SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE Arca, Inc.: Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Change, as Modified by Amendment No. 1, Amending the Co-location Services Offered by the Exchange To Add Certain Access and Connectivity Fees

November 22, 2016.

I. Introduction

On August 16, 2016, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), and Rule 308(b)(1) thereunder, a proposed rule change (1) to provide additional information regarding access to various trading and execution services; connectivity to market data feeds and testing and certification feeds; connectivity to the DXCC; and other services. The proposed rule change was published for comment in the Federal Register on August 26, 2016. The Commission received no comments in response to the proposed rule change. On October 4, 2016, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to November 24, 2016. On November 2, 2016, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this order to solicit comments on Amendment No. 1 from interested persons and to institute proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as discussed below, the Commission seeks additional input on the proposed rule change, as modified by Amendment No. 1, and on the issues presented by the proposal.

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

The proposed rule change seeks to amend the co-location services offered by the Exchange to (1) provide additional information regarding the access to trading and execution services and data connectivity to data provided to Users with local area networks available in the data center; and (2) establish fees relating to a User’s access to trading and execution services; connectivity to data feeds and to testing and certification services; connectivity to clearing; and other services.

Background and Access to Exchange Systems

As discussed more fully in the Notice, a User can purchase access to the Liquidity Center Network (“LCN”) and/or internet protocol (“IP”) network in the data center through the purchase of a 1, 10, or 40 Gb LCN circuit, a 10 Gb LX Circuit, bundled network access, Partial Cabinet Solution bundle, or 1, 10 or 40 Gb IP network access. The purchase of any of the LCN or IP network circuit options gives a User access to the Exchange’s trading and execution systems, connectivity to the Exchange’s certification and testing feeds, and the ability to connect to any NYSE Data Product. More specifically, access to the Exchange’s trading and execution system provides a User with access to the Exchange’s “customer gateways that provide for order entry, order receipt (i.e. confirmation that an order has been received), receipt of drop copies and trade reporting (i.e. whether a trade is executed or cancelled), as well as for sending information to shared data services for clearing and settlement.” The Exchange seeks to add clarifying language in its proposed


9 See Notice, supra note 3, 81 FR at 59004–59005.

10 See id. at 59005.

11 The purchase of access is subject to receiving authorization from the NYSE, NYSE MKT or NYSE Arca for the Included Data Products, as applicable. See id. at 59005 n.10.

12 Certification fees are used to certify that a User conforms to any relevant technical requirements for receipt of data or access to Exchange systems. Testing fees, which do not carry live production data, provide Users with an environment to conduct tests with the non-live data, including testing for upcoming Exchange releases and product enhancements or the User’s own software development. See id. at 59005. These fees are only available to the IP network, however a User without an IP network connection may obtain an IP network circuit for purposes of testing and certification for free for three months. See id. at 59005 n.12.

13 See id. at 59005.

14 See id. at 59006. The Exchange represents that connectivity to the Exchange systems can be obtained without the purchase of access to the LCN or IP network. See id.
rule to reflect the services included with purchase of Exchange system access. 15

Connectivity to Included Data Products

As discussed more fully below, the Exchange offers connectivity to three types of data products: Included Data Products, Premium NYSE Data Products, and Third Party Data Feeds. 16

As discussed more fully in the Notice, the Included Data Products include Consolidated Tape Association ("CTA") disseminated data feeds and NMS data feeds. 17 The CTA disseminates consolidated real-time trade and quote information in NYSE listed securities (Network A) and NYSE MKT, NYSE Arca and other regional exchanges’ listed securities (Network B) pursuant to a national market system plan. 18 The NMS data feeds include Consolidated Tape System and Consolidated Quote System data streams, as well as Options Price Reporting Authority feeds. 19 To obtain connectivity to the Included Data Products, a User must enter into a contract with the Exchange and pay any applicable fees. 20 Once the Exchange receives an authorization from the data feed provider, the Exchange will provide connectivity to the Included Data Product(s) through a User’s LCN or IP network port. 21 The Exchange does not charge any additional fees for this connectivity “because such access and connectivity is directly related to the purpose of co-location.” 22 The Exchange proposes to add language to the NYSE Arca Options Fee Schedule and the NYSE Arca Equities Schedule of Fees and Charges (collectively “Fee Schedules”) to specify that there are no additional fees for connectivity to Included Data Products. 23

