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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88837; File Nos. SR-NYSE-2019-46, SR-NYSENAT-2019-19, SR-NYSEArca-2019-61, SR-NYSEAMER-2019-34]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE National, Inc.; NYSE Arca, Inc.; NYSE American LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Exchanges' Co-Location Services to Offer Co-Location Users Access to the NMS Network

May 7, 2020.

I. Introduction

On August 22, 2019, New York Stock Exchange LLC, NYSE National, Inc., and NYSE Arca, Inc. each filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to: (i) amend their co-location services to offer co-location Users access to the "NMS Network"—a new alternate, dedicated network providing connectivity to data feeds for the National Market System Plans for which Securities Industry Automation Corporation ("SIAC") is engaged as the exclusive securities information processor ("SIP"); and (ii) establish associated fees. NYSE American LLC filed with the Commission a substantively identical filing on August 23, 2019.[3] The proposed rule changes were published for comment in the Federal

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

2 17 CFR 240.19b-4.

3 The New York Stock Exchange LLC, NYSE National, Inc., NYSE Arca, Inc., and NYSE American, LLC are collectively referred to herein as "NYSE" or the "Exchanges."

Register on September 10, 2019.[4] On October 24, 2019, the Commission extended the time period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Original Proposal, to December 9, 2019.[5] The Commission received one comment letter on the Original Proposal, a response from the Exchanges, and a second letter from the original commenter.[6] On December 9, 2019, the Commission instituted proceedings to determine whether to approve or disapprove the Original Proposal.[7] On December 23, 2019, the Exchange filed Amendment No. 1 to the Original Proposal. Amendment No. 1, which superseded and replaced the Original Proposal in its entirety, was published for comment in the Federal Register on January 15, 2020.[8] The Commission received one comment letter on the

4 See Securities Exchange Act Release Nos. 86865 (September 4, 2019), 84 FR 47592 (SR-NYSE-2019-46); 86869 (September 4, 2019), 84 FR 47600 (SR-NYSENAT-2019-19); 86868 (September 4, 2019), 84 FR 47610 (SR-NYSEArca-2019-61); 86867 (September 4, 2019), 84 FR 47563 (SR-NYSEAMER-2019-34) (collectively the "Original Notice" or "Original Proposal"). Page citations to the Original Notice refer to the Notice for SR-NYSE-2019-46 as published in the Federal Register.

5 See Securities Exchange Act Release Nos. 87399, 84 FR 58189 (October 30, 2019) (SR-NYSE-2019-46); 87402, 84 FR 58187 (October 30, 2019) (SR-NYSENAT-2019-19); 87400, 84 FR 58189 (October 30, 2019) (SR-NYSEArca-2019-61); 87401, 84 FR 58188 (October 30, 2019) (SR-NYSEAMER-2019-34).

6 See, respectively, letter dated October 24, 2019 from John M. Yetter, Vice President and Senior Deputy General Counsel, Nasdaq Stock Market LLC ("Nasdaq"), to Vanessa Countryman, Secretary, Commission ("Nasdaq Letter"); letter dated November 8, 2019 from Elizabeth K. King, Chief Regulatory Officer, ICE, General Counsel and Corporate Secretary, NYSE to Ms. Vanessa Countryman, Secretary, Commission ("NYSE Response Letter"); and letter dated November 25, 2019 from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, to Vanessa Countryman, Secretary, Commission ("Second Nasdaq Letter"). All comments received by the Commission on the proposed rule change are available on the Commission's website at: https://www.sec.gov/comments/sr-nyse-2019-46/srnyse201946.htm. NYSE filed a comment letter on behalf of all of the Exchanges.

7 See Securities Exchange Act Release No. 87699 (December 9, 2019), 84 FR 68239 (December 13, 2019) (SR-NYSE-2019-46; SR-NYSENAT-2019-19; SR-NYSEArca-2019-61; SR-NYSEAMER-2019-34) ("Order Instituting Proceedings" or "OIP").

