

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93561; File No. SR-NYSEAMER-2021-43)

November 12, 2021

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE American Equities Price List and Fee Schedule and the NYSE American Options Fee Schedule Regarding Colocation Services

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on November 3, 2021, NYSE American LLC (“NYSE American” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Equities Price List and Fee Schedule and the NYSE American Options Fee Schedule (together, the “Price List and Fee Schedule”) regarding colocation services and fees to provide Users with wireless connectivity to CME Group market data. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List and Fee Schedule regarding colocation services and fees to provide Users⁴ with wireless connectivity to CME Group market data.⁵

The Exchange currently provides Users with wireless connections to eight market data feeds or combinations of feeds from third party markets (the “Existing Third Party Data”),⁶ and

⁴ For purposes of the Exchange’s co-location services, a “User” means any market participant that requests to receive co-location services directly from the Exchange. Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR-NYSEMKT-2015-67). As specified in the Price List and Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange’s affiliates New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2021-67, SR-NYSEArca-2021-97, SR-NYSECHX-2021-17, and SR-NYSENAT-2021-23.

⁵ The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (“Commission”) in 2010. See Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR-NYSEAmex-2010-80).

⁶ See Securities Exchange Act Release Nos. 76748 (December 23, 2015), 80 FR 81648 (December 30, 2015) (SR-NYSEMKT-2015-85); 78376 (July 21, 2016), 81 FR 49311

wired connections to 43 market data feeds.⁷ The Exchange now proposes to add to its Price List and Fee Schedule wireless connections to CME Group, Inc. (“CME Group”) market data (such data, “CME Group Data” and, together with the Existing Third Party Data, the “Third Party Data”). Users would be offered the proposed wireless connection to the CME Group Data through connections into the colocation center in the Mahwah, New Jersey data center (“Data Center”).⁸

The Exchange expects that the proposed rule change would become operative no later than March 31, 2022. The Exchange will announce the date that the wireless connection to the CME Group Data will be available through a customer notice.

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

For each wireless connection to CME Group Data, a User would be charged a \$5,000 non-recurring initial charge and a monthly recurring charge of \$6,000. The Exchange proposes to revise its Price List and Fee Schedule to reflect fees related to the wireless connection to CME Group Data.

(July 27, 2016) (SR-NYSEMKT-2016-17); and 80117 (February 28, 2017), 82 FR 12646 (March 6, 2017) (SR-NYSEMKT-2017-09).

⁷ See Securities Exchange Act Release No. 80309 (March 24, 2017), 82 FR 15725 (March 30, 2017) (SR-NYSEMKT-2016-63).

⁸ Through its ICE Data Services (“IDS”) business, Intercontinental Exchange, Inc. (“ICE”) operates the Data Center in Mahwah, New Jersey. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed service would be provided by IDS pursuant to an agreement with a non-ICE entity. IDS does not own the wireless network that would be used to provide the service.

The CME Group Data would not include all possible CME Group data feeds. There is limited bandwidth available on the wireless network to co-location, and there are currently dozens of CME Group data feeds. To provide connectivity to all of them would use a large amount of bandwidth.

Accordingly, rather than provide connectivity to all possible symbols included in the CME Group data feeds, the wireless connection would only provide connectivity to a selection of CME Group market data for which IDS determines there is User demand. IDS similarly provides connectivity to a selection of data, rather than entire feeds, over a wireless connection to the Markham, Canada third party data center.⁹ The User would then determine the symbols for which it would receive data, which could include data regarding some or all of the symbols for which IDS provides connectivity.¹⁰ The Exchange would not have visibility into which portion of the CME Group Data a given User receives.