Connectivity to Premium NYSE Data Products

As part of its data product offerings, the Exchange now proposes to provide connectivity to Premium NYSE Data Products from the Exchange and its Affiliate SROs to Users over either the LCN and/or IP network “because such access and connectivity is directly related to the purpose of co-location.” 24 The proposed rule change seeks to amend the Fee Schedules to specify the connectivity fees for Premium NYSE Data Products. 25

As discussed more fully in the Notice, the Premium NYSE Data Products are “equity market data products that are variants of the equity Included Data Products. Each Premium NYSE Data Product integrates, or includes data elements from, several Included Data Products.” 26 These Integrated Feeds include “depth of book order data (with add, modify and delete orders), trades (with corrections and cancel/errors), opening and closing imbalance data, security status updates (e.g., trade corrections and trading halts) and stock summary messages. The stock summary messages display a market’s opening price, high price, low price, closing price, and cumulative volume for a security. Only the Integrated Feeds offer all these components in sequence in one feed.” 27 Additionally, the NYSE BQT data feed includes, among other things, certain data elements from six of the equity Included Data Products of the Exchange and Affiliated SROs in one data feed: NYSE Trades, NYSE BBO, NYSE Arca Trades, NYSE Arca BBO, NYSE MKT Trades, and NYSE MKT BBO. 28

As is the case with Included Data Products, a User of Premium NYSE Data Products must enter into a contract with the data provider for each feed and the provider would then authorize the Exchange to provide connectivity of the particular feed to that User’s LCN or IP Network port. 29 The Exchange proposes to charge a User a monthly recurring fee per each Premium NYSE Data Product feed for the connectivity provided by the Exchange. 30

Connectivity to Third Party Data Feeds

The Exchange’s proposal further seeks to offer Third Party Data Feeds to Users and to charge a connectivity fee per feed as reflected on its Fee Schedules. 31 In the data center, the Exchange receives Third Party Data Feeds from multiple national securities exchanges and other content service providers which it then provides to requesting Users for a fee. 32 With the exceptions of Global OTC and NYSE Global Index, Users connect to Third Party Data Feeds over the IP network. 33 In charging for this service, the Exchange notes that its practice is consistent with the monthly fee Nasdaq charges its co-location customers for connectivity to third party data. 34 In order to connect to a Third Party Data Feed, a User must enter into a contract with the relevant third party market or content service provider, under which the third party market or content service provider charges the User for the data feed. 35 The Exchange receives these Third Party Data Feeds over its fiber optic network and, after the data provider and User enter into a contract and the Exchange receives authorization from the data provider, the Exchange re-transmits the data to the User over a User’s port. 36 Users only receive, and are only charged for, the feed(s) which they have entered into contracts for. 37 Additionally, the Exchange notes that Third Party Data Feeds do not provide access or order entry to its execution system or access to the execution system of the third party generating the feed. 38

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Exchange proposes to charge a monthly recurring fee for connectivity to each Third Party Data Feed, however for SuperFeed and MSCI it proposes to charge different fees which vary based on the bandwidth requirements for the connection.\(^{39}\) A User is free to receive all or some of the feeds included in the Fee Schedules.\(^{40}\) Moreover, the Exchange notes that Third Party Data Feed providers may charge redistribution fees, such as Nasdaq’s Extranet Access Fees and OTC Markets Group’s Access Fees,\(^{41}\) which the Exchange will pass through to the User in addition to charging the applicable connectivity fee.\(^{42}\) Finally, the Exchange permits third party markets or content providers that are also Users to connect to their own Third Party Data Feeds without a charge.\(^{43}\) The Exchange represents that it does not charge Users that are third party markets or content providers for connectivity to their own feeds because such parties generally receive their own feeds for purposes of diagnostics and testing.\(^{44}\)

