

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91037; File No. SR-NYSENAT-2021-01)

February 1, 2021

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing of Proposed Rule Change to Amend Its Schedule of Fees and Rebates Related to 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 January 19, 2021, 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 Schedule of Fees and Rebates (“Fee Schedule”) related to co-location services to add two Partial Cabinet Solution bundles. 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 received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 its Fee Schedule related to co-location⁴ services to add two Partial Cabinet Solution (“PCS”) bundles that would be offered to Users.⁵

Proposed Addition of Option E and Option F PCS Bundles

The Fee Schedule currently lists four PCS bundles, Options A through D. As originally formulated, each PCS bundle option included a partial cabinet powered to a maximum of 2 kilowatts (“kW”); access to the liquidity center network (“LCN”) and internet protocol (“IP”) networks, 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 are designed to attract smaller Users, including those with minimal power or cabinet space demands or those for which the costs

⁴ The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (“Commission”) in 2018. See Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR-NYSE-NAT-2018-07) (“NYSE National Co-location Notice”).

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., supra note 4, at 26314 n.9. As specified in the 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”), NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. (together, the “Affiliate SROs”). See id. at 26314 n.11. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2021-05, SR-NYSEAMER-2021-04, SR-NYSEArca-2021-07, and SR-NYSECHX-2021-01.

⁶ See id. at 26315.

attendant with having a dedicated cabinet are too burdensome.⁷ Users are only eligible to purchase PCS bundles if they meet specified requirements, set forth in General Note 2 of the Fee Schedule.⁸

In May 2020, the Exchange amended PCS bundle Options C and D to each include two 10 Gb connections to the NMS Network, an alternate dedicated network connection that Users could use to access the NMS feeds for which the Securities Industry Automation Corporation (“SIAC”) is engaged as the securities information processor (“SIP”).⁹ These two 10 Gb NMS Network connections were added to the Option C and D bundles at no additional cost.

In response to customer interest, the Exchange now proposes to add two new PCS bundles to the Fee Schedule. Proposed Options E and F would be substantially similar to Options C and D, respectively, with the difference that each connection included in the proposed bundles would be upgraded to 40 Gb from 10 Gb: that is, proposed Options E and F would include a 1 kw (Option E) or 2 kw (Option F) partial cabinet, one 40 Gb LCN connection, one 40 Gb IP network connection, two 40 Gb NMS Network connections, and either the Network Time Protocol Feed or the Precision Timing Protocol. Users selecting an Option E or F bundle would be charged the same initial charge of \$10,000 that currently applies to Options C and D. In addition, Users would be charged monthly recurring charges (“MRC”) of \$18,000 for an Option E bundle and \$19,000 for an Option F bundle. The Exchange proposes that Users that purchase

⁷ See id.

⁸ See id. The definitions of “Affiliate” and “Aggregate Cabinet Footprint” were added to the Fee Schedule at the same time.

⁹ See Securities Exchange Act Release Nos. 88837 (May 7, 2020), 85 FR 28671 (May 13, 2020) (SR-NYSE-2019-46, SR-NYSEAMER-2019-34, SR-NYSEArca-2019-61, SR-NYSENAT-2019-19) (“NMS Network Approval Order”) and 88972 (May 29, 2020), 85 FR 34472 (June 4, 2020) (“NYSE Chicago NMS Network Approval Order”).

Option E or F bundles on or before December 31, 2021 would receive a 50% reduction in the MRC for the first 12 months.

The amended portion of the Fee Schedule would read as follows (proposed additions underlined):

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.”	<u>Option E:</u> <u>1 kW partial cabinet, 1 LCN connection (40 Gb), 1 IP network connection (40 Gb), 2 NMS Network connections (40 Gb each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol</u>	<u>\$10,000 initial charge per bundle plus monthly charge per bundle as follows:</u> <ul style="list-style-type: none"> • <u>For Users that order on or before December 31, 2021: \$9,000 monthly for first 12 months of service, and \$18,000 monthly thereafter</u> • <u>For Users that order after December 31, 2021: \$18,000 monthly</u>
	<u>Option F:</u> <u>2 kW partial cabinet, 1 LCN connection (40 Gb), 1 IP network connection (40 Gb), 2 NMS Network connections (40 Gb each), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol</u>	<u>\$10,000 initial charge per bundle plus monthly charge per bundle as follows:</u> <ul style="list-style-type: none"> • <u>For Users that order on or before December 31, 2021: \$9,500 monthly for first 12 months of service, and \$19,000 monthly thereafter</u> • <u>For Users that order after December 31, 2021: \$19,000 monthly</u>

The Exchange proposes that General Note 2 of the Fee Schedule – which currently applies to PCS bundle Options A through D – would also apply to proposed Option E and F bundles, without alteration. Specifically, a User and its Affiliates would be limited to one PCS

bundle at a time, and a User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a PCS bundle.

The Exchange is not proposing any changes to PCS bundle Options A through D.

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.

