

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–NYSE–2024–26 and should be submitted on or before June 10, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–100144; File No. SR–NYSEARCA–2024–36]

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

May 14, 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 May 1, 2024, 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 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 Connectivity Fee Schedule to add wireless connectivity services that transport market data to Toronto, Canada. 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 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 Connectivity Fee Schedule to add wireless connectivity services that transport market data to Toronto, Canada.

The Exchange expects that the proposed rule change would become operative no later than June 30, 2024. It will announce the proposed change to

all Fixed Income and Data Services (“FIDS”) customers in the TR2 third party data center in Toronto, Canada (“TR2”).

The Exchange proposes to add market data connections to a selection of symbols of the NYSE Integrated Feed (“NYSE IF”) and to a selection of symbols of the NYSE Arca Integrated Feed (“NYSE Arca IF”) and together with the NYSE IF, the “Integrated Feeds”) in TR2 (“TR2 Market Data Connections”). As is true for the existing market data connections to the Markham, Canada third party access center (such access center, “Markham”, and such connections, “Markham Market Data Connections”),<sup>4</sup> the TR2 Market Data Connections would not include the Integrated Feeds themselves, just the connections to them.

As there would be limited bandwidth available on the wireless network to TR2, the Exchange proposes that, as with the Markham Market Data Connection, the TR2 Market Data Connection would not transport information for all the symbols included in the NYSE IF and NYSE Arca IF. Rather, FIDS would provide connectivity to the same selection of symbols from the Integrated Feeds that it includes in the Markham Market Data Connections, which include those symbols for which there is demand (the “Proposed Market Data”).<sup>5</sup>

The charges for a TR2 Market Data Connection would be the same as for the Markham Market Data Connection: a non-recurring initial charge of \$5,000 and a \$6,500 monthly fee for the service of transporting the Proposed Market Data. The proposal would waive the first month’s MRC, to allow customers to test a new TR2 Market Data Connection for a month before incurring any MRC.

In order to implement the proposed change, the Exchange proposes to add the following items to the Connectivity Fee Schedule under “C. Wireless Connectivity to Market Data”:

| Type of service   | Amount of charge   |
|---|--|
| NYSE Integrated Feed: Wireless Connection in TR2 access center. | \$5,000 per connection initial charge plus monthly charge per connection of \$6,500. |

<sup>28</sup> 17 CFR 200.30–3(a)(12).

<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.

<sup>4</sup> See Securities Exchange Act Release No. 99970 (April 16, 2024), 89 FR 29413 (April 22, 2024) (SR–NYSEARCA–2024–32).

<sup>5</sup> See *id.* When a market participant requested a TR2 Market Data Connection, it would receive connectivity to the Proposed Market Data. The

customer would then determine the symbols for which it would receive data. The Exchange would not have visibility into which portions of the Proposed Market Data a given customer chooses to receive.

| Type of service  | Amount of charge   |
|--|--|
| NYSE Arca Integrated Feed: Wireless Connection in TR2 access center. | \$5,000 per connection initial charge plus monthly charge per connection of \$6,500. |

As with the Markham Market Data Connections, the proposed TR2 Market Data Connections would not utilize the pole on the grounds of the MDC.

#### The Proposed Market Data

The Integrated Feeds are generated at the MDC in the trading and execution systems of the NYSE and NYSE Arca at the Mahwah data center. In each case, the NYSE or NYSE Arca, as applicable, files with the Commission for the Integrated Feed it generates, and the related fees.<sup>6</sup> The filed market data fees apply to all customers of the Integrated Feeds, no matter what form of connectivity or connectivity provider they use.

When a market participant wants to connect to an Integrated Feed, it requests a connection from the provider of its choice. All providers, including FIDS, may only provide the market participant with connectivity once the provider has received confirmation from the NYSE or NYSE Arca, as applicable, that the market participant is authorized to receive the requested data feed.

#### Application and Impact of the Proposed Change

The proposed change would apply to all customers equally. The proposed change would not apply differently to distinct types or sizes of market participants. As is currently the case, the purchase of any connectivity service is completely voluntary and the Connectivity Fee Schedule is applied uniformly to all customers.

FIDS expects few new customers in TR2.

