposals' failure to offer market participants the opportunity to subscribe to only one or two of the SIAC NMS Feeds at a lower cost also hinders competition.<sup>40</sup>

In response to the Nasdaq Letter, the Exchanges emphasize that Section 6(b)(8) of the Act requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the Exchange Act.<sup>41</sup> They argue that NYSE sought and received approval from both the CTA Operating Committee and OPRA Management Committee (both of which include Nasdaq as a member).<sup>42</sup> They emphasize that the NMS Network would be offered at no additional cost to current Users, that the proposals would promote the protection of investors and the public interest, and that these considerations outweigh any purported concerns raised by Nasdaq that the proposal may be anti-competitive.<sup>43</sup> The Exchanges further counter Nasdaq's arguments, stating that: (i) inter-market competition as contemplated by the Exchange Act does not extend to exclusive SIPs because these entities, by definition, do not offer their services in competition with other exclusive SIPs at the same time;<sup>44</sup> (ii) any suggestion that access to the NMS Network is contingent on a User purchasing a connection to one or more of the Exchanges' trading venues is incorrect because Users may purchase a stand-alone NMS

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<sup>40</sup> Id. at 2.

<sup>41</sup> See NYSE Response Letter at 3.

<sup>42</sup> See NYSE Response Letter at 2-3. The Exchanges further note that Nasdaq, in its role as a member of the CTA Operating Committee and OPRA Management Committee, did not raise objections to the NYSE's proposal to fund and enhance SIAC performance. Id. at n.6.

<sup>43</sup> Id. at 3-4.

<sup>44</sup> Id. at 4. On that point, NYSE also states, "the benefit of providing enhancements to the SIP at no additional cost to Users that already connect to the NMS Feeds outweighs any concerns about how an alternate bidder would make its commercial decision to replace the SIP, and specifically how it would charge for connectivity. Id. at 7.

Network connection;<sup>45</sup> (iii) there is competition for connectivity to the SIAC NMS Feeds in the Data Center, as Hosting Users could purchase NMS Network connections and then re-sell connectivity to the SIAC NMS Feeds to their Hosted Customers at fee discounts;<sup>46</sup> and (iv) the only way to address Nasdaq’s concerns about competition would be to increase fees, which they state would be “a perverse result that benefits neither investors nor the public.”<sup>47</sup>

In addition, the Exchanges analogize to how Nasdaq charges for connectivity to the Nasdaq UTP SIP Feed, noting that Nasdaq provides two free ports and then charges nominal fees for connectivity to a third-party network for access to the UTP SIP Feed.<sup>48</sup> The Exchanges state that they similarly propose to leverage the fees they charge to connect to their own venues in order to keep costs down for providing connectivity to the SIP.<sup>49</sup> They state:

Similar to Nasdaq’s structure, the proposed NMS [N]etwork provides connectivity only to SIP data. But unlike Nasdaq, NYSE is not proposing that current Users receiving [SIAC] NMS Feeds must use the NMS [N]etwork. The [SIAC] NMS Feeds will continue to be available over existing connections and the NYSE Exchanges are not proposing any changes to those fees. The sole purpose of the NMS Network Filings is to establish the basis for connecting to the

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<sup>45</sup> Id. at 5.

<sup>46</sup> Id.

<sup>47</sup> Id. at 5-7.

<sup>48</sup> The Exchanges refer to SR-Nasdaq-2016-120, in which Nasdaq proposed to unbundle Nasdaq exchange and Nasdaq SIP connectivity fees and establish the “Third Party Connectivity Service.” See Securities Exchange Act Release No. 78713 (August 29, 2016), 81 FR 60768 (September 2, 2016). Following negative comment, Nasdaq ultimately amended its proposal, and the Commission approved Nasdaq’s proposal to provide every customer two third-party circuit connections free of charge if used solely to receive the Nasdaq UTP SIP feeds and provide UTP-only connectivity beyond the two free connections for nominal fees (an installation fee of \$100 per connection and an ongoing monthly fee of \$100 per connection). See Securities Exchange Act Release No. 80558 (April 28, 2017), 82 FR 20923 (May 4, 2017).

<sup>49</sup> Id. at 6.

[SIAC] NMS Feeds via the standalone, high-performance network that the industry and the Operating Committee and its advisors demanded.<sup>50</sup>

According to the Exchanges, keeping costs low for data recipients should be the prevailing principle and if an exchange that also operates a SIP can achieve this goal by leveraging the existing fees it charges for connectivity to its exchanges, that benefits SIP data recipients.<sup>51</sup>

In its second letter, Nasdaq states its general support for the proposed NMS Network, but reiterates its view that NYSE's proposed fee structure threatens competitors from bidding to replace SIAC as the SIP, and its belief that this is an impermissible burden on competition.<sup>52</sup> Nasdaq urges that such burden could be overcome if, for example, NYSE were to separate the pricing for NMS Network Connectivity from the pricing for NYSE connectivity, including access to the proprietary data feeds; price each NMS Feed connection separately and allow market participants the opportunity to acquire any of the NMS Network Connections separately; and/or separate the OPRA NMS Feed from the CTA/CQ NMS Feeds.<sup>53</sup>

#### IV. Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>54</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons

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<sup>50</sup> Id. at 6-7.