8 See Securities Exchange Act Releases No. 87927 (January 9, 2020), 85 FR 2468 (SR-

Amended Proposal and a response from the Exchanges.[9] The Commission is approving the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

A. Background

The Exchanges' affiliate, SIAC, is currently engaged as the exclusive SIP for three National Market System Plans: (1) the Consolidated Trade Association ("CTA") Plan; (2) the Consolidated Quotation ("CQ") Plan; and (3) the Options Price Reporting Authority ("OPRA") Plan.[10] SIAC operates in the same data center ("Data Center") in Mahwah, New Jersey from which the Exchanges operate and offer co-location services to co-location "Users."[11] A co-location "User" is any market participant that requests to receive co-location services directly from the Exchange for fees set forth on price lists filed with the Commission.[12]

NYSE-2019-46); 87930 (January 9, 2020), 85 FR 2459 (SR-NYSENAT-2019-19); 87929 (January 9, 2020), 85 FR 2453 (SR-NYSEAMER-2019-34); and 87928 (January 9, 2020), 85 FR 2447 (SR-NYSE-2019-61) (collectively, "Amendment No. 1" or the "Amended Proposal"). The Amended Proposal also is available at https://www.sec.gov/comments/sr-nyse-2019-46/srnyse201946-6584636-201247.pdf. Page citations to the Amended Proposal refer to Amendment No. 1 for SR-NYSE-2019-46 as published in the Federal Register.

9 See, respectively, letter dated February 5, 2020 from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, to Vanessa Countryman, Secretary, Commission ("Nasdaq Letter III") and letter dated February 25, 2020 from Elizabeth K. King, Chief Regulatory Officer, ICE, General Counsel and Corporate Secretary, NYSE to Ms. Vanessa Countryman, Secretary, Commission ("NYSE Response Letter II"). All comments received by the Commission on the proposed rule change are available on the Commission's website at: https://www.sec.gov/comments/sr-nyse-2019-46/srnyse201946.htm. NYSE filed a comment letter on behalf of all of the Exchanges.

10 See Amended Proposal, supra note 8, at n. 16.

11 See Amended Proposal, supra note 8, 85 FR at 2469.

12 See Amended Proposal, supra note 8, at n. 10. As stated in the price list of each of the Exchanges, a User that incurs co-location fees for a particular co-location service is not subject to co-location fees for the same co-location service charged by another of the Exchanges. See id.

Currently, Users can connect to the CTA Plan, CQ Plan, and OPRA Plan data feeds (the "NMS Feeds") disseminated by the SIP using either of the co-location local area networks in the Data Center, which include the Liquidity Center Network ("LCN") and IP network.[13] Currently, a User would need to purchase a service that includes either a 10 Gb or 40 Gb connection to access the LCN and/or IP network and connect to the NMS feeds.[14] Users do not pay an additional or separate charge to connect to the NMS Feeds via the LCN or IP network, but rather pay for the bandwidth they determine will meet their needs in co-location.[15]

B. Original Proposal and Order Instituting Proceedings

As more fully set forth in the Original Notice, the Exchanges initially proposed to offer access to the new NMS Network and establish associated fees. The NMS Network would be an alternate, dedicated network from which co-location Users could access and connect to the NMS Feeds. The NMS Network would have an anticipated benefit of a one-way reduction in latency, as compared to the IP network and/or LCN, of over 140 microseconds. The Exchanges explained that SIAC continually assesses the services it provides and had been working with the operating committees of the NMS Plans and the industry-based advisory committee to the CTA/CQ Plans to identify potential performance enhancements for the SIP, including one that would address concerns that access to the NMS Feeds (required to traverse over the IP network),

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13 See id, 85 FR at 2469.

