

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 26

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2024 - * 91

Amendment No. (req. for Amendments *)

Filing by NYSE Arca, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
--	---	--	--	--	---

Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
-----------------------------------	--	--

Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to amend the Connectivity Fee Schedule language regarding the VCC service

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Martha Last Name * Redding

Title * Associate General Counsel

E-mail * martha.redding@ice.com

Telephone * (212) 656-2938 Fax (212) 656-8101

Signature

Pursuant to the requirements of the Securities Exchange of 1934, NYSE Arca, Inc. has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 10/30/2024

(Title *)

By Patrick Troy

Associate General Counsel

(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Patrick Troy Digitally signed by Patrick Troy
Date: 2024.10.30 16:13:52 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information *

Add Remove View

Arca 19b4.docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

Arca Ex1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

Arca Ex5.docx

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) proposes to amend the service for virtual control circuits in the Connectivity Fee Schedule.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

Martha Redding
Associate General Counsel
NYSE Group, Inc.
(212) 656-2938

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

- (a) Purpose

The Exchange proposes to amend the existing service for virtual control circuits (“VCCs”) in the Connectivity Fee Schedule.

A VCC (previously called a “peer to peer” connection) is a unicast connection through which two participants can establish a connection between two points over dedicated bandwidth, to be used for any purpose. At the Mahwah, New Jersey data center

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(“MDC”)³ the Exchange offers VCCs between two Users.⁴ The recurring monthly fees are based upon the bandwidth requirements per VCC connection between two Users.⁵

However, not all VCCs are between two Users in the MDC. Although all VCCs have at least one end that is a User inside the MDC, the other party may be a non-User outside of the MDC at a remote access center, or the VCC can be between a User in the MDC and the same User outside of the MDC at a remote access center. A VCC that goes outside of the MDC herein is called a “MDC VCC.”

Accordingly, the Exchange proposes to amend the Connectivity Fee Schedule to delete “between two Users” after “Virtual Control Circuit.” Fees for the service would not change and, as now, connectivity to a VCC would require the permission of the non-billed party before the Exchange would establish the connection.

As background, Users require wired circuits to connect into and out of the MDC. A User’s equipment in the MDC’s colocation hall connects to a circuit leading out of the MDC, which connects to the User’s equipment in their back office or another data center.

Before 2013, all such circuits were provided by ICE’s predecessor, NYSE Euronext. In response to customer demand for more connectivity options, in 2013, the MDC opened two “meet-me-rooms” to telecommunications service providers (“Telecoms”),⁶ to enable Telecoms to offer circuits into the MDC in competition with NYSE Euronext. Currently, 16 Telecoms operate in the meet-me-rooms and provide circuit options to Users requiring connectivity into and out of the MDC.

In addition, FIDS provides two different types of circuits, Optic Low Latency and Optic Access. Optic Access,⁷ which is more similar to the MDC VCC, is a circuit between the MDC and the FIDS access centers at five third-party owned data centers: (1) 111 Eighth

³ Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the New York Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc. and NYSE National, Inc. (together, the “Affiliate SROs”) are indirect subsidiaries of ICE.

⁴ For purposes of the Exchange’s colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR-NYSEArca-2015-82). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Affiliate SROs. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the change described herein. See SR-NYSE-2024-69, SR-NYSEAMER-2024-64, SR-NYSECHX-2024-31, and SR-NYSESTAT-2024-28.

⁵ See Securities Exchange Act Release No. 80310 (March 24, 2017), 82 FR 15763 (March 30, 2017) (SR-NYSEArca-2016-89).

⁶ Telecommunication service providers that choose to provide circuits at the MDC are referred to as “Telecoms.” Telecoms are licensed by the Federal Communications Commission (“FCC”) and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

⁷ The “Optic Low Latency” circuits are lower latency. See Securities Exchange Act Release No. 99166 (December 14, 2023), 88 FR 88178 (December 20, 2023) (SR-NYSEARCA-2023-83).

Avenue, New York, NY; (2) 32 Avenue of the Americas, New York, NY; (3) 165 Halsey, Newark, NJ; (4) Secaucus, NJ; and (5) Carteret, NJ.