As with the Existing Third Party Data, if a User purchased two wireless connections, it would pay two non-recurring initial charges. Each wireless connection would include the use of one port for connectivity to CME Group Data. A User would not pay a fee for the use of such port. If a User also connects to Existing Third Party Data, it would not be able to use the same port that it uses for connectivity to CME Group Data to connect to such Existing Third Party

⁹ See Securities Exchange Act Release No. 88238 (February 19, 2020), 85 FR 10776 (February 25, 2020) (SR-NYSEAMER-2020-10). See also Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044 (October 21, 2020) (SR-NYSE-2020-05, SR-NYSEAMER-2020-05, SR-NYSEArca-2020-08, SR-NYSECHX-2020-02, SR-NYSEAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEArca-2020-15, SR-NYSECHX-2020-05, SR-NYSEAT-2020-08).

¹⁰ The Exchange understands that the third parties that provide wireless connectivity to CME Group market data to the Data Center and other data centers in New Jersey follow a substantially similar model, offering connectivity to a selection of market data rather than entire feeds.

Data. Accordingly, a User that connects to both CME Group Data and Existing Third Party Data would have at least two ports, and would not be separately charged for two ports.¹¹

Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally.

As is currently the case, the purchase of any co-location service, including connectivity to Third Party Data, is completely voluntary and the Price List and Fee Schedule are applied uniformly to all Users.

Competitive Environment

Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain CME Group market data using other methods: from another User, a third party wireless connection, or through an IDS or third party fiber connection.

Based on the information available to it, the Exchange believes that at least one market participant provides wireless connectivity to CME Group market data in the Data Center. The Exchange believes that the wireless connection offered by this third party entity provides connectivity at the same or similar speed as the proposed connection to CME Group Data, and at the same or similar cost.¹² The proposed connection to CME Group Data and the existing third party wireless connection to CME Group Data would follow the same route within the Data Center: they would both enter through a meet-me-room, connect to equipment in co-location,

¹¹ If a User purchased a wireless connection to CME Group Data, that connection would include the use of one port for connectivity to CME Group Data. If the same User connected to Existing Third Party Data, it would receive the use of one port for connectivity to the Existing Third Party Data. It would not be separately charged for such ports. A User may purchase additional ports. See 80 FR 81648, *supra* note 6, at 81649.

¹² Because the third party is not a regulated entity, it is not obligated to make its latency figures or fees publicly available or the same for all entities.

and then connect to any Users that are customers. Because of this, the Exchange does not believe that IDS has an advantage over the third party in providing the connectivity. The proposed wireless connection would lead to a pole, from where a fiber connection would lead into the Data Center. The pole is owned by a third party and is not on the grounds of the Data Center.

IDS already offers fiber connections to CME Group market data to Users.¹³ The Exchange also believes that at least two third party market participants offer such fiber connections to CME Group market data. In addition to these options, a User may create a proprietary wireless connection or connect through another User in order to connect to CME Group market data. The Exchange believes that at least two market participants already provide wireless connectivity to CME Group market data to other data centers in New Jersey.

Wireless connections involve beaming signals through the air between antennas that are within line of sight of one another. Because the signals travel a straight, unimpeded line, and because light waves travel faster through air than through glass (fiber optics), wireless messages have lower latency than messages travelling through fiber optics. At the same time, as a general rule wireless networks have less uptime than fiber networks. Wireless networks are directly and immediately affected by adverse weather conditions, which can cause message loss and outage periods. Wireless networks cannot be configured with redundancy in the same way that fiber networks can. As a result, an equipment or weather issue at any one location on the network will cause the entire network to have an outage. In addition, maintenance can take longer than it would with a fiber based network, as the relevant tower may be in a hard to reach location, or weather conditions may present safety issues, delaying technicians servicing equipment. Even

¹³ See Securities Exchange Act Release No. 81015 (June 23, 2017), 82 FR 29610 (June 29, 2017) (SR-NYSEMKT-2017-32).

under normal conditions, a wireless network will have a higher error rate than a fiber network of the same length.

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; their proximity to the data centers on either end; 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 CME Group 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. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

The Exchange operates in a highly competitive market in which exchanges and other vendors (e.g., Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁴

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁷ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable.

The wireless connection would provide Users with an alternative means of connectivity to CME Group Data. The proposed change would provide Users with an additional choice with

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78f(b)(4).

respect to the form and optimal latency of the connectivity they use to receive CME Group market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain CME Group market data using other methods: from another User, a third party wireless connection, or through an IDS or third party fiber connection.

