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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-98964; File No. SR-NYSEARCA-2023-79]**

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Connectivity Fee Schedule**

November 16, 2023.

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 9, 2023, NYSE Arca, Inc. ("NYSE Arca" 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 the Connectivity 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.

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

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1 15 U.S.C. 78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 Connectivity Fee Schedule ("Fee Schedule") regarding colocation services and fees to provide Users[4] 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 wired connections to more than 45 market data feeds or combinations of feeds.[7] The Exchange proposes to add to the Fee Schedule wireless connections to CME Group, Inc. ("CME Group") market 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

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4 For purposes of the Exchange's colocation services, a "User" means any market participant that requests to receive colocation 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). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE American LLC, 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-2023-44, SR-NYSEAMER-2023-59, SR-NYSECHX-2023-22, and SR-NYSENAT-2023-26.

5 The Exchange filed a similar proposal in 2021, which it subsequently withdrew. See Securities Exchange Act Release No. 93810 (December 17, 2021), 86 FR 73026 (December 23, 2021) (SR-NYSE-2021-67, SR-NYSEAMER-2021-43, SR-NYSEARCA-2021-97, SR-NYSECHX-2021-17, SR-NYSENAT-2021-23).

6 See Securities Exchange Act Release Nos. 76749 (December 23, 2015), 80 FR 81640 (December 30, 2015) (SR-NYSEArca-2015-99); 78377 (July 21, 2016), 81 FR 49327 (July 27, 2016) (SR-NYSEARCA-2016-99); and 80116 (February 28, 2017), 82 FR 12663 (March 6, 2017) (SR-NYSEArca-2017-18).

7 See Securities Exchange Act Release No. 80310 (March 24, 2017), 82 FR 15763 (March 30, 2017) (SR-NYSEArca-2016-89).

("MDC").[8]

The Exchange expects that the proposed rule change would become operative in the fourth quarter of 2023, and in any event, no later than December 31, 2023. 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 third party for permission to receive the data, if required. The User would pay this third party any fees for the data content.

The Exchange proposes to revise the Fee Schedule to reflect fees related to the wireless connection to CME Group Data. 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. If a User were to purchase more than one wireless connection to CME Group Data, it would pay more than one non-recurring initial charge. Each proposed wireless connection would include the use of one port for connectivity to CME Group Data, and a User would not pay a separate fee for the use of such port.[9]

The Exchange's proposed wireless connectivity to CME Group market data would not include the entire CME Group market data feed, which includes market data for approximately 1,200 futures symbols. Wireless bandwidth capacity is a small fraction of the capacity required to transport the full CME Group feed. Accordingly, FIDS has consulted with customers about which of the CME Group symbols they would like to be available wirelessly and plans to offer connectivity to a subgroup of symbols based on this customer feedback. The Exchange

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8 Through its Fixed Income and Data Services ("FIDS") (previously ICE Data Services) business, Intercontinental Exchange, Inc. ("ICE") operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE. The proposed service would be provided by FIDS pursuant to an agreement with a non-ICE entity. FIDS does not own the wireless network that would be used to provide the service.

9 If a User also connects to Existing Third Party Data, it would not be able to connect to such Existing Third Party Data using the same port that it uses for connectivity to CME Group Data.

understands that Quincy Data LLC ("Quincy"),[10] a third party that already provides wireless connectivity to CME Group market data in the MDC, similarly provides wireless connectivity to a subset of CME Group market data based on customer demand for particular symbols.[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 colocation service, including connectivity to Third Party Data, is completely voluntary and the Fee Schedule is applied uniformly to all Users.

Competitive Environment

The Exchange operates in a highly competitive market in which other vendors offer colocation services as a means to facilitate the trading and other market activities of those market participants who believe that colocation 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]

As explained below in this filing, the Exchange's proposed wireless connection to CME Group Data would compete with the wireless connection to CME Group market data provided by Quincy. Third-party vendors such as Quincy are not at any competitive disadvantage created by

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10 The Exchange understands that Quincy is an affiliate of McKay Brothers LLC.

11 The Exchange understands that the third parties that provide wireless connectivity to CME Group market data to the MDC and other data centers in New Jersey (as discussed later in this filing) follow a substantially similar model, offering wireless connectivity to a selection of market data rather than to entire feeds.

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

the Exchange.

The proposed change is not otherwise intended to address any other issues relating to colocation services 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 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. In considering the reasonableness of proposed services and fees, the Commission's market-based test considers "whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees."[16] If the Exchange meets that burden, "the

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13 15 U.S.C. 78f(b).

14 15 U.S.C. 78f(b)(5).

15 15 U.S.C. 78f(b)(4).

