

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83403; File No. SR-NYSEARCA-2018-36]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges Related to Co-Location Services in Connection With the Re-Launch of Trading on NYSE National, Inc. and Proposed NYSE National Co-Location Services

June 11, 2018.

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 May 30, 2018, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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 the NYSE Arca Options Fees and Charges (the “Options Fee Schedule”) and the NYSE Arca Equities Fees and Charges (the “Equities Fee Schedule” and, together with the Options Fee Schedule, the “Fee Schedules”) related to co-location services in connection with the re-launch of trading on NYSE National, Inc. (“NYSE National”) and proposed NYSE National co-location services. The Exchange also proposes to make a non-substantive change to remove obsolete text from the Fee Schedules. 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 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 Fee Schedules related to co-location⁴ services in connection with the re-launch of trading on NYSE National and proposed NYSE National co-location services. Specifically, the Exchange proposes to make changes to General Note 1 and General Note 4 of the Fee Schedules to add references to NYSE National. The Exchange also proposes to make a non-substantive change to remove obsolete text from the Fee Schedules, with respect to the wireless connection to third party data provided by the Toronto Stock Exchange (“TSX”).

On January 31, 2017, Intercontinental Exchange, Inc. (“ICE”), the indirect parent of the Exchange, acquired all of the outstanding capital stock of NYSE National through its wholly-owned subsidiary NYSE Group.⁵ As a result, NYSE National is an affiliate of the

Exchange. On February 1, 2017, NYSE National ceased trading operations.⁶

NYSE National filed proposed rule changes to re-launch trading operations.⁷ NYSE National has stated that it anticipates re-launching trading operations in the second quarter of 2018. In connection with the anticipated re-launch of NYSE National’s trading operations, NYSE National has filed a proposed rule change to offer the same co-location services and fees offered by the Exchange, the New York Stock Exchange LLC (“NYSE LLC”), and NYSE American LLC (“NYSE American” and, together with the NYSE LLC, the “Affiliate SROs”), which are its affiliates.⁸

The Exchange requests that the proposed rule change become both effective and operative immediately upon filing.⁹

General Note 1

General Note 1 of the Fee Schedules provides that a User¹⁰ that incurs co-location fees for a particular co-location service shall not be subject to co-location fees for the same co-location service charged by the other Affiliate SROs.¹¹ The Exchange proposes to add NYSE National to General Note 1 to the Options Fee Schedule, as follows (additions underlined, deletions in brackets):

⁶ See Securities Exchange Act Release No. 80018 (February 10, 2017), 82 FR 10947 (February 16, 2017) (SR-NSX-2017-04).

⁷ See Securities Exchange Act Release No. 83289 (May 17, 2018) (notice of filing of Amendment No. 1 and order granting accelerated approval of a proposed rule change, as amended by Amendment No. 1, to support the re-launch of NYSE National, Inc. on the Pillar Trading Platform) (“NYSE National Trading Rules Approval”). See also Securities Exchange Act Release No. 82819 (March 7, 2018), 83 FR 11098 (March 13, 2018) (SR-NYSENat-2018-02).

⁸ See SR-NYSENat-2018-07 (May 18, 2018).

⁹ See NYSE National Trading Rules Approval, *supra* note 7.

¹⁰ 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 Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR-NYSEArca-2015-82).

¹¹ See Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR-NYSEArca-2013-80). Some Users do not connect to the Exchange or the Affiliate SROs, but rather provide services to other Users co-located at the data center. *Id.*

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. See Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR-NYSEArca-2010-100). The Exchange operates a data center in Mahwah, New Jersey (the “data center”) from which it provides co-location services to Users.

⁵ See Securities Exchange Act Release No. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR-NSX-2016-16). Prior to its acquisition, NYSE National was named “National Stock Exchange, Inc.”

A User that incurs co-location fees for a particular co-location service pursuant to this Fee Schedule shall not be subject to co-location fees for the same co-location service charged pursuant to the NYSE Arca Equities Fee Schedule or by the Exchange's affiliates NYSE American LLC (NYSE American), [and] New York Stock Exchange LLC (NYSE) and NYSE National, Inc. (NYSE National).