#### Competitive Environment

The Exchange operates in a highly competitive market in which other vendors offer connectivity services as a

<sup>6</sup> See Securities Exchange Act Release Nos. 74128 (January 23, 2015), 80 FR 4951 (January 29, 2015) (SR-NYSE-2015-03) (notice of filing and immediate effectiveness of proposed rule change establishing the NYSE Integrated Feed data feed); 76485 (November 20, 2015), 80 FR 74158 (November 27, 2015) (SR-NYSE-2015-57) (notice of filing and immediate effectiveness of a proposed rule change establishing fees for the NYSE Integrated Feed); 65669 (November 2, 2011), 76 FR 69311 (November 8, 2011) (SR-NYSEArca-2011-78) (notice of filing and immediate effectiveness of proposed rule change offering the NYSE Arca Integrated Feed); and 66128 (January 10, 2012), 77 FR 2331 (January 17, 2012) (SR-NYSEArca-2011-96) (notice of filing and immediate effectiveness of a proposed rule change establishing fees for NYSE Arca Integrated Feed).

means to facilitate the trading and other market activities of those market participants who believe that it 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.”<sup>7</sup>

A third party has announced that it plans to create a wireless connection between Markham and the MDC. The Exchange believes it intends to expand its offering to connect to the TR2. Such a wireless connection would compete with the Exchange’s TR2 Market Data Connection, as customers could use the third-party wireless connection to transport the Proposed Market Data. Third-party vendors are not at any competitive disadvantage created by 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 market participants 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 in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the

<sup>7</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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

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

public interest and does not unfairly discriminate 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 Exchange has not placed the third party vendors at a competitive disadvantage created by the Exchange.

For the first time, a customer would be able to connect to the Proposed Market Data at TR2, increasing the options available to it. Without this proposed rule change, any market participants in TR2 would not have access to the Proposed Market Data.

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

<sup>11</sup> See Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (SR-NYSE-2020-05, SR-NYSEAMER-2020-05, SR-NYSEARCA-2020-08, SR-NYSECHX-2020-02, SR-NYSEAMER-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEArca-2020-15, SR-NYSECHX-2020-05, SR-NYSEAMER-2020-08) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (“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> See Wireless Approval Order, *supra* note 11, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 11, at 74781.

The Exchange believes that it is reasonable to charge the same amount for the TR2 Market Data Connection as for the Markham Market Data Connection, as the same market data would be transported over both connections. Given the limitation on bandwidth, the Exchange believes that it is reasonable not to transport information for all the symbols included in the Integrated Feeds to TR2, but rather that the Proposed Market Data include a subset of that data.

The Exchange offers wireless bandwidth connections, without connectivity to market data, between the Mahwah data center and Markham and TR2. It does not charge separately for the Markham and TR2 connections, as “the Exchange believes that it is reasonable to view the . . . service as one service, and not two.”<sup>13</sup> This is because northbound, the same data, put on the connection by the customer, is delivered to both Markham and TR2, while southbound, the customer may choose the Mb of data it sends from each Canadian data center, but the combined total must equal no more than the total Mb of the wireless circuit.<sup>14</sup>

By contrast, in the present case, the Exchange believes that it is reasonable to charge for the TR2 Market Data Connection separately from the Markham Market Data Connection. First, the customers would be located in Canada and need not have a presence in the Mahwah data center, and charging for the TR2 Market Data Connection separately from the Markham Market Data Connection reflects that usage of the Integrated Feed serves a different purpose at each location, and is consistent with the NYSE Wireless Order regarding wireless market data connections. Second, the nature of the services is different: the present connectivity would not be to a wireless bandwidth on which the customer can put data, irrespective of whether the data is northbound or southbound. Rather, the TR2 Market Data Connection would be limited to connectivity to the Integrated Feeds. Accordingly, the Exchange believes that the Markham and TR2 services are two services.<sup>15</sup>

<sup>13</sup> Securities Act Release No. 99523 (February 12, 2024), 89 FR 12390 (February 16, 2024) (SR–NYSEARCA–2024–11), at 12392.

<sup>14</sup> See Connectivity Fee Schedule—B. Wireless Connectivity—Wireless Connectivity Note.

<sup>15</sup> The Exchange believes that this would be consistent with its existing approach to wireless connectivity. See Wireless Approval Order, *supra* note 11, Connectivity Fee Schedule—B. Wireless Connectivity, and Connectivity Fee Schedule—C. Wireless Connectivity to Market Data.

The Exchange Would Not Preclude Other Connections to Proposed Market Data in TR2

The Exchange is not aware of any other public, commercially available wireless or fiber connections to the Proposed Market Data between the MDC and TR2.

