

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-91515; File Nos. SR-NYSE-2021-12, SR-NYSEAMER-2021-08, SR-NYSENAT-2021-03, SR-NYSEArca-2021-11, SR-NYSECHX-2021-02)

April 8, 2021

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE American LLC; NYSE National, Inc.; NYSE Arca, Inc.; NYSE Chicago, Inc.; Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of Proposed Rule Changes, Each as Modified by Amendment Nos. 1 and 2, to Establish Procedures for the Allocation of Power in Co-Location When Availability Falls Below Certain Thresholds

I. Introduction

On February 4, 2021, New York Stock Exchange LLC, NYSE American LLC, NYSE National, Inc., NYSE Arca, Inc., and NYSE Chicago, Inc. (the “Exchanges”) each filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to establish procedures for the allocation of power in co-location if the Exchanges cannot satisfy all User demand.³ Each proposed rule change was published for comment in the Federal Register on February 24, 2021.⁴ The Commission received no comments on the proposed rule changes. On February 19, 2021, each Exchange filed Amendment No. 1 to its proposed rule change.⁵ On

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See infra note 7 for the definition of “User.”

⁴ See Securities Exchange Act Release Nos. 91154 (February 18, 2021), 86 FR 11345 (SR-NYSE-2021-12); 91155 (February 18, 2021), 86 FR 11350 (SR-NYSEAMER-2021-08); 91158 (February 18, 2021), 86 FR 11367 (SR-NYSENAT-2021-03); 91156 (February 18, 2021), 86 FR 11356 (SR-NYSEArca-2021-11); and 91157 (February 18, 2021), 86 FR 11361 (SR-NYSECHX-2021-02) (each, a “Notice”). For ease of reference, page citations are to the Notice for NYSE-2021-12.

⁵ Amendment No. 1 revises the proposals to: (i) provide additional explanation for why the Exchanges believe it is reasonable to integrate the procedures for the allocation of power with the procedures for the allocation of cabinets; (ii) clarify that a User may not increase

April 5, 2021, each Exchange filed Amendment No. 2 to its proposed rule change.⁶ This order provides notice of the filings of Amendment Nos. 1 and 2 to each of the proposed rule changes, and grants approval of the proposed rule changes, each as modified by Amendment Nos. 1 and 2, on an accelerated basis.

II. Description of the Proposed Rule Changes, as Modified by Amendment Nos. 1 and 2

A. Background

As more fully set forth in the Notices and their respective co-location fee schedules, the Exchanges offer co-location customers (“Users”)⁷ different options for purchasing cabinet space

its order on the Cabinet Waitlist or Combined Waitlist to a size that would exceed the Cabinet Limits or Combined Limits, as applicable; and (iii) correct typographical errors. Amendment No 1 for each filing is available on the Commission’s website at: <https://www.sec.gov/comments/sr-nyse-2021-12/srnyse202112-8393729-229404.pdf>; <https://www.sec.gov/comments/sr-nyseamer-2021-08/srnyseamer202108-8393752-229406.pdf>; <https://www.sec.gov/comments/sr-nysenat-2021-03/srnysenat202103-8394067-229408.pdf>; <https://www.sec.gov/comments/sr-nysearca-2021-11/srnysearca202111-8393756-229407.pdf>; <https://www.sec.gov/comments/sr-nysechx-2021-02/srnysechx202102-8394068-229409.pdf>. For ease of reference, page citations to Amendment No. 1 are to NYSE-2021-12 Amendment No. 1.

⁶ Amendment No. 2 revises a portion of the proposed text of General Note 8 to state more clearly that the Combined Waitlist would cease to be in effect when unallocated power capacity is 100 kW or more, and at the time, the Cabinet Waitlist would apply if cabinet inventory is 10 or fewer cabinets. Amendment No. 2 for each filing is available on the Commission’s website at: <https://www.sec.gov/comments/sr-nyse-2021-12/srnyse202112-8393729-229404.pdf>; <https://www.sec.gov/comments/sr-nyseamer-2021-08/srnyseamer202108-8393752-229406.pdf>; <https://www.sec.gov/comments/sr-nysenat-2021-03/srnysenat202103-8394067-229408.pdf>; <https://www.sec.gov/comments/sr-nysearca-2021-11/srnysearca202111-8393756-229407.pdf>; <https://www.sec.gov/comments/sr-nysechx-2021-02/srnysechx202102-8394068-229409.pdf>. For ease of reference, page citations to Amendment No. 2 are to NYSE-2021-12 Amendment No. 2.