<sup>51</sup> Id.

<sup>52</sup> See Second Nasdaq Letter supra note 7 at 1-2.

<sup>53</sup> Id. at 3.

<sup>54</sup> 15 U.S.C. 78s(b)(2)(B).

to provide additional comment on the proposed rule changes to inform the Commission’s analysis of whether to approve or disapprove the proposed rule changes.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>55</sup> the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning the proposed rule changes’ consistency with the Act, and particularly:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange “provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,”<sup>56</sup>
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to perfect the operation of a free and open market and a national market system” and “protect investors and the public interest,” and not be “designed to permit unfair discrimination between customers, issuers, brokers, or dealers,”<sup>57</sup> and
- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].”<sup>58</sup>

The Exchanges propose to offer co-location Users connectivity to the SIAC NMS Feeds via the new NMS Network, a dedicated network that is anticipated to reduce one-way latency relative to the IP network and LCN by over 140 microseconds. As discussed above, the

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<sup>55</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>56</sup> 15 U.S.C. 78f(b)(4).

<sup>57</sup> 15 U.S.C. 78f(b)(5).

<sup>58</sup> 15 U.S.C. 78f(b)(8).

Exchanges propose to make the NMS Network available at no additional charge to Users that satisfy certain conditions (those that, together with their Affiliates, purchase up to four LCN and four IP network connections in 10 Gb or 40 Gb sizes and do not use the LCN and IP network connections to access the SIAC NMS Feeds), and impose a substantial charge on Users that seek access to the NMS Network that do not meet these conditions. The Commission believes additional data and information is necessary to assess the Exchanges' arguments that the proposed NMS Network fee structure is consistent with the Exchange Act's requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

More specifically, it is not clear from the information provided why the proposed fee for a Charged NMS Connection (\$10,000 initially and \$11,000 or \$18,000 monthly for a 10 Gb or 40 Gb connection, respectively) is reasonable. Although the Exchanges urge that there will be few, if any, Charged NMS Connections, it is not clear why the level of the proposed fee for a Charged NMS Connection is reasonable for Users that do not meet the proposed conditions for receiving a No Additional Fee NMS Network Connection (e.g., why the proposed fee for a Charged NMS Connection would defray expenses or why it is otherwise reasonably related to the cost to provide access to the NMS Network).

In addition, it is not clear from the information provided why it is equitable and not unfairly discriminatory for those Users that purchase access to the IP network or LCN on the proposed conditions to receive connections to the NMS Network at no additional charge, whereas other Users (e.g., those seeking connections to the NMS Network that do not satisfy the proposed conditions, or those who do not otherwise require access to the LCN or IP network) would be required to pay \$10,000 initially and \$11,000 or \$18,000 monthly for a 10 Gb or 40 Gb

connection, respectively. In particular, it is unclear the basis on which the Exchanges have determined the proposed conditions for making available a No Additional Fee NMS Network Connection, and whether that basis is reasonable, equitable, and not unfairly discriminatory as required by the Exchange Act.

Further, the Commission solicits additional comment on whether the Exchanges' proposed fee structure for the NMS Network would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

V. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposals. In particular, the Commission invites the written views of interested persons concerning whether the proposals are consistent with Sections 6(b)(4),<sup>59</sup> 6(b)(5),<sup>60</sup> 6(b)(8)<sup>61</sup> or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,<sup>62</sup> any request for an opportunity to make an oral presentation.<sup>63</sup>

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<sup>59</sup> 15 U.S.C. 78f(b)(4).

<sup>60</sup> 15 U.S.C. 78f(b)(5).

<sup>61</sup> 15 U.S.C. 78f(b)(8).

<sup>62</sup> 17 CFR 240.19b-4.

<sup>63</sup> Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding - either oral or notice and opportunity for written comments - is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban

Interested persons are invited to submit written data, views, and arguments regarding whether the proposals should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Numbers SR-NYSE-2019-46, SR-NYSEENAT-2019-19, SR-NYSEArca-2019-61, SR-NYSEAMER-2019-34 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 Numbers SR-NYSE-2019-46, SR-NYSEENAT-2019-19, SR-NYSEArca-2019-61, SR-NYSEAMER-2019-34. This file number should be included on the subject line if e-mail 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

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Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).



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 Numbers SR-NYSE-2019-46, SR-NYSENAT-2019-19, SR-NYSEArca-2019-61, SR-NYSEAMER-2019-34 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>64</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>64</sup> 17 CFR 200.30-3(a)(12).