SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61999; File No. SR-NYSEArca-2010-15)

April 29, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Amending its Schedule of Fees and Charges for Exchange Services

I. Introduction

On March 5, 2010, 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"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to co-location services and related fees. The proposed rule change was published for comment in the Federal Register on March 26, 2010.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description

In its proposal, NYSE Arca described certain co-location services offered by the Exchange, and proposed to amend its Schedules of Fees and Charges for Exchange Services for both its equities and options platforms (the "Schedules") in order to identify fees pertaining to such co-location services.

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

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 61748 (March 19, 2010), 75 FR 14644 ("Notice").

Co-location Services

The Exchange offers its Users[4] the opportunity to rent space on premises controlled by the Exchange so that they may locate their electronic servers in close physical proximity to the Exchange's trading and execution systems. These co-location services are currently provided at a data center operated by a private third-party vendor located in New Jersey, and Users may rent space ranging from half cabinets up to two full cabinets, with different power usage capabilities ranging from 2 kilowatts up to 8 kilowatts. The services provided include equipment installation, cross connections, and miscellaneous post-installation services (including cable installation, equipment racking and "remote-hands" maintenance). In the proposal, the Exchange represents that the fees assessed for the services and space generally reflect the amount of space used and power required.

NYSE Arca further represents that Users that receive co-location services from NYSE Arca do not receive any means of access to the Exchange's trading and execution systems that is separate from or superior to that of Users that do not receive co-location services. NYSE Arca further represents that all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the Exchange's data center or not. In addition, the Exchange represents that co-located Users do not receive any market data or data service product that is not available to all Users. Finally, NYSE Arca notes that although Users that receive co-location services normally would expect reduced latencies when sending orders to the Exchange and receiving market data from the Exchange,

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4 The term "User" means any ETP Holder or Sponsored Participant who is authorized to obtain access to the NYSE Arca Marketplace pursuant to Rule 7.29, and any OTP Holder, OTP Firm or Sponsored Participant that is authorized to obtain access to OX pursuant to Rule 6.2A. See NYSE Arca Equities Rule 1.1(yy) and NYSE Arca Options Rule 6.1A(a)(19).

NYSE Arca believes that other than these reduced latencies, there are no material differences in terms of access to the Exchange between Users that choose to co-locate and those that do not.

In the proposal, the Exchange explained that it offers co-location space based on availability, and believes that it has sufficient space to accommodate current demand on an equitable basis. In addition, according to the Exchange, any difference among the positions of the cabinets within the data center does not create any material difference among co-location Users in terms of access to the Exchange.

Co-Location Fees

The Exchange's proposed co-location fees, which, in part, reflect power usage priced at $1000 per kilowatt ("kW") per month, are reflected below.

Half cabinet (up to 2 kW)	$2000 per month $2500 one time installation fee
Full cabinet (up to 2.5 kW)	$2500 per month $5000 one time installation fee
Full cabinet (up to 4 kW)	$4000 per month $5000 one time installation fee
Full cabinet (up to 8 kW)	$8000 per month $5000 one time installation fee
Miscellaneous services post installation (including cable installation services, equipment racking services, and ongoing remote-hands maintenance)	$200 per hour
Fiber cross connections (local and interfloor)	$600 per month $950 one time installation fee
Less than half cabinet[5]	$150 per Rack Unit

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

5 The Exchange represents that it supports existing arrangements to provide Users with less than a half cabinet, but it does not offer that option to new co-location Users.

securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] 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, and with Section 6(b)(5) of the Act,[8] which requires, among other things, that that the rules of a national securities exchange be designed 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.

The Commission believes that the proposed co-location fees are equitably allocated insofar as they are applied on the same terms to similarly-situated market participants. In addition, the Commission believes that the co-location services described in the proposed rule change are not unfairly discriminatory because: 1) co-location services are offered to all Users who request them and pay the appropriate fees; 2) the Exchange has represented that Users receiving co-location services do not receive any means of access to the Exchange's trading and execution systems that is separate from or superior to that of Users that do not receive co-location services; 3) the Exchange has represented that there are no material differences in terms of access to the Exchange between Users that choose to co-locate and those that do not, other than co-located Users' reduced latencies due to proximity; and 4) the Exchange has stated that it has sufficient space to accommodate current demand for co-location services on an equitable

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6 In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. <u>See</u> 15 U.S.C. 78c(f).

7 15 U.S.C. 78f(b)(4).

8 15 U.S.C. 78f(b)(5).

basis.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR-NYSEArca-2010-15) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon
Deputy Secretary

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9 15 U.S.C. 78s(b)(2).

10 17 CFR 200.30-3(a)(12).