Additional third party competitors could offer fiber or wireless connectivity to the Proposed Market Data in TR2 by obtaining the market data at the MDC and sending it over a fiber or wireless network to Canada. A market participant in TR2 also may create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize fiber connections offered by third parties; or utilize fiber connections offered by FIDS. The Exchange could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other competitive disadvantage with respect to the Exchange. Indeed, as noted above, the Exchange believes that in the future a third party may offer a wireless connection to TR2, which would compete with the TR2 Market Data Connection, as customers could use the third-party wireless connection to transport the Proposed Market Data.

Wireless connections and fiber connections to the Proposed Market Data in Markham would compete with each other. Given the various advantages and disadvantages of both wireless and fiber connections, a market participant interested in purchasing a connection to the Proposed Market Data in Markham is likely to consider a variety of factors in deciding whether to use a wireless versus fiber connection, including latency; the amount of network uptime; the equipment the network uses; the cost of the connection; and the applicable contractual provisions. Indeed, fiber network connections may be more attractive to some market participants as they are more reliable and less susceptible to weather conditions.

Third Party Competitors Would Not Be at a Competitive Disadvantage Created by the Exchange

The Exchange does not believe that FIDS would have any competitive advantage over any future providers of connectivity to the Proposed Market Data in TR2. The Exchange’s proposed service for connectivity to Proposed Market Data in TR2 does not have any special access to or advantage within the MDC. The Integrated Feeds are generated at the MDC in the trading and execution systems of the NYSE and

NYSE Arca. FIDS would collect the Proposed Market Data, then send it over the TR2 Market Data Connection by connecting to equipment in a MDC meet-me-room and from there to a pole. 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. Further, all distances in the MDC are normalized.

Nor would the Exchange have a competitive advantage over third-party competitors offering wireless connectivity to the Proposed Market Data in TR2 by virtue of the fact that it owns and operates the MDC’s meet-me-rooms. Third parties purchasing wireless connectivity to the Proposed Market Data 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”). 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>16</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 meet-me-rooms and to sell circuits to Users<sup>17</sup> 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<sup>18</sup> 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

<sup>16</sup> See Securities Exchange Act Release No. 98000 (July 26, 2023), 88 FR 50244 (August 1, 2023) (SR–NYSEArca–2023–47) (“MMR Notice”).

<sup>17</sup> “User” means any market participant that requests to receive co-location services directly from the Exchange.

<sup>18</sup> A User may host another entity in its space within the MDC. Such Users are called “Hosting Users” and their customers are referred to as “Hosted Customers.” See Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82).

spurs demand for all of the services it sells at the MDC.<sup>19</sup>

If anything, the Exchange would be subject to a competitive disadvantage vis-à-vis third party competitors offering wireless or fiber connectivity to the Proposed Market Data in TR2. Third-party competitors would not be subject to the Commission's filing requirements, and therefore could 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 could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other competitive disadvantage with respect to the Exchange the proposed fees for the TR2 Market Data Connection are reasonable.<sup>20</sup>

The Exchange believes that the proposed rule change is reasonable because a market participant in the Canadian data center that opted for a TR2 Market Data Connection would be able to select the specific Proposed Market Data feed that it wanted to receive in accordance with its needs, thereby helping it tailor its operations to the requirements of its business operations.

#### The Proposed Change Is an Equitable Allocation of Fees and Credits

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

The Exchange believes that it is equitable to make wireless connectivity to the Proposed Market Data available at TR2. For the first time, a customer would be able to connect to the Proposed Market Data at TR2, increasing the options available to it. Without this proposed rule change, any market participants in TR2 would not have access to the Proposed Market Data.

The Exchange believes that it is equitable to charge the same amount for the TR2 Market Data Connection as for the Markham Market Data Connection, as the same market data would be transported over both connections. Given the limitation on bandwidth, the Exchange believes that it is equitable not to transport information for all the symbols included in the Integrated Feeds to TR2, but rather that the

Proposed Market Data include a subset of that data.

Additional third party competitors could offer fiber or wireless connectivity to the Proposed Market Data in TR2 by obtaining the market data at the MDC and sending it over a fiber or wireless network to Canada. A market participant in TR2 also may create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize fiber connections offered by third parties; or utilize fiber connections offered by FIDS. The Exchange could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other competitive disadvantage with respect to the Exchange. Indeed, as noted above, the Exchange believes that in the future a third party may offer a wireless connection to TR2, which would compete with the TR2 Market Data Connection, as customers could use the third-party wireless connection to transport the Proposed Market Data.