Ultimately, the MDC VCCs are similar to the Optic Access FIDS circuits in that, like Optic Access, the MDC VCCs run between the MDC and five FIDS access centers as well as, in the case of the MDC VCCs, additional U.S. FIDS access centers. They are smaller than the Optic Access FIDS circuits, however. While the Exchange has no visibility into how a User utilizes its connections, the Exchange believes that the Optic Access FIDS circuit is used for items that require more bandwidth, like market data, while the MDC VCCs are used for items that require smaller amounts of bandwidth, such as messaging, pre- and post-trade data, or clearing information, as determined by the User. Accordingly, if a User wants a smaller connection to a U.S. access center, or wants to reach an access center that Optic Access does not reach, the MDC VCCs are a viable option.

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.

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.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁰ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(4).

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.

Although all VCCs have at least one end that is a User inside the MDC, the other party may be a non-User outside of the MDC at a remote access center, or the VCC can be between a User in the MDC and the same User outside of the MDC at a remote access center. Accordingly, the proposed change is reasonable because it would make the Connectivity Fee Schedule more accurately reflect the usage of VCCs. It would ensure that the description of VCCs was complete, accessible and transparent, and thereby provide market participants with greater clarity.

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."¹¹ 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."¹² 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.

MDC VCCs would 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 are reasonable substitutes for the MDC VCCs. The Commission has recognized that products do not need to be identical to be considered substitutable; it is sufficient that they be substantially similar.¹³ The MDC VCCs, the FIDS circuits, and the circuits provided by the Telecoms all perform the same function: connecting into and out of the MDC. The providers of the MDC VCCs, VCCs between Users, FIDS circuits 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

¹¹ 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-NYSESTAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEArca-2020-15, SR-NYSECHX-2020-05, SR-NYSESTAT-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).

¹² Wireless Approval Order, supra note 11, at 67049, citing 2008 ArcaBook Approval Order, supra note 11, at 74781.

¹³ See 2008 ArcaBook Approval Order, supra note 11, at 74789 and note 295 (recognizing that products need not be identical to be substitutable).

needs.

The MDC VCCs are sufficiently similar substitutes to the circuits offered by the 16 Telecoms even though the MDC VCCs all terminate in one of the U.S. remote access centers, while circuits from the 16 Telecoms could terminate in those locations or additional 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 remote access centers where the MDC VCCs would terminate. Moreover, the Telecoms may offer smaller circuits that are the same as or similar size to the MDC VCCs. Ultimately, Users can choose to configure their pathway leading out of colocation in the way that best suits their business needs, which may include connecting to the User's equipment at one of the U.S. remote access center locations that serve as termination points for MDC VCCs, or connecting first to one of those remote access centers with a FIDS- or Telecom-supplied circuit and then further connecting to another remote location using a telecommunication provider-supplied circuit.

Neither the MDC VCCs, Optic Access circuits, nor the Optic Low Latency circuits 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 the colocation halls and (b) the distance between the rooms where the FIDS circuits and the MDC VCCs exit the MDC and the colocation halls. As a result, a User choosing whether to use the MDC VCCs or Telecom circuits does not face any difference in the distances or latency within the MDC.

The Exchange also believes that the MDC VCCs 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 proposed MDC VCCs.¹⁴ 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 does not believe that there is anything about the MDC VCCs that would make the Telecoms' circuits inadequate substitutes.

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.¹⁵ Currently, 16 Telecoms

¹⁴ 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.

¹⁵ Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

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 level¹⁶ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.¹⁷ 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 the Exchange were to set the price of the MDC VCCs 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 MDC VCCs 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 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.

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. The proposed change would apply equally to all types and sizes of market participants. It would clarify that all VCCs, irrespective of whether between two Users, a User and non-User outside of the VCC, or the same User, are subject to the same size and cost provisions. In addition, the Exchange believes that the proposal is equitable

¹⁶ See Securities Exchange Act Release No. 98000 (July 26, 2023), 88 FR 50244 (August 1, 2023) (SR-NYSEARCA-2023-47).