16 See Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee

Commission will find that its proposal is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or the rules thereunder."[17] Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the Exchange has not placed the third party vendors at a competitive disadvantage created by the Exchange.

*Substantially Similar Substitutes Are Available*

The Exchange's proposed wireless connection to CME Group Data would compete with other methods by which both the Exchange and various third parties already provide connectivity to CME Group market data to Users.

Quincy already provides wireless connectivity to CME Group market data in the MDC. Like the Exchange's proposed wireless connectivity, Quincy's wireless connectivity to CME Group market data includes a similarly-sized subset of symbols that almost completely overlaps with the symbols for which the Exchange proposes to provide wireless connectivity – presumably because customers have requested the same symbols of each provider. Specifically, like the Quincy wireless connection, the Exchange's proposed wireless connection would include the main futures for equity indices, government bonds, foreign exchanges, oil, and precious metals.[18] In addition, the Exchange's proposed wireless connection would also include several

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Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR-NYSE-2020-05, SR-NYSEAMER-2020-05, SR-NYSEArca-2020-08, SR-NYSECHX-2020-02, SR-NYSENAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEArca-2020-15, SR-NYSECHX-2020-05, SR-NYSENAT-2020-08) ("Wireless Approval Order"), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) ("2008 ArcaBook Approval Order"). See NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

17 See Wireless Approval Order, supra note 16, at 67049, citing 2008 ArcaBook Approval Order, supra note 16, at 74781.

18 Quincy's symbol list for wireless connectivity to CME Group data is available at https://www.quincy-data.com/product-page/ under the heading "2023 Quincy Extreme Data Symbol Set / North America QED Symbol Set." The Exchange understands that the Quincy wireless connection to CME Group data currently includes 26 symbols. The Exchange's proposed wireless connection to CME Group data would contain a similar

additional symbols that proposed Users have specifically requested be included. The Exchange plans to continuously monitor Users' preferences and their views of the usefulness of the included symbols, and may adjust them accordingly. The Exchange believes that the Quincy wireless connection to CME Group market data is at a same or similar speed as the Exchange's proposed connection, and at a similar price.[19]

Accordingly, the Quincy wireless connection to CME Group market data would compete with the Exchange's proposed wireless connection, and would exert significant competitive forces on the Exchange in setting the terms of its proposal, including the level of the Exchange's proposed fees.[20] If the Exchange were to set its proposed fees too high, Users could respond by instead selecting Quincy's substantially similar wireless connectivity to CME Group data.[21]

*Third Party Competitors Are Not at a Competitive Disadvantage Created by the Exchange*

The Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party provider or any future providers of wireless connectivity to CME Group market data. The Exchange's proposed service for connectivity to CME Group Data does not have any special access to or advantage within the MDC. The Exchange's proposed wireless connection would lead to a pole, from which a fiber connection would lead into the MDC. The pole is owned by a third party and is not on the grounds of the MDC, and the path into the MDC through a meet-me-room is available to any telecommunications provider. Within the MDC, the

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number of symbols, nearly all of which are included in the Quincy wireless connection.

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

20 See 2008 ArcaBook Approval Order, supra note 16, at 74789 and n.295 (recognizing that products need not be identical to be substitutable).

21 In addition, the Exchange believes that at least two third-party market participants, in addition to FIDS, offer fiber connections to CME Group market data in colocation. See Securities Exchange Act Release No. 81013 (June 23, 2017), 82 FR 29604 (June 29, 2017) (SR-NYSEARCA-2017-62). Unlike the proposed wireless connectivity, FIDS' fiber connection to CME Group market data includes the entire CME Group data feed, instead of a subset of symbols.

proposed connection would follow the same route as that of any User, connecting to equipment in colocation and then to any Users that are customers.

Further, all distances in the MDC are normalized and Exchange rules require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.[22] Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Nor does the Exchange have a competitive advantage over the third-party competitors offering wireless connectivity to CME Group market data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to CME Group market data – like Users of any other colocation service – would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party telecommunications service providers that have installed their equipment in the MDC's two meet-me-rooms ("Telecoms").[23] Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level[24] so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by

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22 See NYSE Rule 3.13(c), NYSE American Rule 3.13E(c), NYSE Arca Rule 3.13(c), NYSE Chicago Rule 3.13(c), and NYSE National Rule 3.13(c) (Data Center Pole Restrictions—Connectivity to Co-Location Space). "Patch Panel Point" is defined as "the patch panel where fiber connections for wireless services connect to the network row in the space used for co-location in the Data Center." Id. The proposed service would not use the MDC pole, so Rule 3.13(b) would not apply.