The Exchange believes that the proposed change is equitable because it will result in fees being charged only to market participants that voluntarily select to receive the corresponding services and because those services will be available to all market participants. 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 market participants on an equal basis (*i.e.*, the same products and services are available to all market participants). All market participants that voluntarily select a TR2 Market Data Connection 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.

The Exchange believes that it is not unfairly discriminatory to make wireless connectivity to the Proposed Market Data available at TR2. For the first time, a customer would be able to connect to the Proposed Market Data at TR2, increasing the options available to it. Without this proposed rule change, any market participants in TR2 would not have access to the Proposed Market Data.

The Exchange believes that it is not unfairly discriminatory to charge the same amount for the TR2 Market Data Connection as for the Markham Market Data Connection, as the same market

data would be transported over both connections. Given the limitation on bandwidth, the Exchange believes that it is not unfairly discriminatory not to transport information for all the symbols included in the Integrated Feeds to TR2, but rather that the Proposed Market Data include a subset of that data.

The Exchange believes that the proposed change is not unfairly discriminatory because it will result in fees being charged only to market participants that voluntarily select to receive the corresponding services and because those services will be available to all market participants. 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 market participants on an equal basis (*i.e.*, the same products and services are available to all market participants). All market participants that voluntarily select a TR2 Market Data Connection would be charged the same amount for the same services.

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

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

The proposed rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of section 6(b)(8) of the Act.<sup>21</sup>

The Exchange believes that it would not impose a burden on competition that is not necessary or appropriate to expand the connectivity options to make wireless connectivity to the Proposed Market Data available at TR2. For the first time, a customer would be able to connect to the Proposed Market Data at TR2, increasing the options available to it. Without this proposed rule change, any market participants in TR2 would not have access to the Proposed Market Data.

The Exchange believes that it would not impose a burden on competition that is not necessary or appropriate to charge the same amount for the TR2 Market Data Connection as for the Markham Market Data Connection, as the same market data would be transported over both connections. Given the limitation on bandwidth, the Exchange believes that it is reasonable not to transport information for all the symbols included in the Integrated Feeds to TR2, but rather that the Proposed Market Data include a subset of that data.

<sup>19</sup> See MMR Notice, *supra* note 16.

<sup>20</sup> See Wireless Approval Order, *supra* note 11.

<sup>21</sup> 15 U.S.C. 78f(b)(8).

Additional third party competitors could offer fiber or wireless connectivity to the Proposed Market Data in TR2 by obtaining the market data at the MDC and sending it over a fiber or wireless network to Canada. A market participant in Markham or TR2 also may create a proprietary market data connection, whether fiber or wireless; connect through another market participant; utilize fiber connections offered by third parties; or utilize fiber connections offered by FIDS. The Exchange could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other competitive disadvantage with respect to the Exchange.

The Exchange does not believe that FIDS would have any competitive advantage over any future providers of connectivity to the Proposed Market Data in TR2. The Exchange's proposed service for connectivity to Proposed Market Data in TR2 does not have any special access to or advantage within the MDC. The Integrated Feeds are generated at the MDC in the trading and execution systems of the NYSE and NYSE Arca. FIDS would collect the Proposed Market Data, then send it over the TR2 Market Data Connection by connecting to equipment in a MDC meet-me-room and from there to a pole. 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. Further, all distances in the MDC are normalized.

Because the Exchange could not impose any impediments to a third party seeking to offer a similar service, including by placing them at a latency or other competitive disadvantage with respect to the Exchange, the Exchange believes that it would not impose a burden on competition that is not necessary or appropriate to expand the connectivity options to make wireless connectivity to the Proposed Market Data available at TR2.

Nor does the Exchange have a competitive advantage over any future third-party competitors offering wireless or fiber connectivity to the Proposed Market Data in TR2 by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Third parties purchasing wireless connectivity to the Proposed Market Data would require a circuit connecting out of the MDC, and in most cases, such circuits are provided by third-party Telecoms. 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>22</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 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.<sup>23</sup>

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

*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<sup>24</sup> and Rule 19b-4(f)(6) thereunder.<sup>25</sup> 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.<sup>26</sup>

<sup>22</sup> See MMR Notice, *supra* note 16.

<sup>23</sup> See *id.*

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>25</sup> 17 CFR 240.19b-4(f)(6).

<sup>26</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to

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)<sup>27</sup> 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](mailto:rule-comments@sec.gov). Please include file number SR-NYSEARCA-2024-36 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-2024-36. 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 (<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,

file 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.

<sup>27</sup> 15 U.S.C. 78s(b)(2)(B).