⁷ 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 Securities Exchange Act Release Nos. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR-NYSE-2015-40); 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SE-NYSEMKT-2015-67); 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR-NYSENAT-2018-07); 76010 (September 29, 2015), 80 FR 60197 (October

to house their servers and other equipment in co-location and meet their associated power needs.⁸ Cabinets are offered as dedicated or partial cabinets, and Users are assessed an initial fee depending on type of cabinet purchased, and a monthly fee based on the number of kilowatts (“kW”) contracted for the cabinet.⁹ Dedicated cabinets have a standard power allocation of either 4 kW or 8 kW (the “Standard Cabinet Power”). Partial cabinets, which are available in increments of eight-rack units of space, may be allocated 1 or 2 kW. For dedicated cabinets a User may request power upgrades in excess of Standard Cabinet Power. A User may request that such additional power (“Additional Power”) be allocated to a cabinet when it is first set up or later. A User with a dedicated cabinet, for example, may develop its infrastructure in a manner that allows for Additional Power without need for an additional cabinet (e.g., by overhauling wiring, circuitry and hardware to permit the dedicated cabinet to handle the increased power).¹⁰

The Exchanges also offer cabinets that do not have power: cabinets for which power is not utilized (“PNU cabinets”).¹¹ PNU cabinets are reserved cabinet space that are not active and can be converted to a powered, dedicated cabinet when the User requests it. Although PNU cabinets do not use power, when the Exchanges establish a PNU cabinet, they allocate unused power capacity to it, depending on the User’s requirements. The allocated power is kept in

5, 2015) (SR-NYSEArca-2015-82); and 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR-NYSECHX-2019-27).

⁸ See Notice, supra note 4 at 11346. See also, e.g., NYSE Price List, available at: https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.

⁹ See Notice, supra note 4 at 11346.

¹⁰ Id.

¹¹ Id.

reserve for the PNU cabinet, and, upon the User's request, the PNU cabinet may be powered and used promptly.

The Exchanges currently have in place general measures for the conversion of PNU cabinets if such reserved cabinet space is needed for use,¹² and procedures for allocating cabinet space should cabinet inventory fall and remain below specified thresholds.¹³ The Exchanges now propose to establish procedures for allocating power when cabinet inventory (and associated Standard Cabinet Power) and/or power inventory fall below specified thresholds.¹⁴

B. Proposed Limits and Waitlist Procedures if Standard Cabinet Power and/or Additional Power Fall Below Specified Thresholds

The Exchanges represent that Users have had an unprecedented demand for power, largely driven by the demands caused by volatile market conditions related to the COVID-19 pandemic and higher than usual trading volumes.¹⁵ They further state that they are currently working to expand the amount of power and number of cabinets available in co-location.¹⁶ Although current procedures address the potential for cabinet space to become limited, they do not address the potential for power in co-location to become limited due to heightened demand

¹² See Notice, supra note 4 at 11346 and n. 10.

¹³ See Securities Exchange Act Release No. 90732 (December 18, 2020), 85 FR 84443 (December 28, 2020) (SR-NYSE-2020-73, SR-NYSEAMER-2020-66, SR-NYSEArca-2020-82, SR-NYSECHX-2020-26, and SR-NYSEAT-2020-28) (Notice of Filings of Amendment No. 1 and Order Granting Approval of Proposed Rule Changes, Each as Modified by Amendment No. 1, Amending the Exchanges' Co-Location Services To Establish Procedures for the Allocation of Cabinets to Co-Located Users if Cabinet Inventory Falls Below Certain Thresholds).

¹⁴ See Notice, supra note 4 at 11346.

¹⁵ Id.

¹⁶ Id.

for (i) cabinets and associated Standard Cabinet Power and/or (ii) Additional Power.¹⁷ The Exchanges now propose to establish procedures to address this possibility.