The Exchange proposes to add NYSE National to General Note 1 to the Equities Fee Schedule, as follows (additions underlined, deletions in brackets):

A User that incurs co-location fees for a particular co-location service pursuant to this Fee Schedule shall not be subject to co-location fees for the same co-location service charged pursuant to the NYSE Arca Options Fee Schedule or by the Exchange's affiliates NYSE American LLC (NYSE American), [and] New York Stock Exchange LLC (NYSE) and NYSE National, Inc. (NYSE National).

By including the proposed reference to NYSE National, General Note 1 would provide that the fees a User pays for co-location services would not depend on whether the User connects to none, one, some, or all of the Exchange, the Affiliate SROs, and NYSE National. General Note 4

General Note 4 of the Fee Schedules provides that, when a User purchases access to the Liquidity Center Network

("LCN") or the internet protocol ("IP") network, the two local area networks available in the data center,¹² a User receives (a) the ability to access the trading and execution systems of the Exchange and Affiliate SROs, and (b) connectivity to any of the listed data products ("Included Data Products") that it selects.

The Exchange proposes to add NYSE National to the list of trading and

execution system providers in the first sentence of the first paragraph, thereby expanding the definition of "Exchange Systems" which Users may access to include NYSE National. It also proposes to add NYSE National to the lists of affiliated entities in the first, third and fourth sentences. The proposed changes are as follows (additions underlined, deletions in brackets):

¹² See Securities Exchange Act Release No. 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR-NYSEArca-2016-172).

When a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the NYSE, NYSE American,¹ [and] NYSE Arca and NYSE National (Exchange Systems), subject, in each case, to authorization by the NYSE, NYSE American,¹ [or] NYSE Arca or NYSE National, as applicable. Such access includes access to the customer gateways that provide for order entry, order receipt (i.e. confirmation that an order has been received), receipt of drop copies and trade reporting (i.e. whether a trade is executed or cancelled), as well as for sending information to shared data services for clearing and settlement. A User can change the access it receives at any time, subject to authorization by NYSE, NYSE American,¹ [or] NYSE Arca, or NYSE National. NYSE, NYSE American,¹ [and] NYSE Arca and NYSE National also offer access to Exchange Systems to their members, such that a User does not have to purchase access to the LCN or IP network to obtain access to Exchange Systems.

In addition, the Exchange proposes to add NYSE National to the table of Included Data Products set forth in General Note 4.

Toronto Stock Exchange

The Exchange offers Users the option to receive certain market data feeds from third party markets through a wireless connection. The description of the charge for the TSX wireless connection in the Fee Schedules states that “[c]ustomers with an existing wireless connection to TSX at the time the Exchange makes the service available will not be subject to an initial charge or receive 30-day testing period.” Because the wireless connection to the TSX has become effective, the statement is obsolete. Accordingly, the Exchange proposes to delete the statement from the Fee Schedules.

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;¹³ 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, one or both of its Affiliate SROs, or NYSE National.¹⁴

¹³ 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 in sending orders to, and receiving market data from, the Exchange.

¹⁴ See 78 FR 50459, *supra* note 11, at 50459. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes

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 proposal 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 mechanisms of, a free and open market and a national market system and, in general, to protect

described herein. See SR–NYSE–2018–23 and SR–NYSEAMER–2018–23.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendments would update General Note 1 to reflect NYSE National's provision of co-location services. By including the proposed reference to NYSE National, General Note 1 would provide that the fees a User pays for co-location services would not depend on whether the User connects to none, one, some, or all of the Exchange, the Affiliate SROs, and NYSE National. For example, to charge one User three times for a cage because that User connects to the Exchange, NYSE National, and an Affiliate SRO, when another User that buys the same size cage and only connects to the Exchange only pays once, would not promote just and equitable principles of trade. The Exchange also believes that the proposed amendments to General Note 1 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because charging a User for co-location services based on how many markets to which a User connects could result in the Exchange, NYSE National and the Affiliate SROs receiving the proceeds from multiple fees despite only providing a service once.

The Exchange believes that the proposed amendments would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendments would update General Note 4 to reflect NYSE National's provision of co-location services. By expanding the definition of "Exchange Systems" to include the NYSE National trading and execution system, incorporating references to NYSE National, and adding NYSE National to the list of Included Data Products, the Exchange would provide market participants with clarity as to what access and connectivity a User receives when it purchases access to the LCN or IP network, thereby making the description more accessible and transparent.