¹⁷ See *id.* at 50246. 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.

because only market participants that voluntarily select to receive MDC VCCs would be charged for them.

Moreover, the proposed change would ensure that the Connectivity Fee Schedule accurately reflects the usage of VCCs. It would ensure that the description of VCCs was complete, accessible and transparent, and provide market participants with greater clarity.

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 equitable because only market participants that voluntarily select to receive MDC VCCs would be charged for them. The MDC VCCs are available to all market participants on an equal basis, and all market participants that voluntarily choose to purchase a MDC VCC are charged the same amount as all other market participants purchasing that type of MDC VCC.

For the reasons above, the proposed change does not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable collocation 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.

4. 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.¹⁸ The proposed rule change is designed to ensure that the provision on VCCs clarifies that all VCCs, irrespective of whether between two Users, a User and non-User outside of the VCC, or the same User, are subject to the same size and cost provisions. It is not meant to address intramarket or intermarket competition.

The proposed change would enhance competition in the market for circuits transmitting data into and out of collocation at the MDC by adding VCCs, in addition to the 16 Telecoms that also sell circuits to Users and the FIDS circuits. The MDC VCCs do 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.

¹⁸ 15 U.S.C. 78f(b)(8).

5. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The Exchange believes that the proposal qualifies for immediate effectiveness upon filing as a “non-controversial” rule change in accordance with Section 19(b)(3)(A) of the Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as the Commission may designate.

The Exchange believes that the proposed rule change would not adversely affect investors or the public interest. The proposed change would add VCCs to the options for circuits, in addition to the 16 Telecoms that also sell circuits to Users and FIDS circuits. The MDC VCCs do 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 the proposed rule change would not impose any significant burden on competition. The MDC VCCs do 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 proposed rule change would clarify that all VCCs, irrespective of whether between two Users, a User and non-User outside of the VCC, or the same User, are subject to the same size and cost provisions. Moreover, the proposed change would ensure that the Connectivity Fee Schedule accurately reflects the usage of VCCs.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6).

It would ensure that the description of VCCs was complete, accessible and transparent, and provide market participants with greater clarity.

Accordingly, the Exchange believes that this rule change is eligible for immediately effective treatment under the Commission's current procedures for processing rule filings.²¹

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4.²² At any time within 60 days of the filing of the 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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Publication in the Federal Register

Exhibit 5 – Text of the Proposed Rule Change

²¹ See Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008) (concerning 17 CFR 200 and 241).

²² Id.

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSEARCA-2024-91)

[Date]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Service for Virtual Control Circuits in the Connectivity Fee Schedule

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 30, 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, 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 service for virtual control circuits in the Connectivity Fee Schedule. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 existing service for virtual control circuits (“VCCs”) in the Connectivity Fee Schedule.

A VCC (previously called a “peer to peer” connection) is a unicast connection through which two participants can establish a connection between two points over dedicated bandwidth, to be used for any purpose. At the Mahwah, New Jersey data center (“MDC”)⁴ the Exchange offers VCCs between two Users.⁵ The recurring monthly fees are based upon the bandwidth requirements per VCC connection between two Users.⁶

However, not all VCCs are between two Users in the MDC. Although all VCCs have at least one end that is a User inside the MDC, the other party may be a non-User outside of the MDC at a remote access center, or the VCC can be between a User in the MDC and the same

⁴ Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the New York Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc. and NYSE National, Inc. (together, the “Affiliate SROs”) are indirect subsidiaries of ICE.

⁵ For purposes of the Exchange’s colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR-NYSEArca-2015-82). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Affiliate SROs. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the change described herein. See SR-NYSE-2024-69, SR-NYSEAMER-2024-64, SR-NYSECHX-2024-31, and SR-NYSENAT-2024-28.

⁶ See Securities Exchange Act Release No. 80310 (March 24, 2017), 82 FR 15763 (March 30, 2017) (SR-NYSEArca-2016-89).

User outside of the MDC at a remote access center. A VCC that goes outside of the MDC herein is called a “MDC VCC.”