Specifically, the Exchanges propose to amend General Notes 7 and 8 on their respective fee schedules to supplement existing cabinet allocation procedures with power allocation procedures. As further explained in Amendment No. 1, a shortage in power or a shortage in both power and cabinets could impede the ability of the Exchanges to satisfy User demand for cabinets (which come with Standard Cabinet Power) and/or Additional Power. Accordingly, the proposed procedures establish power allocation procedures when (i) cabinet inventory falls to 40 cabinets or fewer (the “Cabinet Threshold”), and/or (ii) total power inventory falls to 350 kW or below (the “Power Threshold”).

General Note 7 currently provides that if the Cabinet Threshold is reached, a User would be required to convert or relinquish its PNU cabinets before purchasing new cabinets, and limit its purchase of new cabinets (dedicated and partial) to a maximum of four dedicated cabinets (which may be comprised of dedicated and partial cabinets, with two partial cabinets counting as one dedicated cabinet).¹⁸ The Exchanges propose to amend General Note 7 to provide for limits on power reservation and new purchases if the Cabinet Threshold and/or the Power Threshold is reached.

If only the Cabinet Threshold is reached, the following limits (“Cabinet Limits”) would apply: (i) all Users with PNU cabinets would be required to either convert their PNU cabinets into dedicated cabinets or relinquish their PNU cabinets; and (ii) the Exchanges would cease

¹⁷ See Notice, supra note 4 at 11346 and Amendment No. 1 at 2-3.

¹⁸ See supra note 13.

offering or providing new PNU cabinets to all Users and Users would not be permitted to convert a currently used dedicated cabinet to a PNU cabinet.¹⁹ As a result, the space and power reserved for PNU cabinets would be available for active use, and a User would be prevented from reserving but not using this resource when other Users are subject to purchasing limits.²⁰ In addition, new cabinet purchases would be limited, to a maximum of four dedicated cabinets (which may be comprised of dedicated and partial cabinets, with two partial cabinets counting as one dedicated cabinet), as is currently the case.

If only the Power Threshold is reached, or both the Cabinet Threshold and the Power Threshold are reached, then “Combined Limits” would apply: (i) all Users with PNU cabinets similarly would be required to either convert their PNU cabinets into dedicated cabinets or relinquish their PNU Cabinets; (ii) the Exchanges similarly would cease offering or providing new PNU cabinets to all Users and Users would not be permitted to convert a currently used dedicated cabinet to a PNU cabinet. As a result, the space and power reserved for PNU cabinets would be available for active use, and a User would be prevented from reserving but not using this resource when other Users are subject to purchasing limits.²¹ In addition if the Combined Limits are in effect, then a User may purchase either or both of the following, so long as the combined power usage of such purchases is no more than a maximum of 32 kW: (A) new

¹⁹ The Exchange will notify each User with a PNU cabinet that the User has 30 business days to decide whether to contract to convert the PNU cabinet to a dedicated cabinet. If the User does not contract to use the PNU cabinet as a dedicated cabinet within such time, the PNU cabinet will be relinquished. See Notice, supra note 4 at 11347.

²⁰ See Notice, supra note 4 at 11347, 11349.

²¹ See id.

cabinets (dedicated and partial), subject to a maximum of four dedicated cabinets with standard power allocations of 4 kW or 8 kW, or (B) Additional Power for new or existing cabinets.²²

Amended General Note 7 would also specify that when the number of available cabinets is greater than 40 (above the Cabinet Threshold), the Cabinet Limits would cease to apply, and when the available power is greater than 350 kW (above the Power Threshold), the Combined Limits would cease to apply.²³

General Note 8 currently sets forth waitlist procedures if cabinet inventory falls to zero. The Exchanges propose to amend General Note 8 to provide for both a “Cabinet Waitlist” and “Combined Waitlist.” Specifically, if cabinet inventory is zero (or a User requests, in writing, a number of cabinets that, if provided, would cause the available inventory to be zero), then a Cabinet Waitlist would be initiated. If a Cabinet Waitlist is in effect, then the following will apply: (i) Users will be required to either convert their PNU cabinets into dedicated cabinets or relinquish their PNU cabinets; (ii) a User would be placed on the Cabinet Waitlist based on the date its signed order is received and may only have one order for new cabinets at a time; (iii) a User may change the size of its cabinet order while it is on the Cabinet Waitlist, provided that