14 Id.

15 Currently, a User that purchases access to the LCN or IP network also receives the ability to access the trading and execution systems of the Exchanges, and the trading and execution systems of OTC Global, an alternative trading system ("ATS"), subject, in each case, to authorization by the relevant entity; as well as connectivity to market data products that a User selects from a list of Included Data Products, subject to technical provisioning requirements and authorization from the provider of the data feed. The Included Data Products are the NMS Feeds and the proprietary feeds of the Exchanges and its affiliate, NYSE Chicago. Id.

were subject to an additional layer of latency because the IP network was not designed as a low-latency network.[16]

Under the Original Proposal, a User would have been permitted to connect to the NMS Feeds via the newly established NMS Network at no additional charge subject to certain conditions. Specifically, if a User purchased 10Gb or 40Gb access to the LCN or IP network and requested a connection to the NMS Network, that User and its Affiliates,[17] taken together, would not have been charged for up to eight corresponding NMS Network connections (each a "No Additional Fee NMS Network Connection"), if:

(i) such User, together with its Affiliates, designated no more than four No Additional Fee NMS Network Connections as corresponding to the LCN connections of the User, together with its Affiliates, on a one-to-one basis;

(ii) such User, together with its Affiliates, designated no more than four No Additional Fee NMS Network Connections as corresponding to the IP network connections of the User, together with its Affiliates, on a one-to-one basis;

(iii) such User, together with its Affiliates, did not use the LCN or IP network connections that correspond to the No Additional Fee NMS Network Connections to access the NMS Feeds;[18] and

(iv) each of the No Additional Fee NMS Network Connections was of equal size or smaller than the associated LCN or IP network connection purchased by it or its Affiliates.[19]

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16 See Original Notice, supra note 4, 84 FR at 47594.

17 See Original Notice, supra note 4, at n. 17, noting that "Affiliate" of a User is defined in the price list as "any other User or Hosted Customer that is under 50% or greater common ownership or control of the first User;" that a "Hosted Customer" is a customer of a Hosting User that is hosted in a Hosting User's co-location space; and a ''Hosting User'' is a User of colocation services that hosts a Hosted Customer in the User's co-location space. Hosting Users are subject to Hosting fees.

18 Users would still have had the option to connect to the NMS Feeds using their LCN or IP network connections, but would have been charged the proposed fee for the NMS Network connection.

In contrast, a User that did not satisfy these conditions would have been subject to an additional or separate charge to access the NMS Network.[20] Those seeking an NMS Network connection that did not qualify as a No Additional Fee NMS Network Connection would have been assessed: (i) $10,000 per connection initial charge and $11,000/month for a 10 Gb connection; or (ii) $10,000 per connection initial charge and $18,000/month for a 40 Gb connection (the same fee assessed for the same-sized 10 Gb or 40 Gb IP network connection).[21]

The Commission received one comment letter on the Original Proposal from Nasdaq, a response from the Exchanges, and a second letter from Nasdaq.[22] In its initial comment letter, Nasdaq observed that the Exchanges' proposal would permit market participants who separately pay the Exchanges to connect to their trading venue(s) to receive up to eight free connections to the faster NMS Network; whereas market participants who elect a stand-alone connection to the NMS Feeds would be charged.[23] Nasdaq expressed concern that the "commingling," or bundling, of pricing for NMS Network connectivity with connectivity to the NYSE venues, including access to NYSE proprietary data feeds, would create a burden on intermarket

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19 See Original Notice, supra note 4, 84 FR at 47594. Accordingly, a User's access to a 1 Gb connection would not entitle a User to a No Additional Fee NMS Network Connection.

20 See id. at 47595. According to the Exchanges, Users would typically be charged separately for access to the NMS Network in circumstances where they (i) would like to purchase access to the NMS Network and have not purchased a 10 Gb or 40 Gb LCN or IP network connection; (ii) have purchased an LCN or IP connection but would like NMS Network connections in excess of permitted number of corresponding No Additional Fee NMS Network Connections; and/or (iii) would like to use their LCN and IP connections to continue to access the NMS Feeds.