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–SR–NYSEARCA–2024–36 and should be submitted on or before June 10, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100139; File No. SR–GEMX–2024–10]

### Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 6

May 14, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on May 1, 2024, Nasdaq GEMX, LLC (“GEMX” 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 Exchange. 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 Rules at Options 7, Section 6.<sup>3</sup>

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/gemx/rules>, 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 Exchange 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 these 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 aspects of such statements.

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

###### 1. Purpose

The Exchange proposes to amend Options 7, Section 6, C, Ports and Other Services. Specifically, the Exchange proposes to amend the monthly caps for SQF Ports<sup>4</sup> and SQF Purge Ports.<sup>5</sup>

withdrew SR–GEMX–2024–03 and submitted SR–GEMX–2024–07. On May 1, 2024, the Exchange withdrew SR–GEMX–2024–07 and submitted this filing.

<sup>4</sup> “Specialized Quote Feed” or “SQF” is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (e.g., underlying instruments); (2) System event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection, Market Order Spread Protection, and Size Limitation Protection in Options 3, Section 15(a)(1)(A), (1)(B), and (2)(B) respectively. See Supplementary Material .03(c) to Options 3, Section 7.

<sup>5</sup> SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. Dedicated SQF Purge Ports enable Market Makers to seamlessly manage their ability to remove their quotes in a swift manner. The SQF Purge Port is designed to assist Market Makers in the management of, and risk control over, their quotes. Market Makers may utilize a purge port to reduce uncertainty and to manage risk by purging all quotes in their assigned options series. Of note, Market Makers may only enter interest into SQF in their assigned options series. Additionally, the SQF Purge Port may be

Today, GEMX assesses \$1,250 per port, per month for an SQF Port as well as an SQF Purge Port.<sup>6</sup> Also, today, SQF Ports and SQF Purge Ports are subject to a monthly cap of \$17,500, which cap is applicable to Market Makers.

At this time, the Exchange proposes to establish an increased SQF Fee and SQF Purge Port Cap to Primary Market Makers and Market Makers that do not provide a minimum amount of liquidity on GEMX. This proposed increased SQF Fee and SQF Purge Port Cap is intended to incentivize Primary Market Makers and Market Makers to add liquidity on GEMX for the benefit of other market participants in order to lower their fees. GEMX proposes to increase the SQF Port and SQF Purge Port Cap to \$27,500 a month if a Primary Market Maker or Market Maker does not transact 0.50% of Total Customer Volume in electronic simple orders that adds liquidity in a month.<sup>7</sup> Today, GEMX caps an SQF Port and SQF Purge Port at \$17,500 a month.<sup>8</sup> With this proposal, the Exchange would not assess Primary Market Makers and Market Makers an SQF Port and SQF Purge Port Cap beyond the monthly cap of \$27,500, instead of \$17,500, once the Member has exceeded the proposed port cap for the respective month. Primary Market Makers and Market Makers who transact 0.50% of Total Customer Volume in electronic simple orders that adds liquidity in a month will continue to be subject to the \$17,500 SQF Port and SQF Purge Port Cap.

Pursuant to Supplementary Material .03(c) to Options 3, Section 7, Market Makers may only enter interest into SQF in their assigned options series. Pursuant to Supplementary Material .03(c) to Options 3, Section 7, the SQF interface allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. An SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. A GEMX Market Maker requires only one SQF Port to

utilized by a Market Maker in the event that the Member has a system issue and determines to purge its quotes from the order book.

<sup>6</sup> The Exchange proposes to add a comma between “per port” and “per month” in the Options 7, Section 6, C, SQF Port and SQF Purge Port Fee rule text. The Exchange also proposes to remove an extraneous period in Options 7, Section 6, C, in the second paragraph.

<sup>7</sup> For purposes of this cap, “Total Customer Volume” shall be defined as a percentage of all cleared customer volume at The Options Clearing Corporation in Multiply Listed Equity Options and Exchange-Traded Products (“TCV”).

<sup>8</sup> The Exchange also proposes a technical amendment to remove an extra period in Options 7, Section 6, C.

<sup>28</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> The Exchange initially filed the proposed pricing changes on November 28, 2023 (SR–GEMX–2023–16) to be effective on December 1, 2023. On December 5, 2023, the Exchange withdrew SR–GEMX–2023–16 and replaced it with SR–GEMX–2023–19. On January 16, 2023, the Exchange withdrew SR–GEMX–2023–19 and submitted SR–GEMX–2024–03. On March 7, 2024, the Exchange