23 Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

24 See Securities Exchange Act Release No. 98000 (July 26, 2023), 88 FR 50244 (August 1, 2023) (SR-NYSEARCA-2023-47) ("MMR Notice").

pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.[25] Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange is subject to a competitive disadvantage vis-à-vis third-party competitors offering wireless connectivity to CME Group market data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because a substantially similar substitute is available, and the Exchange has not placed the third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the Exchange's wireless connectivity to CME

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[25] See id. at 50247. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

Group Data are reasonable.[26] If the Exchange were to set its prices for wireless connectivity to CME Group Data at a level that Users found to be too high, Users could easily choose to connect to CME Group market data in colocation at the MDC through the competing Quincy wireless connection, as detailed above.

*Additional Considerations*

The Exchange believes that it is reasonable for the proposed wireless connection to CME Group Data not to transport information for all of the symbols included in CME Group data feeds to the MDC, but rather to transport a subset of that data. Wireless bandwidth capacity is a small fraction of the capacity required to transport the full CME Group feed. The Exchange believes it is reasonable for FIDS to select the symbols it will make available for wireless connectivity based on customer input and demand. The Exchange understands that Quincy similarly provides wireless connectivity to a subset of CME Group market data based on customer demand for particular symbols.

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 the 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 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 market 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

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26 See Wireless Approval Order, supra note 16.

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 wirelessly using Quincy's wireless 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 the Exchange's proposed wireless connections to CME Group Data would be charged the same amount for the same services.

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 wirelessly using Quincy's wireless 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 MDC, but rather to transport a subset of that data. There is limited bandwidth available on the wireless network to colocation, 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 FIDS determines there is demand would allow Users to receive the relevant CME Group Data over a wireless network.

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.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable colocation 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.[27]

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

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[27] 15 U.S.C. 78f(b)(8).

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 wirelessly using Quincy's wireless connection. The Exchange's proposed wireless connection and the existing Quincy wireless connection to CME Group market data are sufficiently similar substitutes and thus provide market participants with choices to meet their wireless connectivity needs.

In addition, the Exchange does not believe that FIDS would have any competitive advantage over either the existing third-party provider or any future providers of wireless connectivity to CME Group market data. The Exchange's proposed service for connectivity to CME Group Data does not have any special access to or advantage within the MDC. The Exchange's proposed wireless connection would lead to a pole, from which a fiber connection would lead into the MDC. The pole is owned by a third party and is not on the grounds of the MDC, and the path into the MDC through a meet-me-room is the same path followed by any Telecom. Within the MDC, the proposed connection would follow the same route as that of any User, connecting to equipment in colocation and then to any Users that are customers.

Further, all distances in the MDC are normalized and Exchange rules require that the distance from the Patch Panel Point to each User cabinet in colocation be the same.[28] Every provider of wireless connectivity to Users, including FIDS, is connected to the Patch Panel Point, and the length of the fiber path from the Patch Panel Point to each User cabinet in colocation is the same.

Nor does the Exchange have a competitive advantage over the third-party competitors offering wireless connectivity to CME Group market data by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Users purchasing wireless connectivity to CME Group market data – like Users of any other colocation service – would require a circuit connecting out

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[28] See supra note 22.

of the MDC, and in most cases, such circuits are provided by third-party Telecoms that have installed their equipment in the MDC's two meet-me-rooms.[29] Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level[30] so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.[31] Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If anything, the Exchange is subject to a competitive disadvantage vis-à-vis third party competitors offering wireless connectivity to CME Group market data. Third-party competitors are not subject to the Commission's filing requirements, and therefore can freely change their services and pricing in response to competitive forces. In contrast, the Exchange's service and

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29 See supra note 23.

30 See MMR Notice, supra note 24.

31 See supra note 25.

pricing would be standardized as set out in this filing, and the Exchange would be unable to respond to pricing pressure from its competitors without seeking a formal fee change in a filing before the Commission.

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 Act[32] and Rule 19b-4(f)(6) thereunder.[33] 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.

A proposed rule change filed under Rule 19b-4(f)(6)[34] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[35] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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

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32 15 U.S.C. 78s(b)(3)(A)(iii).

33 17 CFR 240.19b-4(f)(6).

34 17 CFR 240.19b-4(f)(6).

35 17 CFR 240.19b-4(f)(6)(iii).

Commission shall institute proceedings under Section 19(b)(2)(B)[36] 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 (https://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2023-79 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-NYSEARCA-2023-79. 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 (https://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 a.m. and 3

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36 15 U.S.C. 78s(b)(2)(B).

p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2023-79 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

**Sherry R. Haywood,**

*Assistant Secretary*.

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[37] 17 CFR 200.30-3(a)(12).