21 See id.

22 See Nasdaq Letter, NYSE Response Letter, and Second Nasdaq Letter, supra note 6.

23 See Nasdaq Letter at 1.

competition and hinder potential providers from competing to serve as network processor in place of SIAC.[24] In Nasdaq's view, "[a]ny change to the current processor would increase costs to market participants that would purchase a subset of NMS Network Connections from the new provider and continue to pay the bundled price to NYSE to connect and transact business on NYSE."[25] Nasdaq also believed that NYSE's failure to offer market participants the opportunity to acquire NMS Network connections individually hindered competition.[26] Finally, Nasdaq took the position that the Exchanges' proposal would burden intermarket competition because other exchanges would be unable to couple their pricing for connectivity to their trading venues with NMS Network connections.[27]

The Exchanges responded by noting that Section 6(b)(8) of the Act requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the Exchange Act.[28] With respect to Nasdaq's first argument, the Exchanges took the position that the bidding process to be the exclusive SIP for an NMS Plan is a commercial competition that is not intermarket competition as contemplated by the Exchange Act, and that how (and how much) a bidder chose to charge for connectivity to its SIP would be part of its bid.[29] The Exchanges characterized Nasdaq's second argument as "baseless" because market

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[24] Id. at 1 -2.

[25] Id. at 2.

[26] Id.

[27] Id.

[28] See NYSE Response Letter, supra note 6, at 3. They added that NYSE sought and received approval from both the CTA Operating Committee and OPRA Management Committee (both of which include Nasdaq as a member) on the Original Proposal. Id.

[29] Id. at 4.

participants would in fact be able to purchase a stand-alone NMS Network connection.[30] The Exchanges expressed the view that Nasdaq's final argument was unfounded because there inherently is no competition to provide connectivity to an exclusive SIP.[31] The Exchanges further stated that while the NMS Network would be offered at no additional cost to current Users, the only way to address Nasdaq's concerns would be to increase fees currently charged to Users to connect to the Exchanges.[32] In this regard, the Exchanges observed that Nasdaq's approach to managing its own fees for connectivity to the UTP SIP Feed (defined below) is similar to the approach proposed by the Exchanges in that both parties seek to leverage their existing exchange connectivity fees to keep costs down for providing connectivity to the relevant SIPs.[33]

In a second comment letter, Nasdaq stated its general support for the proposed NMS Network, but reiterated its view that the Exchanges' proposed fee structure would hamper competitors from bidding to replace SIAC as the SIP.[34] According to Nasdaq, if another exchange or third party became the SIP for one of the three NMS Feeds, market participants would need to separately connect to two separate environments to obtain all three NMS Feeds, at increased costs.[35] Nasdaq urged that NMS Network connectivity should be priced separately

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30 Id. at 5.

31 Id.

32 Id. at 5-7.

33 Id. In making this statement, the Exchanges also acknowledge that the specific way in which Nasdaq seeks to effect this outcome is different from what the Exchanges propose (i.e., Nasdaq offers UTP NMS Plan customers two free connections and additional connections for $100 per month).

34 See Second Nasdaq Letter, supra note 6, at 1-2.

35 Id. at 2.

from exchange connectivity, and offered examples of how this could be accomplished without an increase in NYSE's fees.[36]

The Commission issued an Order Instituting Proceedings, requesting comment on the NMS Network fee structure set forth in the Original Proposal.[37] The Commission highlighted that the Exchanges proposed to make the NMS Network available at no additional charge to Users that satisfied certain conditions (as described above) and to impose a substantial charge on Users seeking access to the NMS Network that did not satisfy the proposed conditions.[38] In particular, the Commission questioned the basis for the level of the proposed fee for a charged NMS connection ($10,000 initially and $11,000 or $18,000 monthly for a 10 Gb or 40 Gb connection, respectively), as well as whether it was reasonable, equitable, and not unfairly discriminatory for only certain Users to receive NMS Network Connections at no additional charge.[39] The Commission also solicited comment on whether the revised fee structure for the NMS Network set forth in the Original Proposal would impose an undue burden on competition that is not necessary or appropriate under the Act.[40]

