

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87838; File No. SR-NYSENAT-2019-32)

December 23, 2019

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Price List to Extend for One Year a Fee Discount for the Partial Cabinet Solution Bundles Offered in Connection with the Exchange's Co-location Services

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 16, 2019, NYSE National, Inc. ("NYSE National" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Price List to extend for one year a fee discount for the Partial Cabinet Solution bundles offered in connection with the Exchange's co-location services. 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.

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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend the Price List related to co-location⁴ services to extend a fee discount for the Partial Cabinet Solution (“PCS”) bundles that the Exchange offers Users.⁵

There are four PCS bundles, each of which includes a partial cabinet; access to the Liquidity Center Network (“LCN”) and internet protocol (“IP”) network, the local area networks available in the data center; two fiber cross connections; and connectivity to one of two time feeds.⁶ The PCS bundles were designed to attract smaller Users, including those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.⁷

⁴ The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (“Commission”) in May 2018. See Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR-NYSE-2018-07) (“Co-location Notice”). The Exchange operates a data center in Mahwah, New Jersey (the “data center”) from which it provides co-location services to Users.

⁵ 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. See id. at note 10. As specified in the Price List, 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 the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. (collectively, the “Affiliate SROs”). See id. at note 12.

⁶ See id. at 26317.

⁷ See Securities Exchange Act Release No. 77072 (February 5, 2016), 81 FR 7394 (February 11, 2016) (SR-NYSE-2015-53).

The Exchange offers Users that purchase a PCS bundle on or before December 31, 2019 a 50% reduction in the monthly recurring charges (“MRC”) for the first 24 months.⁸ The Exchange proposes to extend the 50% fee reduction to those Users that purchase a PCS bundle on or before December 31, 2020.⁹ The Exchange does not propose to amend the length of the discount period.

The amended portion of the Price List would read as follows:

| Type of Service | Description | Amount of Charge |
|--|--|---|
| Partial Cabinet Solution bundles Note: A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 2 under “General Notes.” | Option A: 1 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol | \$7,500 initial charge per bundle plus monthly charge per bundle as follows: <ul style="list-style-type: none"> • For Users that order on or before December 31, 2020: \$3,000 monthly for first 24 months of service, and \$6,000 monthly thereafter • For Users that order after December 31, 2020: \$6,000 monthly |
| | Option B: 2 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol | \$7,500 initial charge per bundle plus monthly charge per bundle as follows: <ul style="list-style-type: none"> • For Users that order on or before December 31, 2020: \$3,500 monthly for first 24 months of service, and \$7,000 monthly thereafter • For Users that order after December 31, 2020: \$7,000 monthly |

⁸ See Securities Exchange Act Release No. 84895 (December 20, 2018), 83 FR 67405 (December 28, 2019) (SR-NYSENAT-2018-26).

⁹ Affiliate SROs previously extended the MRC reduction for one year. See Securities Exchange Act Release Nos. 82223 (December 6, 2017) 82 FR 58459 (December 12, 2017) (SR-NYSE-2017-62); and 79715 (December 30, 2016), 82 FR 1777 (January. 6, 2017) (SR-NYSE-2016-91).

| | |
|--|---|
| <p>Option C: 1 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol</p> | <p>\$10,000 initial charge per bundle plus monthly charge per bundle as follows:</p> <ul style="list-style-type: none"> • For Users that order on or before December 31, 2020: \$7,000 monthly for first 24 months of service, and \$14,000 monthly thereafter • For Users that order after December 31, 2020: \$14,000 monthly |
| <p>Option D: 2 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol</p> | <p>\$10,000 initial charge per bundle plus monthly charge per bundle as follows:</p> <ul style="list-style-type: none"> • For Users that order on or before December 31, 2020: \$7,500 monthly for first 24 months of service, and \$15,000 monthly thereafter • For Users that order after December 31, 2020: \$15,000 monthly |

Application and Impact of the Proposed Change

The proposed change would apply to all PCS bundles. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally.

Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them. As is currently the case, the purchase of any colocation service, including PCS bundles, is completely voluntary and the Price List is applied uniformly to all Users.

Competitive Environment

A User may host another entity in its space within the data center. Such Users are called

“Hosting Users,” and their customers are “Hosted Customers.”¹⁰

Based on conversations with Users and potential customers, the Exchange believes that Hosting Users offer bundles (“Hosting User Bundles”) that include cabinet space and space on shared LCN and IP network connections--and that the Hosting User Bundles provide their end users with a service similar to that of the PCS bundles, but with a lower cost and latency.¹¹

The Exchange believes that, by extending the existing eligibility for a 50% MRC reduction for another year, the proposed change may make PCS bundles more competitive with the services that Hosting Users offer. Importantly, the proposed extension would provide potential Users with a wider range of choices for the period of the extension, which would be especially beneficial for potential Users with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.¹²

The Exchange operates in a highly competitive market in which exchanges and other vendors (i.e., 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

¹⁰ A Hosting User is required to be a User, but because only Users can be Hosting Users, a Hosted Customer is not able to provide hosting services to any other entities in the space in which it is hosted. The Exchange allows Users to act as Hosting Users for a monthly fee. See Co-location Notice, supra note 4, at 26318.