Accordingly, the Exchange proposes to amend the Connectivity Fee Schedule to delete “between two Users” after “Virtual Control Circuit.” Fees for the service would not change and, as now, connectivity to a VCC would require the permission of the non-billed party before the Exchange would establish the connection.

As background, Users require wired circuits to connect into and out of the MDC. A User’s equipment in the MDC’s colocation hall connects to a circuit leading out of the MDC, which connects to the User’s equipment in their back office or another data center.

Before 2013, all such circuits were provided by ICE’s predecessor, NYSE Euronext. In response to customer demand for more connectivity options, in 2013, the MDC opened two “meet-me-rooms” to telecommunications service providers (“Telecoms”),⁷ to enable Telecoms to offer circuits into the MDC in competition with NYSE Euronext. Currently, 16 Telecoms operate in the meet-me-rooms and provide circuit options to Users requiring connectivity into and out of the MDC.

In addition, FIDS provides two different types of circuits, Optic Low Latency and Optic Access. Optic Access,⁸ which is more similar to the MDC VCC, is a circuit between the MDC and the FIDS access centers at five third-party owned data centers: (1) 111 Eighth Avenue, New York, NY; (2) 32 Avenue of the Americas, New York, NY; (3) 165 Halsey, Newark, NJ; (4) Secaucus, NJ; and (5) Carteret, NJ.

⁷ Telecommunication service providers that choose to provide circuits at the MDC are referred to as “Telecoms.” Telecoms are licensed by the Federal Communications Commission (“FCC”) and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

⁸ The “Optic Low Latency” circuits are lower latency. See Securities Exchange Act Release No. 99166 (December 14, 2023), 88 FR 88178 (December 20, 2023) (SR-NYSEARCA-2023-83).

Ultimately, the MDC VCCs are similar to the Optic Access FIDS circuits in that, like Optic Access, the MDC VCCs run between the MDC and five FIDS access centers as well as, in the case of the MDC VCCs, additional U.S. FIDS access centers. They are smaller than the Optic Access FIDS circuits, however. While the Exchange has no visibility into how a User utilizes its connections, the Exchange believes that the Optic Access FIDS circuit is used for items that require more bandwidth, like market data, while the MDC VCCs are used for items that require smaller amounts of bandwidth, such as messaging, pre- and post-trade data, or clearing information, as determined by the User. Accordingly, if a User wants a smaller connection to a U.S. access center, or wants to reach an access center that Optic Access does not reach, the MDC VCCs are a viable option.

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.

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,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular,

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ 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.

Although all VCCs have at least one end that is a User inside the MDC, the other party may be a non-User outside of the MDC at a remote access center, or the VCC can be between a User in the MDC and the same User outside of the MDC at a remote access center. Accordingly, the proposed change is reasonable because it would make the Connectivity Fee Schedule more accurately reflect the usage of VCCs. It would ensure that the description of VCCs was complete, accessible and transparent, and thereby provide market participants with greater clarity.

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

¹¹ 15 U.S.C. 78f(b)(4).

in setting the terms of its proposal . . . , including the level of any fees.”¹² 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.”¹³ 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.

MDC VCCs would 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 are reasonable substitutes for the MDC VCCs. The Commission has recognized that products do not need to be identical to be considered substitutable; it is sufficient that they be substantially similar.¹⁴ The MDC VCCs, the FIDS circuits, and the circuits provided by the Telecoms all perform the same function: connecting into and out of the MDC. The providers of the MDC VCCs, VCCs between Users, FIDS circuits 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.

¹² 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-NYSEAT-2020-03, SR-NYSE-2020-11, SR-NYSEAMER-2020-10, SR-NYSEArca-2020-15, SR-NYSECHX-2020-05, SR-NYSEAT-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).

¹³ Wireless Approval Order, supra note 12, at 67049, citing 2008 ArcaBook Approval Order, supra note 12, at 74781.

¹⁴ See 2008 ArcaBook Approval Order, supra note 12, at 74789 and note 295 (recognizing that products need not be identical to be substitutable).