Based on the information available to it, the Exchange believes that at least one market participant provides wireless connectivity to CME Group market data in the Data Center. The Exchange believes that the wireless connection offered by this third party entity provides connectivity at the same or similar speed as the proposed connection to CME Group Data, and at the same or similar cost. The proposed connection to CME Group Data and the existing third party wireless connection to CME Group Data would follow the same route within the Data Center: they would both enter through a meet-me-room, connect to equipment in co-location, and then connect to any Users that are customers. Because of this, the Exchange does not believe that IDS has an advantage over the third party in providing the connectivity. The proposed wireless connection would lead to a pole, from where a fiber connection would lead into the Data Center. The pole is owned by a third party and is not on the grounds of the Data Center.

IDS already offers fiber connections to CME Group market data to Users.¹⁸ The Exchange also believes that at least two third party market participants offer such fiber connections to CME Group. In addition to these options, a User may create a proprietary wireless connection or connect through another User in order to connect to CME Group market

¹⁸ See 82 FR 29610, supra note 12.

data. The Exchange believes that at least two market participants already provide wireless connectivity to CME Group market data to other data centers in New Jersey.

Market participants' considerations in determining what connectivity to purchase may include latency; the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

The Exchange believes that it is reasonable to not transport information for all of the symbols included in CME Group data feeds to the Data Center, but rather to transport a subset of that data. There is limited bandwidth available on the wireless network to co-location, and there are a number of CME Group data feeds. Limiting the feeds to the selection of CME Group market data regarding securities for which IDS determines there is demand would allow Users to receive the relevant CME Group Data over a wireless network, which could include data regarding some or all of the symbols for which IDS provides connectivity. The User would then determine those symbols for which it will receive data.

The Exchange believes that it is reasonable that a User that has already purchased wireless connections to other Third Party Data would be charged a non-recurring charge when it purchases a wireless connection to the CME Group Data, because it would allow the Exchange to defray or cover certain costs it incurs in installing the wireless connection to the CME Group Data, which costs it incurs irrespective of whether the User has existing wireless connections to Third Party Data, while providing the User the benefit of the installation, which would allow it to receive CME Group Data within co-location and with a lower latency over the fiber optics option. To do the initial installation, the Exchange must provide the personnel required for initial

installation and testing. The costs associated with installing wireless connections are incrementally higher than those associated with installing fiber optics-based solutions.

The Exchange believes that it is reasonable that a User that connects to both CME Group Data and Existing Third Party Data may not use the same port for connectivity to both, and so would have at least two ports, because the proposed wireless connection would include the use of one port for connectivity to CME Group Data and connectivity to the Existing Third Party Data includes the use of one port for connectivity to Existing Third Party Data. A User would not pay a separate fee for using such ports.

The Exchange believes the proposed pricing for the wireless connection to CME Group Data is reasonable because it would allow the Exchange to defray or cover the costs associated with offering Users a wireless connection to CME Group Data while providing Users the benefit of receiving CME Group Data within co-location and with a lower latency over the fiber optics option. The wireless connection for CME Group Data would allow Users to select the CME Group Data connectivity option that better suits their needs.

The Exchange believes that the proposed pricing is reasonable because the Exchange proposes to offer the wireless connection to CME Group Data described herein as a convenience to Users, but in order to do so must provide, maintain and operate the Data Center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of such services, including by responding to any production issues. Since the inception of co-location, the Exchange has made numerous improvements to the network hardware and technology infrastructure and has established additional administrative controls. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users. Specifically, in order to offer

wireless connections, the Exchange must install, test, maintain and operate the wireless equipment.

The Proposed Change Is Not Unfairly Discriminatory

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

Without this proposed rule change, Users would have fewer options for connectivity to CME Group Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive CME Group market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain CME Group market data using other methods: from another User, a third party wireless connection, or through an IDS or third party fiber connection.