Further, the Exchange believes that revising General Note 4 to provide a more detailed description of the access and connectivity to NYSE National that Users would receive with their purchase of access to the LCN or IP network would promote just and equitable

principles of trade and remove impediments to, and perfect the mechanisms of, a free and open market and a national market system as it would make clear that all Users that voluntarily select to access the LCN or IP network would receive the same access to the NYSE National trading and execution systems and connectivity to NYSE National data and would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. In addition, a User would not be required to use any of its bandwidth to access the NYSE National trading and execution system or connect to NYSE National data unless it wishes to do so. A User only receives the access to Exchange Systems and connectivity to Included Data Products that it selects, and a User can change such access or connectivity it receives at any time, subject to authorization from the data provider or relevant Exchange or Affiliate SRO.

The Exchange believes that the non-substantive change to remove obsolete text with respect to the wireless connection to TSX data would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendment would clarify Exchange rules and alleviate any possible market participant confusion caused by the obsolete reference.

The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,¹⁷ in particular, 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 Exchange believes that the proposed change 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, because the change would result in the Exchange offering co-location services related to access and connectivity to NYSE National, an affiliate of the Exchange, on the same terms and in the same manner as it offers access and connectivity to the Exchange and the Affiliate SROs. By adding NYSE National to General Notes 1 and 4, the proposed change would ensure that the fees a User pays for co-location services would not depend on whether the User connects to none, one

or more of the Exchange, the SRO Affiliates and NYSE National. For example, a User that connects to the Exchange, NYSE National, and an Affiliate SRO, and another User that only connects to the Exchange, would both receive the same services for the same fee, including the same access and connectivity with their purchase of access to the LCN or IP network.

The Exchange believes that the proposed non-substantive change to remove obsolete text with respect to the wireless connection to TSX data would be reasonable because the change would have no impact on pricing. Rather, the change would remove obsolete information from the description of the pricing for the service, alleviating possible market participant confusion.

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

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

In accordance with Section 6(b)(8) of the Act,¹⁸ the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the use of co-location services being completely voluntary, they are available to all Users on an equal basis (*i.e.*, the same range of products and services are available to all Users).

The Exchange believes that the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the change would result in the Exchange offering co-location services related to access and connectivity to NYSE National, an affiliate of the Exchange, on the same terms and in the same manner as it offers access and connectivity to the Exchange and the Affiliate SROs. By adding NYSE National to General Notes 1 and 4, the proposed change would ensure that the fees a User pays for co-location services would not depend on whether the User connects only to none, one or more of the Exchange, the SRO Affiliates and NYSE National. Further, the Exchange believes that revising General Note 4 to provide a more detailed description of the access and connectivity to NYSE National that Users would receive with their purchase of access to the LCN or IP network would make clear that all Users that voluntarily select to access the LCN or IP network would receive the same access to the NYSE National trading and

¹⁷ 15 U.S.C. 78f(b)(4).

¹⁸ 15 U.S.C. 78f(b)(8).

execution systems and connectivity to NYSE National data and would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access.

In addition, a User would not be required to use any of its bandwidth to access the NYSE National trading and execution system or connect to NYSE National data unless it wishes to do so.

The Exchange believes that the non-substantive change to remove obsolete text with respect to the wireless connection to TSX data would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it would have no impact on pricing or existing services. Rather, the change would remove obsolete information from the description of the pricing for the service, alleviating possible market participant confusion.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.²¹

A proposed rule change filed under Rule 19b-4(f)(6)²² normally does not become operative prior to 30 days after the date of the filing. However, pursuant

to Rule 19b-4(f)(6)(iii),²³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule changes may become operative immediately upon filing. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to offer co-location services related to access and connectivity to NYSE National to coincide with the relaunch of the NYSE National and its proposed co-location services. The Exchange also notes that waiver would alleviate the possibility of confusion that could be caused by inconsistencies between the Exchange's Price List and NYSE National co-location services that are to be included in NYSE National's price list. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it would allow the Exchange to offer co-locations services in the form of access and connectivity to NYSE National without undue delay. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.²⁴

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)²⁵ 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:

²³ 17 CFR 240.19b-4(f)(6)(iii).

²⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78s(b)(2)(B).

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2018-36 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NYSEARCA-2018-36. This file number should be included on the subject line if email 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-NYSEARCA-2018-36 and should be submitted on or before July 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Eduardo A. Aleman,

Assistant Secretary.

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²⁶ 17 CFR 200.30-3(a)(12).

¹⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange 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 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.

²² 17 CFR 240.19b-4(f)(6).