**Connectivity to Other Services**

As part of its data center offerings, the Exchange also seeks to provide access and connectivity to Third Party Systems/content service providers, the DTCC,\(^{45}\) (collectively “Service Providers”), third party certification and testing feeds,\(^{46}\) and Virtual Control Circuits\(^{47}\) (“VCCs”).\(^{48}\) The proposed rule change seeks to amend the Fee Schedules to add new fees for connectivity to Third Party Data Feeds, a User must receive authorization from its third party Service Provider and/or third party certification and testing feed provider(s) pursuant to which a User pays each the associated fee(s) for their services.\(^{53}\) Once the Exchange receives authorization from the Service Provider and/or third party certification and testing feed provider(s), the Exchange will enable a User to connect to the Service Provider and/or third party certification and testing feed(s) over the IP Network.\(^{54}\) Similarly, with respect to VCCs, the Exchange will not establish a VCC connection over its IP Network until the other User confirms the VCC request.\(^{55}\) Finally, the Exchange notes, that its execution system does not provide access to Service Provider systems, nor do the Service Provider systems provide access to the Exchange’s execution system.\(^{56}\)

As noted above, the Commission received one comment letter on a related filing which is equally applicable to this filing.\(^{57}\) This commenter (1) requested clarification about the history of the fees and “the increasing costs of maintaining the data center and providing co-location compared to any related fee revenue” and (2) expressed a concern about whether “there are any true alternatives that are practically available to various types of participants who are seeking to compete with those who are paying exchanges for co-location and data services.”\(^{58}\) Specifically, the commenter noted that the NYSE states that the connectivity fees are used to defray the costs associated with providing co-location to Users, but, the commenter questions whether the fees to cover the increasing costs of providing co-location are applied in an equitable manner.\(^{59}\) Moreover, with respect to alternatives, the commenter noted that broker-dealers face best execution obligations that are “critically impacted by sub-millisecond differences in access to exchange systems and market data.”\(^{60}\) As a result, market participants face the quandary of whether to trade from outside the data center if other members are trading from inside.\(^{61}\) Additionally, some broker-dealers trading for clients “may be practically required to buy and consume proprietary market data feeds directly from exchanges in order to provide competitive products for those clients.”\(^{62}\) The commenter believes that this environment “imposes a form of trading tax on all members by offering different methods of access to different members.”\(^{63}\) The commenter questions whether true alternatives are available for participants seeking to compete with firms paying for exchange co-location and data services and whether the Exchange’s ability to set fees is truly constrained by market forces for a “comparable product”.\(^{64}\)

As discussed above, the Exchange submitted a response to the commenter on the related filing.\(^{65}\) The Exchange in its Response Letter stated that historical information about the development of these product offerings is “not required by the Act and is not relevant to [ ] the substance of the Proposal—which is, by definition, forward looking . . .”\(^{66}\)

Additionally, the Response Letter noted that costs are not the only consideration in setting its prices, but rather the prices “include the competitive landscape; whether Users would be required to utilize a given service; the alternatives available to Users; and, significantly, the benefits Users obtain from the trading and clearing services. In order to receive the ICE feeds, a User must receive authorization from ICE to receive both market data and trading and clearing services. See id.\(^{39}\) See id.\(^{40}\) See id.\(^{41}\) See id. at 59008–59009.\(^{42}\) See id. \(^{43}\) See id. at 59009.\(^{44}\) See id. \(^{45}\) “Such connectivity to DTCC is distinct from the access to shared data services for clearing and settlement services that a User receives when it purchases access to the LCN or IP network. The shared data services allow Users and other entities with access to the Trading Systems to post files for settlement and clearing services to access.” See id. at 59009 n. 33. \(^{46}\) Certification fees certify that a User conforms to any of the relevant content service providers’ requirements for accessing Third Party Systems or receiving Third Party Data, whereas testing fees provide Users an environment in which to conduct system tests with non-live data. See id. at 59009. \(^{47}\) A VCC (previously called a “peer to peer” connection) is a two-way connection through which two participants can establish a connection between two points over dedicated bandwidth using the IP network to be used for any purpose. See id.\(^{48}\) See id. at 59007–59009.\(^{49}\) See Notice, supra note 5, 81 FR at 59009. \(^{50}\) See id. at 59008–59009. \(^{51}\) See IEX Letter, supra note 4. \(^{52}\) See id. at 1–2. \(^{53}\) See id. \(^{54}\) See id. at 2. \(^{55}\) See id. \(^{56}\) See id. \(^{57}\) See id. \(^{58}\) See id. \(^{59}\) See Notice, supra note 4.