The Exchange believes that it is not unfairly discriminatory to not transport information for all of the symbols included in CME Group data feeds to the Data Center, but rather to transport a subset of that data. There is limited bandwidth available on the wireless network to co-location, and there are a number of CME Group data feeds. Limiting the feeds to the selection of CME Group market data regarding securities for which IDS determines there is demand would allow Users to receive the relevant CME Group Data over a wireless network. The User would then determine those symbols for which it will receive data, which could include data regarding some or all of the symbols for which IDS provides connectivity.

The Exchange believes that the proposed pricing is not unfairly discriminatory because the Exchange proposes to offer the wireless connection to CME Group Data described herein as

a convenience to Users, but in order to do so must provide, maintain and operate the Data Center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of such services, including by responding to any production issues. Since the inception of co-location, the Exchange has made numerous improvements to the network hardware and technology infrastructure and has established additional administrative controls. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users. Specifically, in order to offer wireless connections, the Exchange must install, test, maintain and operate the wireless equipment.

The Exchange believes that the proposed change is not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (i.e., the same products and services are available to all Users). All Users that voluntarily select wireless connections to CME Group Data would be charged the same amount for the same services.

Users that opt to use wireless connections to CME Group Data would receive the CME Group Data that is available to all Users, as all market participants that contract with CME Group or its affiliate for CME Group Data, as required, may receive it.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users.

Without this proposed rule change, Users would have fewer options for connectivity to CME Group Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive CME Group market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations. Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain CME Group market data using other methods: from another User, a third party wireless connection, or through an IDS or third party fiber connection.

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

The Exchange operates in a highly competitive market in which exchanges offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the

exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

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

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

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.¹⁹

The proposed change does not affect competition among national securities exchanges or among members of the Exchange, but rather between IDS and its commercial competitors.

The wireless connection would provide Users with an alternative means of connectivity to CME Group Data. The proposed change would provide Users with an additional choice with respect to the form and optimal latency of the connectivity they use to receive CME Group market data, allowing a User to select the connectivity that better suits its needs, helping it tailor its colocation operations to the requirements of its business operations.

Users that do not opt to utilize the Exchange's proposed wireless connection would still be able to obtain CME Group market data using other methods: from another User, a third party wireless connection, or through an IDS or third party fiber connection. Based on the information available to it, the Exchange believes that at least one market participant provides wireless

¹⁹ 15 U.S.C. 78f(b)(8).

connectivity to CME Group market data in the Data Center. The Exchange believes that the wireless connection offered by this third party entity provides connectivity at the same or similar latency as the proposed connection to CME Group Data, and at the same or similar cost. The proposed connection to CME Group Data and the existing third party wireless connection to CME Group Data would follow the same route within the Data Center: they would both enter through a meet-me-room, connect to equipment in co-location, and then connect to any Users that are customers. Because of this, the Exchange does not believe that IDS has an advantage over the third party in providing the connectivity. The proposed wireless connection would lead to a pole, from where a fiber connection would lead into the Data Center. The pole is owned by a third party and is not on the grounds of the Data Center.

IDS already offers fiber connections to CME Group market data to Users.²⁰ The Exchange also believes that at least two third party market participants offer such fiber connections to CME Group. In addition to these options, a User may create a proprietary wireless connection or connect through another User in order to connect to CME Group market data. The Exchange believes that at least two market participants already provide wireless connectivity to CME Group market data to other data centers in New Jersey.

The Exchange notes that the proposed wireless connection would compete not just with other wireless connections to CME Group market data, but also with fiber network connections, which may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions. Market participants' considerations in determining what connectivity to purchase may include latency; the amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. As noted

²⁰ See 82 FR 29610, supra note 12.

above, a User may purchase a fiber connection to CME Group market data from at least three providers, including IDS.

The Exchange operates in a highly competitive market in which exchanges and other vendors (e.g., Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²¹

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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²² and Rule 19b-4(f)(6) thereunder.²³

²¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2021-43 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-NYSEAMER-2021-43. 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>).

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.

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-NYSEAMER-2021-43, 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.²⁴

J. Matthew DeLesDernier
Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12).