



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102042; File No. SR-NYSEAMER-2024-80]

### Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Change to Amend the Connectivity Fee Schedule

December 27, 2024.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 17, 2024, NYSE American LLC (“NYSE American” or “Exchange”) filed with the Securities and Exchange Commission (“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 (“Fee Schedule”) to add connectivity to the New York Stock Exchange LLC, NYSE American, and NYSE Arca, Inc. trading floors. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 Schedule to add connectivity to the New York Stock Exchange LLC, NYSE American, and NYSE Arca, Inc. trading floors (“Trading Floors”).

A User<sup>4</sup> may wish to have a connection between the Mahwah, New Jersey data center (“MDC”)<sup>5</sup> and a Trading Floor. A connection between the MDC and a Trading Floor may be between the User and itself or between the User and a third party. The User may use such connection for receiving and transmitting trading-related data (including pre- and post-trade data and clearing information) or providing services to individuals physically located on the floor (including access to back-office systems), as determined by the User.

The Exchange proposes to add an option for such a connection to the Fee Schedule. Specifically, the Exchange proposes to amend the Fee Schedule to add unicast connections through which a User can establish a connection between the MDC and a Trading Floor over dedicated bandwidth (“TF Connections”).<sup>6</sup> Presently, a TF Connection can be in the form of a virtual control circuit between the MDC and a single Trading Floor (“TF VCC”), or a virtual routing and forwarding service between the MDC and one or more Trading Floors (“TF VRF”).

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<sup>4</sup> 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. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR-NYSEMKT-2015-67). 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 New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc. and NYSE National, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the change described herein. See SR-NYSE-2024-81, SR-NYSEARCA-2024-113, SR-NYSECHX-2024-37, and SR-NYSENAT-2024-33.

<sup>5</sup> Through its Fixed Income and Data Services (“FIDS”) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs are indirect subsidiaries of ICE.

<sup>6</sup> Information flows over existing network connections in two formats: “unicast” format, which is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange; and “multicast” format, which is a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast.

A TF Connection may be used for any purpose: neither FIDS nor the Exchange has any visibility into a TF Connection.

All TF Connections must be authorized by both parties to the connection before FIDS will establish a connection. Establishing a User’s TF Connection will not give FIDS or the Exchange any right to use the relevant exchange’s system. A TF Connection will not provide direct access or order entry to the Exchange’s execution system, and a User’s TF Connection will not be through the Exchange’s execution system.

TF Connections are offered at a monthly fee based on bandwidth requirements, which fee is consistent with the monthly fees charged for VCC connections and the same as those charged for connectivity to Third Party Systems.<sup>7</sup> When a User requests a TF Connection, it identifies the size of bandwidth connection it requires, and the monthly charge for the TF Connection varies based on the size of the bandwidth. The calculation of the monthly fee may differ based on whether the form chosen by the User is a TF VCC or TF VRF. This is because the TF VCC connects the MDC to one Trading Floor, while the TF VRF may connect the MDC to more than one Trading Floor. Accordingly, the Exchange proposes to add a note to the Fee Schedule to clarify the difference.

To make the change, the Exchange proposes to amend the Fee Schedule as follows (all text new):

Type of Service	Description	Amount of Charge
Connectivity to Trading Floor*	1Mb	\$200 monthly charge
	3Mb	\$400 monthly charge
	5Mb	\$500 monthly charge
	10Mb	\$800 monthly charge
	25Mb	\$1,200 monthly charge
	50Mb	\$1,800 monthly charge
	100Mb	\$2,500 monthly charge

<sup>7</sup> See Connectivity Fee Schedule—A. Co-Location Fees.

\* The amount of the charge for Connectivity to Trading Floor may differ based on the connectivity chosen: (a) a virtual control circuit between the Mahwah data center and a single Trading Floor (“VCC”), or (b) a virtual routing and forwarding service between the Mahwah data center and one or more Trading Floors (“VRF”). Specifically, if the User chooses VCCs or combination of a VCC and VRF for connectivity to several Trading Floors, it will be charged separately for each connection. If the User chooses one VRF for connectivity to multiple trading floors, the User will be charged for one connection.

### General

The proposed rule change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new Users.