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 co-location service, including PCS bundles, is completely voluntary and the Fee Schedule 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, IP, and NMS network connections, and that the Hosting User Bundles provide their end users with a service similar to that of the PCS bundles.¹¹

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 NYSE National 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.

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.”¹²

The proposed changes are 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,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ 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

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

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,¹⁵ 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 and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, for the following reasons.

The Exchange believes that it is reasonable to expand its PCS bundle options by offering the proposed Option E and F bundles. Currently, the Exchange offers Users the ability to purchase connectivity to the LCN/NMS and IP/NMS networks in 10 Gb and 40 Gb bandwidths, but within the Exchange's existing PCS bundle options, 40 Gb connections are not available. This means that at present, Users interested in the PCS bundled services – either because they have minimal power and cabinet space demands or because the costs attendant with having a dedicated cabinet are too burdensome – cannot access 40 Gb connections and are limited to the 10 Gb connections offered as part of the Option C and D bundles. Users and potential customers have requested that the Exchange provide them the opportunity to purchase PCS bundles that include 40 Gb connections, which would enable them to connect to more of the Included Data Products and Third Party Data Feeds or have the same size connection in co-location that they have everywhere. The Exchange believes that it is reasonable to offer the proposed Option E and F bundles to satisfy this customer demand, while continuing to offer the existing bundle

¹⁵ 15 U.S.C. 78f(b)(4).

offerings, in order to provide potential Users of the PCS bundled services an additional 40 Gb option for their network connection requirements.

Additionally, the Exchange believes that the proposed change may make PCS bundles more competitive with the services that Hosting Users offer. Without this proposed rule change, potential Users choosing between a PCS bundle and a Hosting User Bundle would have fewer options.

The Exchange believes that the proposed charges for the Option E and F bundles are reasonable. The Exchange proposes that Users choosing the Option E or F bundles would pay the same \$10,000 initial charge that Users currently pay when choosing the Option C or D bundles, which reflects the fact that setting up each of these four cabinet options involves a similar amount of work for the Exchange. It is also reasonable for the Exchange to set MRC charges of \$18,000 for an Option E bundle (a \$4,000 increase over Option C) and \$19,000 for an Option F bundle (a \$4,000 increase over Option D) which reflects the fact that the Exchange will have to supply multiple 40 Gb connections in the Option E and F bundles, as opposed to the 10 Gb connections included in the Option C and D bundles.

The Exchange believes that it is reasonable to provide a period of eligibility for a 50% MRC reduction as an incentive to Users to utilize the Option E and F bundles. Similar 50% MRC reductions were proposed and approved for Options A through D when those product offerings were added to the Fee Schedule.

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 existing PCS bundles

(Options A through D) with different cabinet footprints and network connection options, in addition to the proposed Option E and F bundles. 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 co-location service, including PCS bundles, would be completely voluntary.

The Exchange believes that the proposed charges for Option E and F bundles are not unfairly discriminatory. The proposed initial charges and MRCs for Options E and F would apply equally to all Users that purchase an Option E or F bundle, and the proposed 50% reduction of MRC for the first 12 months would apply to any User that orders an Option E or F bundle on or before December 31, 2021.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that 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. Specifically, the proposed initial charges and MRCs for Options E and F would apply equally to all Users that purchase an Option E or F bundle, and the proposed 50% reduction of MRC for the first 12 months would apply to any User that orders an Option E or F bundle on or before December 31, 2021. The Exchange would continue to offer the four existing PCS bundles (Options A through D) with different cabinet footprints and network connection options, in addition to the proposed Option E and F bundles. 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 co-location service, including PCS bundles, would be completely voluntary.

Without this proposed rule change, potential Users choosing between a PCS bundle and a Hosting User Bundle would have fewer options. Potential Users could benefit from having an additional 40 Gb option for their network connection requirements, which would allow them to connect to more of the Included Data Products and Third Party Data Feeds or have the same size connection in co-location that they have elsewhere.

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.

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 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.¹⁶

Intramarket Competition

The Exchange believes that the proposed changes would not place any burden on intramarket competition that is not necessary or appropriate.

The Exchange's offering of the proposed Option E and F bundles would provide potential Users of PCS bundles a wider range of choices, which would be especially beneficial for potential Users with minimal power and cabinet space demands, but which could nevertheless benefit from an additional 40 Gb option for their network connection requirements. The Exchange believes that the proposed change may make PCS bundles more attractive to potential

¹⁶ 15 U.S.C. 78f(b)(8).

Users who might otherwise opt to become Hosted Customers, and thus would enhance the competitive environment for potential Users, who would then have more options from which to select. 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.

Intermarket Competition

The Exchange believes that the proposed changes will not 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 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. 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, an 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 price, 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, recognizing 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.”¹⁷

For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

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

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or

¹⁷ See Regulation NMS Adopting Release, supra note 12, at 37499.

- (B) institute proceedings to determine whether the proposed rule change should be 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-2021-01 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSENAT-2021-01. 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-NYSENAT-2021-01 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.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).