50 See id. at 1–2. 51 See id. at 2. 52 See id. 53 See id. 54 See id. 55 See Response Letter, supra note 4. 56 See id.
services." With respect to the commenter's concern about members needing additional information to assess the fixed costs of exchange membership, the Exchange responded that these are not fixed costs of "Exchange members" but instead costs to any User who voluntarily chooses to purchase such services based upon "[t]he form and latency of access and connectivity that bests suits a User's needs . . . ." Users do not require the Exchange's access or connectivity to trade on the Exchange and can instead use alternative access and connectivity options for trading if they choose.

In response to the commenter's argument regarding different methods of access to trading, the Exchange stated that "it is a vendor of fair and non-discriminatory access, and like any vendor with multiple product offerings, different purchasers may make different choices regarding which products they wish to purchase." The Exchange further stated in response to the commenter's concern of a lack of true alternatives for a "comparable product", that the filing lists several alternative options for Users and a User can evaluate the "relative benefits of those alternatives and choose whichever it deems most beneficial to it . . . ."

Amendment No. 1

In Amendment No. 1, the Exchange offers additional justification for the proposed rule change. In Amendment No. 1, the Exchange addressed (1) the benefits offered by the Premium NYSE Data Products that are not present in the Included Data Products, (2) how Premium NYSE Data Products are related to the purpose of co-location, (3) the similarity of charging for connectivity to Third Party Systems and DTCC and charging for connectivity to Premium NYSE Data Products and (4) the costs incurred by the Exchange in providing connectivity to Premium NYSE Data Products to Users in the data center. In the Amendment, the Exchange provided further detail on the benefits provided to Users through the Premium NYSE Data Products including "depth of book order data (with add, modify and delete orders), trades (with corrections and cancel/errrors), opening and closing imbalance data, security status updates (e.g., trade corrections and trading halts) and stock summary messages." The Exchange also clarified which costs are associated with providing Users with access and connectivity to the various services discussed in the filing, including the Premium NYSE Data Products.

III. Proceedings To Determine Whether To Disapprove SR–NYSEArca–2016–89 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as modified by Amendment No. 1. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the following grounds for disapproval that are under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities;"
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to protect the operation of a free and open market and a national market system" and "protect investors and the public interest," and not be "designed to permit unfair discrimination between customers, issuers, brokers, or dealers;"
- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]." As discussed above, the Exchange's proposal would, among other things, establish fees relating to a User's access to trading and execution services, connectivity to data feeds and to testing and certification feeds, connectivity to clearing, and other services. The Exchange believes that the proposed fees are consistent with Sections 6(b)(4), (5), and (8) of the Act because the fees charged for co-location services are constrained by the active competition for the order flow and other business from such market participants. The Exchange stated that charging excessive fees would make it stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms. Additionally, the Exchange believes that there are alternatives for a User both in and outside of the data center if it believes the fees are too excessive, the fees are consistent with the Act. Specifically, the Exchange noted that a User could terminate its co-location arrangement with the exchange "and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location."

Additionally, "[a]lternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof." However, the Exchange also stated that the expectation of co-location was that normally Users would expect reduced latencies in sending orders to the Exchange and in receiving market data from the Exchange by being co-located. Therefore, as the Exchange states in Amendment No. 1, both Included Data Products and Premium NYSE Data Products are "directly related to the purpose of co-location."
The commenter suggests that Users do not in fact have alternatives to paying the connectivity fee to obtain Premium NYSE Data Products. If these products are integral to co-located Users for trading on the Exchange, the Commission questions whether obtaining the information contained in these products from another source is, in fact, a viable alternative given the importance of receiving such information in a timely manner. The Commission is concerned that the Exchange has not clearly identified a distinction between the utility of the Included Data Products and the provision of connectivity to Premium NYSE Data Products, as opposed to a distinction between the utility of the Included Data Products and the provision of connectivity to Premium NYSE Data Products in a different manner is consistent with Sections 6(b)(4), (5) and (8)\textsuperscript{,} any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the efficiency and merit of the Exchange’s statements in support of the proposed rule change, as modified by Amendment No. 1, in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