²² See Notice, supra note 4 at 11347. The purchase may be comprised of a mix of dedicated and partial cabinets, with two partial cabinets counting as one dedicated cabinet. Id. Consistent with current procedures, the Exchanges propose that a User will have to wait 30 days from the date of its signed order form before purchasing new cabinets or Additional Power again. Also consistent with current procedure, the Exchanges propose that if a User requests, in writing, a number of new cabinets and/or an amount of Additional Power that, if provided, would cause the unallocated power capacity to be below the Power Threshold or Cabinet Threshold, the Combined Limits would apply only to the portion of the User’s order below the relevant threshold. Id.

²³ See Notice, supra note 4 at 11347. If the Cabinet Threshold is reached before the Power Threshold, the Cabinet Limits will be in effect until the Power Threshold is reached, after which the Combined Limits will apply. Id. If the Combined Limits are discontinued when unallocated cabinet inventory is 40 or fewer cabinets, the Cabinet Limits would enter into effect. Id.

the User may not increase the size of its order such that it would exceed the Cabinet Limits; (iv) as cabinets become available, the Exchanges would offer them to the User at the top of the waitlist; (v) a User would be removed from the Cabinet Waitlist when its order is completed and would remain at the top of the Cabinet Waitlist if its order is not completed; (vi) a User would be removed from the Cabinet Waitlist (a) at the User's request or (b) if the User turns down an offer of a cabinet of the same size it requested in its order; (vii) a User may turn down an Exchange's offer of a cabinet of a different size than the User requested in its order and remain at the top of the waitlist until its order is completed.; and (viii) a User that is removed from the Cabinet Waitlist but subsequently submits a new written order for cabinets would be added to the bottom of the Cabinet Waitlist.²⁴ The Exchanges would cease use of the Cabinet Waitlist when unallocated cabinet inventory is more than 10 cabinets.²⁵

Similarly, if unallocated power capacity is zero (or if a User requests, in writing, an amount of power (whether Standard Cabinet Power or Additional Power) that, if provided, would cause the unallocated power capacity to be below zero) then a Combined Waitlist would be initiated. If a Combined Waitlist is in effect, then, operating in substantially the same manner as the Cabinet Waitlist, the following would apply: (i) all Users with PNU cabinets will be required to either convert their PNU cabinets into dedicated cabinets or relinquish their PNU cabinets; (ii) a User would be placed on the Combined Waitlist based on the date its signed order for cabinets and/or Additional Power is received, and may only have one order on the Combined Waitlist at a time; (iii) a User may change the size of its order while it is on the Combined Waitlist, provided that the User may not increase the size of its order such that it would exceed

²⁴ See Notice, supra note 4 at 11347.

²⁵ Id.

the Combined Limits; (iv) as Additional Power and/or cabinets become available, the Exchanges would offer them to the User at the top of the waitlist; (v) a User would be removed from the Combined Waitlist when its order is completed and would remain at the top of the Combined Waitlist if its order is not completed; (vi) a User would be removed from the Combined Waitlist (a) at the User's request or (b) if the Exchange User turns down an offer of the same size it requested in its order; (vii) if the Exchange offers the User an offer that is different than its order, the User may turn down the offer and remain at the top of the waitlist until its order is completed.; (viii) a User that is removed from the Combined Waitlist but subsequently submits a new written order would be added to the bottom of the waitlist.²⁶ The Exchanges would cease use of the Combined Waitlist when unallocated power capacity is 100 kW or more; if at that time the unallocated cabinet inventory is 10 or fewer cabinets, the Cabinet Waitlist would enter into effect.²⁷

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule changes, each as modified by Amendment Nos. 1 and 2 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁸ In particular, the Commission finds that the proposed rule changes, each as modified by Amendment Nos. 1 and 2,

²⁶ See Notice, supra note 4 at 11347. If a Cabinet Waitlist exists when the requirements to create a Combined Waitlist are met, the Cabinet Waitlist will convert to the Combined Waitlist. If a Combined Waitlist exists when the requirements to create a Cabinet Waitlist are met, a new waitlist will not be created, and the Combined Waitlist will continue in effect. Id.