C. Amendment No. 1

Following the OIP, the Exchanges filed Amendment No. 1. As more fully set forth in Amendment No. 1, the Exchanges propose to eliminate the fee changes associated with the

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36 More specifically, Nasdaq suggested that the Exchanges could: (i) separately price NMS Network connectivity and NYSE connectivity; (ii) price each NMS Feed connection separately; or (iii) separate OPRA NMS Feed connectivity from CTA and CQ NMS Feed connectivity. See id. at 3.

37 See OIP, supra note 7.

38 Id.

39 Id.

40 Id.

proposed new NMS Network service.[41] In lieu of establishing conditions for No Additional Fee NMS Network Connections and proposing separate charged NMS Network connections, the Exchanges instead propose to offer co-location Users access to the NMS Network as a new service with no associated fee changes. To effect this change, the Exchanges propose to amend the services available to co-location Users to provide that if a User purchases a service that includes a 10 Gb or 40 Gb IP or LCN network connection, that purchase would include an NMS Network connection of the same size.[42] For co-location Users, the option of receiving connectivity to the NMS Feeds in co-location would therefore continue to be included when a User purchases a 10 Gb or 40 Gb network IP or LCN circuit.[43] Access to the NMS Network would thus be offered as a service upgrade, designed to provide co-location Users a one-way reduction in latency for the NMS Feeds of over 140 microseconds, as compared to the IP network and LCN, at no additional cost.[44]

III. Summary of Comments on Amendment No. 1 and Exchanges' Response

Nasdaq submitted a comment letter on Amendment No. 1, objecting that the Amended Proposal continues to integrate access to the Exchanges' proprietary products with access to the NMS Feeds in an improper manner that would impose a burden on competition that is neither

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41 See Amended Proposal, supra note 8.

42 See Amended Proposal, supra note 8, 85 FR at 2470.

43 Id. More specifically, the Exchanges propose to amend the sections of the price lists that set forth the services offering the 10 Gb and 40 Gb LCN connection and the 10 Gb and 40 Gb IP connection and their prices to include an NMS Network connection as part of each service and to include a note for each service stating that the connection offered as part of the service and the NMS Network connection are together considered to be one connection, so Users are not subject to two initial or two monthly charges. Id.

44 Id.

necessary nor appropriate under the Act.[45] According to Nasdaq, market participants currently paying for connectivity to NYSE proprietary data feeds can receive NMS Network connectivity at no additional cost, but are forced to pay for this connectivity within the bundled price, and new market participants that only want to receive NMS Feeds are effectively forced to pay the bundled fees.[46] In addition, Nasdaq took the position that, because the OPRA feed is so large, the bundling with OPRA has the effect of steering all market participants to consume larger bandwidths at higher cost.[47]

In response, the Exchanges state that they do not propose to change any fee or the availability of any current connectivity option; rather they propose only to add NMS Network connectivity as a service provided to co-location Users.[48] They further state that Nasdaq focuses on whether existing fees for connectivity to the NMS Feeds are a burden on competition, but note that that issue is not before the Commission.[49] Instead, in the Exchanges' view, their proposal would simply add a new service and provide more choice to Users, allowing them to opt to use the low-latency NMS Network to connect to NMS feeds.[50] In addition, the Exchanges take the position that Nasdaq's claim that such Users are forced to purchase larger bandwidth has no basis, as there are multiple reasons why a User would purchase a larger connection, and the

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45 See Nasdaq Letter III, supra note 9, at 1.

46 Id. at 2. The Exchanges responded that all direct recipients of the NMS Feeds in co-location also connect to one or more of the Exchanges for trading purposes. See NYSE Response Letter II, supra note 9, at 3.