**Electronic Comments**
- Use the Commission’s Internet comment form (http://www.sec.gov/rules/sro.shtml);
- Send an email to rule-comments@sec.gov. Please include File No. SR-NYSEArca–2016–89 on the subject line.

**Paper Comments**
- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File No. SR-NYSEArca–2016–89. 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 Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements

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\textsuperscript{86} See IEX Letter supra note 4.

\textsuperscript{87} See Amendment No. 1 supra note 6.

\textsuperscript{88} See id.

\textsuperscript{89} 15 U.S.C. 78f(b)(4), (b)(5) and (b)(8).


\textsuperscript{91} Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

\textsuperscript{92} 15 U.S.C. 78f(b)(4), (b)(5) and (b)(8).
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 Web site 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2016–89, and should be submitted by December 20, 2016. Rebuttal comments should be submitted by January 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.93

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE MKT Rule 901NY

November 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),2 and Rule 19b–4 thereunder,3 notice is hereby given that on November 10, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") 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 NYSE MKT Rule 901NY to permit the Chief Executive Officer of the Exchange or his or her designee to take certain actions in connection with the trading of securities on the NYSE Amex Options marketplace. The proposed rule change is available on the Exchange’s Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections 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 NYSE Amex Options Rule 901NY (Trading Sessions) to permit the Chief Executive Officer ("CEO") of the Exchange or his or her designee to take certain actions in connection with the trading of securities on the Exchange.

The Exchange believes the proposed rule change would make Rule 901NY more reflective of the organizational structure of the Exchange. At the same time, the proposed rule changes would ensure that the Board of Directors of the Exchange continues to have the authority to take action it deems necessary or appropriate in particular situations.

The first paragraph of Rule 901NY provides that, unless otherwise ruled by the Board of the Exchange or its designee, the Exchange shall be open for the transaction of business daily except on Saturdays and Sundays, and that the hours at which trading sessions shall open and close shall be established by the Board or its designee. Commentary .01 to Rule 901NY notes that, except under unusual conditions as may be determined by the Board or its designee, hours during which transactions in options on individual securities may be made on the Exchange shall correspond to the normal hours for business set forth in the rules of the primary exchange listing the securities underlying the options.

The Exchange proposes to amend the first paragraph of Rule 901NY to provide that, except as may be otherwise determined by the Board as to particular days, the Exchange shall be open for the transaction of business on every business day. The Exchange proposes to remove the current exclusion of Saturdays and Sundays because Saturdays and Sundays are not business days and therefore no exclusion is needed. Finally, the amended paragraph would provide that the hours at which trading sessions shall open and close may be specified by Exchange rule, as well as by the Board. The two paragraphs of the present rule would become paragraphs (a) and (b). These proposed rule changes are based in part Exchange Rule 51(a)—Equities as well as on New York Stock Exchange LLC ("NYSE LLC") Rule 51(a).4

The Exchange proposes to add new paragraphs (c), (d), and (e) to Rule 901NY. These proposed changes are based on Rule 51(b)–(d)—Equities and NYSE Rule 51(b) and (c). New paragraph (c) would provide that, except as may be otherwise determined by the Board of Directors, the CEO of the Exchange or his or her designee may halt or suspend trading in some or all securities traded on the Exchange; extend the hours for the transaction of business on the Exchange; close some or all Exchange facilities; determine the duration of any such halt, suspension or closing undertaken; or determine to trade securities on the Exchange’s disaster recovery facility.5

6 As part of its business continuity and disaster recovery plans, the Exchange maintains a disaster recovery facility, which is a secondary data center located in a geographically diverse location, as required by Regulation SCI. See 14 CFR 242.1001(a)(2)(v) (requiring policies and procedures for business continuity [sic] and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-