Use of the services proposed in this filing are completely voluntary and available to all Users on a non-discriminatory basis.

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 customers 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,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> 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

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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,<sup>10</sup> 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."<sup>11</sup> If the Exchange meets that burden, "the 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."<sup>12</sup> 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 third-party vendors are not at a competitive disadvantage created by the Exchange.

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<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 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 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).

<sup>12</sup> Wireless Approval Order, supra note 11, at 67049, citing 2008 ArcaBook Approval Order, supra note 11, at 74781.

In 2013 the MDC opened two meet-me-rooms to telecommunications service providers (“Telecoms”),<sup>13</sup> to enable Telecoms to offer circuits into the MDC. The TF Connections compete with circuits currently offered by the 16 third-party Telecoms that have installed their equipment in the MDC’s two meet-me-rooms.

The Telecom circuits (including any circuit-based network services a Telecom may offer) are reasonable substitutes for TF Connections. The Commission has recognized that products do not need to be identical to be considered substitutable; it is sufficient that they be substantially similar.<sup>14</sup> Because Telecoms can connect to the Trading Floors, the TF Connections and the circuits provided by the Telecoms perform the same function: connecting into and out of the MDC and the Trading Floors. The providers of the TF Connection and Telecom circuits design them to perform with particular combinations of latency, bandwidth, price, termination point, and other factors that they believe will attract Users, and Users choose from among these competing services on the basis of their business needs.

The TF Connections are sufficiently similar substitutes to the circuits offered by the 16 Telecoms even though the TF Connections all terminate on a Trading Floor while circuits from the 16 Telecoms could terminate on a Trading Floor or other locations. While neither the Exchange nor FIDS knows the end point of any particular Telecom circuit, the Exchange understands that the Telecoms can offer circuits terminating in any location, including the Trading Floors. Moreover, the Telecoms may offer smaller circuits that are the same as or similar size to the TF Connections. Ultimately, Users can choose to configure their pathway in the way that best suits their business needs.

The TF Connections do not have a distance or latency advantage over the Telecoms’ circuits within the MDC. FIDS has normalized (a) the distance between the meet-me-rooms and

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<sup>13</sup> Telecoms are licensed by the Federal Communications Commission and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

<sup>14</sup> See 2008 ArcaBook Approval Order, *supra* note 11, at 74789 and note 295 (recognizing that products need not be identical to be substitutable).

the colocation halls and (b) the distance between the rooms where the FIDS circuits and the TF Connections exit the MDC and the colocation halls. As a result, a User choosing whether to use the TF Connections or Telecom circuits does not face any difference in the distances or latency within the MDC. The Exchange is not aware of any differences under its control that give the Exchange a latency advantage.

The Exchange also believes that the TF Connections do not have any latency or bandwidth advantage over the Telecoms' circuits outside of the MDC. The Exchange believes that the Telecoms operating in the meet-me-rooms offer circuits with a variety of latency and bandwidth specifications, some of which may exceed the specifications of the TF Connections.<sup>15</sup> The Exchange believes that Users consider these latency and bandwidth factors – as well as other factors, such as price and termination point – in determining which offerings will best serve their business needs.

In sum, the Exchange is not aware of anything that would make the Telecoms' circuits inadequate substitutes for the TF Connections.

Nor does the Exchange have a competitive advantage over any third-party competitors by virtue of the fact that it owns and operates the MDC's meet-me-rooms. In most cases, circuits coming out of the MDC are provided by the Telecoms.<sup>16</sup> 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<sup>17</sup> 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

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<sup>15</sup> The specifications of FIDS's competitors' circuits are not publicly known. The Exchange understands that FIDS has gleaned any information it has about its competitors through anecdotal communications, by observing customers' purchasing choices in the competitive market, and from its own experience as a purchaser of circuits from telecommunications providers to build FIDS's own networks.

<sup>16</sup> Note that in the case of wireless connectivity, a User 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.

<sup>17</sup> See Securities Exchange Act Release No. 97999 (July 26, 2023), 88 FR 50190 (August 1, 2023) (SR-NYSEAmer-2023-36) ("MMR Notice").

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.<sup>18</sup> 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 would be subject to a competitive disadvantage vis-à-vis the Telecoms. They 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.