¹¹ Because Hosting Users’ services are not regulated, they may offer differentiated pricing and are not required to make their pricing public or disclose it to the Exchange. The Exchange therefore does not have direct visibility into the specific range of options, or cost thereof, offered by Hosting Users, and relies on third parties for information.

¹² See supra note 7.

securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and 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.”¹³

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User’s customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (e.g., a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;¹⁴ and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.¹⁵

¹³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁴ As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange’s trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange’s trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies, as compared to Users that are not co-located, in sending orders to, and receiving market data from, the Exchange.

¹⁵ See Co-location Notice, supra note 4, at 26315. Each of the Affiliate SROs has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2019-72, SR-NYSEAmer-2019-58, SR-NYSEArca-2019-97, and SR-NYSECHX-2019-27.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁷ 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 mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and does not unfairly discriminate between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁸ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. The Exchange would continue to offer the four different PCS bundles with different cabinet footprints and network connections options. Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them. As is currently the case, the purchase of any colocation service,

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 15 U.S.C. 78f(b)(4).

including PCS bundles, would be completely voluntary.

The proposed change would ensure that all Users that order a bundle on or before December 31, 2020 would have their MRC reduced by 50% for the first 24 months. Extending the period would make it more cost effective for current or potential Users to utilize co-location by offering a cost effective, convenient way to create a colocation environment, through the choice among PCS bundles with different cabinet footprints and network connections options. The Exchange expects that such Users would include those with minimal power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.

The Proposed Change is Reasonable

The Exchange believes its proposal is reasonable.

The Exchange believes that it is reasonable to extend the period of eligibility for a 50% MRC reduction as an incentive to Users to utilize PCS bundles. Extending the existing eligibility for a 50% MRC reduction for another year would provide smaller current or potential Users with minimal power or cabinet space demands with additional time to purchase a PCS bundle at a discounted rate.

The Exchange believes that, by extending the existing eligibility for a 50% MRC reduction for another year, the proposed change may make PCS bundles more competitive with the services that Hosting Users offer. The proposed extension would continue to provide potential Users with a wider range of choices for the period of the extension.

The Proposed Change is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees among its market participants.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. The Exchange would continue to offer the four different PCS bundles with different cabinet footprints and network connections options. Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them. As is currently the case, the purchase of any colocation service, including PCS bundles, would be completely voluntary.

Having the change apply to all PCS bundles would ensure that all Users that order a bundle on or before December 31, 2020 would have their MRC reduced by 50% for the first 24 months. Extending the period would make it more cost effective for current or potential Users to utilize co-location by continuing to offer a cost effective, convenient way to create a colocation environment, through the choice among PCS bundles with different cabinet footprints and network connections options. The Exchange expects that such Users would include those with minimal power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.

Without this proposed rule change, potential Users choosing between a PCS bundle and a Hosting User Bundle would have fewer attractive options. This would be a detriment for them, especially for potential Users with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.¹⁹

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

¹⁹ See supra note 7.

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.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

The proposed rule changes 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.²⁰

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate. The proposed changes would enhance competition by extending the period of eligibility for a 50% MRC reduction to all Users that order a bundle on or before December 31, 2020. Such change would make it more cost effective for current or potential Users to utilize co-location by offering a cost effective, convenient way to create a colocation environment, through the choice among PCS bundles with different cabinet footprints and network connections options. The Exchange believes that, by extending the period of eligibility, the proposed change may make PCS bundles more attractive to potential Users who might otherwise opt to become Hosted Customers, and thus enhance the competitive environment for potential Users (who would then have more options from which to select).

Importantly, the proposed extension would provide potential Users with a wider range of choices for the period of the extension, which would be especially beneficial for potential Users with minimal power or cabinet space demands or those for which the costs attendant with having

²⁰ 15 U.S.C. 78f(b)(8).

a dedicated cabinet or greater network connection bandwidth are too burdensome. At the same time, however, no potential User would be obligated to purchase a PCS bundle, and it would still have the options offered by Hosting Users.

PCS bundles allow Users to select their desired cabinet footprint and network connections at a reduced MRC for the first 24 months. Such Users may choose, in turn, to pass on such cost savings to their customers. In addition to the proposed 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, and the extension of the 50% reduction for the MRC for the PCS bundles, would apply to all Users).

Intermarket Competition

The Exchange does not believe that the proposed fee would impose any burden on intermarket competition that is not necessary or appropriate. The proposed change is not meant to affect competition among national securities exchanges. Rather, the Exchange believes that the proposed change is a reasonable attempt to maintain a more level playing field between the Exchange and the Hosting Users, who compete for Hosted Customer business. Because Hosting Users' services are not regulated, they may offer differentiated pricing and are not required to make their pricing public. The Exchange believes that the proposed change may make PCS bundles more attractive to potential Users who might otherwise opt to become Hosted Customers.

The Exchange operates in a highly competitive market in which exchanges 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. 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. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges.

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

For the reasons described above, the Exchange believes that the proposed rule changes reflect this competitive environment.

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

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

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

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)²² of the Act and subparagraph (f)(2) of Rule 19b-4²³ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁴ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSENAT-2019-32 on the subject line.

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(2).

²⁴ 15 U.S.C. 78s(b)(2)(B).

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSENAT-2019-32. 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 Number SR-NYSESTAT-2019-32 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.²⁵

Eduardo A. Aleman
Deputy Secretary

²⁵ 17 CFR 200.30-3(a)(12).