²⁷ See Amendment No. 2.

²⁸ In approving this proposed rule change, as modified by Amendment Nos. 1 and 2, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

are consistent with Section 6(b)(5) of the Act,²⁹ which requires that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Exchanges propose rational objective procedures to address circumstances in which the supply of available power in co-location becomes limited due to heightened demand for Standard Cabinet Power and/or Additional Power. As the Exchanges work to expand the amount of power and number of cabinets available in co-location to address unprecedented demand, the establishment of allocation procedures when the proposed thresholds are crossed offers a reasonable buffer that would allow for limited purchases of Standard Cabinet Power or Additional Power before a waitlist is initiated. The Commission believes that the proposed Cabinet Limits and Combined Limits are reasonably designed to facilitate an equitable distribution if the cabinet inventory or power supply are insufficient to fully satisfy User demand, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Further, the proposed Cabinet Waitlist and Combined Waitlist are reasonably designed to facilitate an equitable allocation of these resources while preventing Users from utilizing the waitlist as a method to obtain a greater portion of the power available. When cabinets and power are no longer at or below the specified thresholds, the proposed limits and waitlists will cease to apply. For the foregoing reasons, Commission finds that the proposals, each as modified by Amendment Nos. 1 and 2, are consistent with the Act.

²⁹ 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments on Amendment Nos. 1 and 2

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment Nos. 1 and 2 to 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 e-mail to rule-comments@sec.gov. Please include File Numbers SR-NYSE-2021-12, SR-NYSEAMER-2021-08, SR-NYSENAT-2021-03, SR-NYSEArca-2021-11, SR-NYSECHX-2021-02 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 Numbers SR-NYSE-2021-12, SR-NYSEAMER-2021-08, SR-NYSENAT-2021-03, SR-NYSEArca-2021-11, SR-NYSECHX-2021-02. 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 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-2021-12, SR-NYSEAMER-2021-08, SR-NYSENAT-2021-03, SR-NYSEArca-2021-11, SR-NYSECHX-2021-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Changes, Each as Modified by Amendment Nos. 1 and 2

The Commission finds good cause to approve the proposed rule changes, each as modified by Amendment Nos. 1 and 2, prior to the 30th day after the date of publication of notice of Amendment Nos. 1 and 2 in the Federal Register. Amendment No. 1 revises the proposals to: (i) provide additional explanation for why the Exchanges believe it is reasonable to integrate the procedures for the allocation of power with the procedures for the allocation of cabinets; (ii) clarify that a User may not increase its order on the Cabinet Waitlist or Combined Waitlist to a size that would exceed the Cabinet Limits or Combined Limits, as applicable; and (iii) correct typographical errors. Amendment No. 2 revises a portion of the proposed text of General Note 8 to state more clearly that the Combined Waitlist would cease to be in effect when unallocated power capacity is 100 kW or more, and at the time, the Cabinet Waitlist would apply if cabinet inventory is 10 or fewer cabinets. The Commission believes that Amendment Nos. 1 and 2 provide additional clarity and detail to the rule text and additional explanation for the basis of the proposal, thereby facilitating the Commission's ability to make the findings set forth above to approve the proposal.

Accordingly, pursuant to Section 19(b)(2) of the Exchange Act,³⁰ the Commission finds good cause to approve the proposed rule changes, each as modified by Amendment Nos. 1 and 2, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³¹ that the proposed rule changes (SR-NYSE-2021-12, SR-NYSEAMER-2021-08, SR-NYSENAT-2021-03, SR-NYSEArca-2021-11, SR-NYSECHX-2021-02), each as modified by Amendment Nos. 1 and 2 be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

J. Matthew DeLesDernier
Assistant Secretary

³⁰ 15 U.S.C. 78s(b)(2).

³¹ See id.

³² 17 CFR 200.30-3(a)(12).