If the Exchange were to set the price of the TF Connections at a level that Users found to be too high, Users would likely respond by choosing one of the many alternative options offered by the 16 Telecoms. Conversely, if the Exchange were to offer the TF Connections at prices aimed at undercutting comparable Telecom circuits, the Telecoms might reassess whether it makes financial sense for them to continue to participate in the MDC's meet-me-rooms. Their

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<sup>18</sup> See *id.* at 50193. 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.

departure might negatively impact User participation in colocation and on the Exchange. As a result, the Exchange is not motivated to undercut the prices of Telecom circuits.

In sum, because the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because the Exchange believes that a substantially similar substitute for TF Connectivity is available, and the Exchange has not placed third-party vendors at a competitive disadvantage created by the Exchange, the proposed fees for the TF Connectivity are reasonable.<sup>19</sup>

For these reasons, the proposed change is reasonable.

#### The Proposed Change Is Equitable

The Exchange believes that the proposed change 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 because it is not designed to permit unfair discrimination between market participants. Rather, it would apply to all market participants equally.

In addition, the Exchange believes that the proposal is equitable because only Users that voluntarily select to receive TF Connectivity would be charged for it. The proposed TF Connectivity is available to all Users on an equal basis, and all Users that voluntarily choose to purchase TF Connectivity would be charged the same amount for that circuit as all other market participants purchasing that type of TF Connectivity.

The Exchange believes that it is equitable that it offers two types of TF Connectivity: TF VCCs that may connect to one Trading Floor, and TF VRFs that may connect to one or more Trading Floors. By offering these varied technological options, FIDS provides potential Users more choices from which to choose the option that would work best for their specific needs. The Exchange proposes to add a note to the Fee Schedule to clarify the difference, thereby making it

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<sup>19</sup> See Wireless Approval Order, supra note 11.

easier for potential purchasers of the service to assess what connectivity will best serve them.

#### The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntary and the Fee Schedule will be applied uniformly to all market participants.

In addition, the Exchange believes that the proposal is not unfairly discriminatory because only Users that voluntarily select to receive TF Connectivity would be charged for it. TF Connectivity is available to all market participants on an equal basis, and all Users that voluntarily choose to purchase TF Connectivity are charged the same amount as all other market participants purchasing that type of TF Connectivity.

The Exchange believes that it is not unfairly discriminatory that it offers two types of TF Connectivity: TF VCCs that may connect to one Trading Floor, and TF VRFs that may connect to one or more Trading Floors. By offering these varied technological options, FIDS provides potential Users more choices from which to choose the option that would work best for their specific needs. The Exchange proposes to add a note to the Fee Schedule to clarify the difference, thereby making it easier for potential purchasers of the service to assess what connectivity will best serve them.

For the reasons above, the proposed change does 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.<sup>20</sup>

The proposed change would not impose a burden on competition among national securities exchanges or among members of the Exchange.

The proposed change would enhance competition in the market for circuits transmitting data into and out of colocation at the MDC to the Trading Floors, by adding TF Connectivity, in addition to the 16 Telecoms that also sell circuits to Users. TF Connectivity does not have any latency, bandwidth, or other advantage over the Telecoms' circuits. The proposal would not burden competition in the sale of such circuits, but rather, enhance it by providing Users with an additional choice for their circuit needs.

The Exchange believes that it would not be a burden on competition that it offers two types of TF Connectivity: TF VCCs that may connect to one Trading Floor, and TF VRFs that may connect to one or more Trading Floors. By offering these varied technological options, FIDS provides potential Users more choices from which to choose the option that would work best for their specific needs. The Exchange proposes to add a note to the Fee Schedule to clarify the difference, thereby making it easier for potential purchasers of the service to assess what connectivity will best serve them

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 within such longer period 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

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<sup>20</sup> 15 U.S.C. 78f(b)(8).

- (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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSEAMER-2024-80 on the subject line.

##### Paper Comments:

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

All submissions should refer to file number SR-NYSEAMER-2024-80. 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 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-NYSEAMER-2024-80 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.<sup>21</sup>

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2024-31504 Filed: 1/2/2025 8:45 am; Publication Date: 1/3/2025]

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<sup>21</sup> 17 CFR 200.30-3(a)(12).