47 Id. at 3.

48 See NYSE Response Letter II, supra note 9, at 2.

49 Id. at 2-3. The Exchanges further note that Nasdaq's objections to the Exchanges bundled fee structure would not be resolved by approval or disapproval of the Amended Proposal.

50 Id. at 3.

additional capacity provided by the NMS Network should reduce demand for those larger connections.[51]

IV. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[52] which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 not be designed to permit unfair discrimination between customers, issuers, brokers or dealers; and Section 6(b)(8) of the Act,[53] which prohibits any exchange rule from imposing any burden on competition that is not necessary or appropriate in furtherance of the Act.[54]

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51 Id. at 3. Specifically, the Exchanges state that the additional capacity provided by the NMS Network will reduce demand for 40 Gb connections and permit some Users to instead consume NYSE Exchanges' data over a 10 Gb local area network connection and NMS Feeds over the complementary 10 Gb NMS Network connection. Id. at n. 5.

52 15 U.S.C. 78f(b)(5).

53 15 U.S.C. 78f(b)(8).

54 In approving this proposed rule change, as modified by Amendment No. 1, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f). See discussion below in this Section IV stating the reasons why the Commission believes that the Amended Proposal, to provide co-location Users access to the new NMS Network without associated fee changes, does not impose a burden on competition that is not necessary or appropriate in furtherance of the Act.

In the Amended Proposal, the Exchanges propose to augment how co-location Users may connect to the NMS Feeds in the Data Center by offering them access to the "NMS Network," an upgraded alternative local area network, and to do so without the associated fee changes that were part of the Original Proposal. As discussed above, Nasdaq takes the position that, because the Exchanges' proposal does not separate pricing for connectivity to the NMS Feeds from pricing for connectivity to the Exchanges' proprietary products, the proposal imposes an unnecessary or inappropriate burden on competition that is inconsistent with the Act. The Exchanges respond that they simply propose to offer a new connectivity option for co-location Users without any fee change and that, regardless, Nasdaq's arguments that the existing fee structure burdens competition in a manner inconsistent with the Act are without merit.

The Commission believes that the Amended Proposal is responsive to the issues identified in the Order Instituting Proceedings, and that the Amended Proposal is consistent with the Act. Under the Amended Proposal, the Exchanges remove the proposed limits on No Additional Fee NMS Network Connections. Accordingly, under the Amended Proposal, the Exchanges would provide co-location Users the option to access consolidated market data more efficiently through the NMS Network, a new dedicated low-latency connectivity service, at no additional charge. The Commission believes that providing market participants the ability to obtain consolidated market data in a more timely manner in these circumstances would enhance the utility of this critical component of the national market system for the benefit of market participants and investors that rely upon access to consolidated market data to effectuate trades and otherwise have confidence in the efficiency and integrity of that system. Thus, the

Commission finds the proposal would protect investors and the public interest and otherwise is consistent with Section 6(b)(5) of the Act. [55]

With regard to competition, Nasdaq takes the position that the Amended Proposal inappropriately burdens competition because the Exchanges would bundle fees for connectivity to the NMS Feeds with fees for connectivity to the Exchanges' proprietary products for co-location Users. In Nasdaq's view, this pricing structure for co-location services hinders potential competitors from replacing SIAC as processor for the NMS Feeds, and inappropriately burdens market participants that may seek connectivity only to the NMS Feeds or to the Exchanges' proprietary products, or to some subset thereof, in the Exchanges' co-location facilities. Nasdaq also states that there are alternative ways the Exchanges could structure the proposal such that connectivity to the NMS Feeds could be priced separately from exchange connectivity, and offered examples of how this could be accomplished without an increase in NYSE's fees.[56]

As an initial matter, the Commission notes that the proposed rule change under consideration would not modify the existing fees of the Exchanges; instead the Exchanges are proposing to offer co-location Users an enhanced connectivity option for consolidated market data through the NMS Feeds at no additional charge. Nonetheless, with respect to Nasdaq's position that the Exchanges' existing pricing structure hinders potential competitors from replacing SIAC as processor for the NMS Feeds, and is therefore a burden on intermarket