The MDC VCCs are sufficiently similar substitutes to the circuits offered by the 16 Telecoms even though the MDC VCCs all terminate in one of the U.S. remote access centers, while circuits from the 16 Telecoms could terminate in those locations or additional 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 remote access centers where the MDC VCCs would terminate. Moreover, the Telecoms may offer smaller circuits that are the same as or similar size to the MDC VCCs. Ultimately, Users can choose to configure their pathway leading out of colocation in the way that best suits their business needs, which may include connecting to the User's equipment at one of the U.S. remote access center locations that serve as termination points for MDC VCCs, or connecting first to one of those remote access centers with a FIDS- or Telecom-supplied circuit and then further connecting to another remote location using a telecommunication provider-supplied circuit.

Neither the MDC VCCs, Optic Access circuits, nor the Optic Low Latency circuits 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 the colocation halls and (b) the distance between the rooms where the FIDS circuits and the MDC VCCs exit the MDC and the colocation halls. As a result, a User choosing whether to use the MDC VCCs or Telecom circuits does not face any difference in the distances or latency within the MDC.

The Exchange also believes that the MDC VCCs 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 proposed MDC VCCs.¹⁵ The

¹⁵ 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

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 does not believe that there is anything about the MDC VCCs that would make the Telecoms' circuits inadequate substitutes.

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.¹⁶ 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 level¹⁷ 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

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.

¹⁶ Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

¹⁷ See Securities Exchange Act Release No. 98000 (July 26, 2023), 88 FR 50244 (August 1, 2023) (SR-NYSEARCA-2023-47).

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.¹⁸ 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 the Exchange were to set the price of the MDC VCCs 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 MDC VCCs 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 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.

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. The proposed change would apply equally to all types and sizes of market participants. It would clarify that all VCCs, irrespective of whether between two Users, a User and non-User outside of

¹⁸ See *id.* at 50246. 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.

the VCC, or the same User, are subject to the same size and cost provisions. In addition, the Exchange believes that the proposal is equitable because only market participants that voluntarily select to receive MDC VCCs would be charged for them.

Moreover, the proposed change would ensure that the Connectivity Fee Schedule accurately reflects the usage of VCCs. It would ensure that the description of VCCs was complete, accessible and transparent, and provide market participants with greater clarity.

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 equitable because only market participants that voluntarily select to receive MDC VCCs would be charged for them. The MDC VCCs are available to all market participants on an equal basis, and all market participants that voluntarily choose to purchase a MDC VCC are charged the same amount as all other market participants purchasing that type of MDC VCC.

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.¹⁹ The proposed rule change is designed to ensure that the provision on VCCs clarifies that all VCCs, irrespective of whether between two Users, a User and non-User outside of the VCC, or the same User, are subject to the same size and cost provisions. It is not meant to address intramarket or intermarket competition.

The proposed change would enhance competition in the market for circuits transmitting data into and out of colocation at the MDC by adding VCCs, in addition to the 16 Telecoms that also sell circuits to Users and the FIDS circuits. The MDC VCCs do 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.

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 Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹ 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

¹⁹ 15 U.S.C. 78f(b)(8).

²⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

²¹ 17 CFR 240.19b-4(f)(6).

Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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)²⁴ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-91 on the subject line.

²² 17 CFR 240.19b-4(f)(6).

²³ 17 CFR 240.19b-4(f)(6)(iii).

²⁴ 15 U.S.C. 78s(b)(2)(B).

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-NYSE- SR-NYSEARCA-2024-91. 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-SR-NYSEARCA-2024-91 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.²⁵

²⁵ 17 CFR 200.30-3(a)(12).

Sherry R. Haywood,

Assistant Secretary.

Additions underscored
 Deletions [bracketed]

**New York Stock Exchange LLC
 NYSE American LLC
 NYSE Arca, Inc.
 NYSE Chicago, Inc.
 NYSE National, Inc.**

Connectivity Fee Schedule

Last Updated: [October 28]●, 2024

* * * * *

A. Co-Location Fees

* * * * *

Type of Service	Description	Amount of Charge
-----------------	-------------	------------------

* * * * *

Virtual Control Circuit [between two Users]	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

* * * * *