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[55] The Commission also believes that the proposed enhancements to the provision of consolidated market data are consistent with past Commission statements that the widespread availability of timely market information promotes fair and efficient markets. See, e.g., Securities Exchange Act Release No. 42208 (Dec. 9, 1999), 64 FR 70613, 70614 (Dec. 17, 1999) (Market Information Concept Release); Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3593, 3600 (Jan. 21, 2010) (Equity Market Structure Concept Release).

[56] See note 36 supra.

competition, the Commission does not believe in these circumstances that potential competitors who are also exchanges, such as Nasdaq, are inappropriately constrained from offering connectivity to the NMS Feeds to co-location Users at prices competitive with the Exchanges. As noted above, Nasdaq, like the Exchanges, provides connectivity to a consolidated market data feed (the "UTP SIP Feed"),[57] as well as its own proprietary products, at its co-location facility. Whether connectivity services at co-location facilities are offered for multiple products or a single product, co-location customers generally are charged for connectivity by the Exchanges and Nasdaq based on the number of connections received and the bandwidth thereof.[58] Thus, the Commission believes that Nasdaq could propose a comparable pricing structure that would allow it to compete with the Exchanges.[59] For the same reasons, the Commission is also not persuaded that the Exchanges choosing not to propose the alternative pricing approaches suggested by Nasdaq renders the proposed rule change an inappropriate or unnecessary burden on intermarket competition and thus inconsistent with the Act. Further, the Commission does not believe that Nasdaq's argument is persuasive with respect to an entity that may not be an exchange but that wishes to compete for the exclusive SIP contracts currently held by SIAC. While it is possible that the changes proposed by the Exchanges could place greater pressure on these would-be competitors, it does not appear that any such pressure would force users to pay higher prices than

[57] The UTP SIP Feed is comprised of a UTP Quote Data Feed ("UQDF") and a UTP Trade Data Feed ("UTDF"). The UQDF provides continuous quotations from all market centers trading Nasdaq-listed securities. The UTDF provides continuous last sale information from all market centers trading Nasdaq-listed securities. See http://www.utpplan.com/.

[58] See e.g., NYSE Price List and Nasdaq Price Lists, available, respectively, at: https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf; and https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-general-8.

[59] Nasdaq today offers its co-location customers two free connections to the UTP SIP Feed and additional connections for a nominal fee. See https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-general-8.

they currently do or that there would be a loss of desirable alternative bidders for the exclusive SIP contract. In sum, the Commission does not believe that any such competitive pressure creates an inappropriate or unnecessary burden on the competitive landscape in the context of this proposal.

The Commission also does not believe that the Exchanges' existing pricing structure inappropriately burdens either those market participants that may seek connectivity only to a subset of market data products, or those that would otherwise be forced into using the NMS Network connectivity to access OPRA. This is because co-location Users that desire a small number of market data products are likely to require fewer connections or less bandwidth, and therefore pay lower connectivity fees, whereas those that require more connections or more bandwidth are likely to pay comparatively higher connectivity fees, and the Exchanges are not proposing to charge an additional fee for access to the new NMS Network. For all of the foregoing reasons, the Commission finds that the Amended Proposal, to provide co-location Users access to the new NMS Network without associated fee changes, is consistent with Section 6(b)(8) of the Act, which prohibits any exchange rule from imposing any burden on competition that is not necessary or appropriate in furtherance of the Act.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[60] that the proposed rule change (SR-NYSE-2019-46, SR-NYSENAT-2019-19, SR-NYSEArca-2019-61, SR-NYSEAMER-2019-34), as modified by Amendment No. 1, be, and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

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60 See id.

J. Matthew DeLesDernier,

Assistant Secretary.

[61] 17 CFR 200.30-3(a)(12).

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