

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70173; File No. SR-NYSEArca-2013-80)

August 13, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Describe the Billing Practice for Co-location Services and Expand Co-location Services to Provide for a 40 Gigabit Liquidity Center Network Connection

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 1, 2013, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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 (i) describe the Exchange’s current billing practice for co-location services received by Users that connect to more than one market, and (ii) expand its co-location services to provide for a 40 gigabit (“Gb”) Liquidity Center Network (“LCN”) connection in the Exchange’s data center. The text of 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 (i) describe the Exchange’s current billing practice for co-location services received by Users that connect to more than one market, and (ii) expand its co-location services to provide a 40 Gb LCN connection in the Exchange’s data center.⁴ The Exchange’s affiliate NYSE MKT LLC (“NYSE MKT”) has filed substantially the same proposed rule change, and its affiliate New York Stock Exchange LLC (“NYSE” and together

⁴ The Securities and Exchange Commission (“Commission”) initially approved the Exchange’s co-location services in Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR-NYSEArca-2010-100) (the “Original Co-location Approval”). The Exchange’s co-location services allow Users to rent space in the data center so they may locate their electronic servers in close physical proximity to the Exchange’s trading and execution system. See id. at 70049. For purposes of the Exchange’s co-location services, the term “User” includes (i) ETP Holders and Sponsored Participants that are authorized to obtain access to the NYSE Arca Marketplace pursuant to NYSE Arca Equities Rule 7.29 (see NYSE Arca Equities Rule 1.1(yy)); (ii) OTP Holders, OTP Firms and Sponsored Participants that are authorized to obtain access to the NYSE Arca System pursuant to NYSE Arca Options Rule 6.2A (see NYSE Arca Options Rule 6.1A(a)(19)); and (iii) non-ETP Holder, non-OTP Holder and non-OTP Firm broker-dealers and vendors that request to receive co-location services directly from the Exchange. See, e.g., Securities Exchange Act Release Nos. 65970 (December 15, 2011), 76 FR 79242 (December 21, 2011) (SR-NYSEArca-2011-74) and 65971 (December 15, 2011), 76 FR 79267 (December 21, 2011) (SR-NYSEArca-2011-75).

with NYSE MKT, “Affiliates”), is expected to do so as well.⁵ The Exchange will propose applicable fees for the proposed 40 Gb LCN connection via a separate proposed rule change.

Current Billing Practice

The Exchange and its Affiliates (collectively, the “Exchanges”) utilize a single data center in Mahwah, New Jersey (the “data center”) to provide co-location services to their respective Users.⁶ The Exchanges offer identical co-location services in the data center and charge identical fees for such services. A User only incurs a single charge for a particular co-location service and is not charged multiple times if it obtains such service as, for example, a member of more than one Exchange. In other words, if a User receives a co-location service in the data center, and, pursuant to separate non-co-location fees, connects to all three Exchanges,

⁵ See SR-NYSEMKT-2013-67. The Commission initially approved NYSE MKT’s co-location services in Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR-NYSEAmex-2010-80). For purposes of NYSE MKT co-location services, the term “User” includes (i) member organizations, as that term is defined in the definitions section of the General and Floor Rules of the NYSE MKT Equities Rules, and ATP Holders, as that term is defined in NYSE Amex Options Rule 900.2NY(5); (ii) Sponsored Participants, as that term is defined in Rule 123B.30(a)(ii)(B) – Equities and NYSE Amex Options Rule 900.2NY(77); and (iii) non-member organization and non-ATP Holder broker-dealers and vendors that request to receive co-location services directly from the Exchange. See, e.g., Securities Exchange Act Release Nos. 65974 (December 15, 2011), 76 FR 79249 (December 21, 2011) (SR-NYSEAmex-2011-81) and 65975 (December 15, 2011), 76 FR 79233 (December 21, 2011) (SR-NYSEAmex-2011-82). The Commission initially approved NYSE’s co-location services in Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56). For purposes of NYSE co-location services, the term “User” includes (i) member organizations, as that term is defined in NYSE Rule 2(b); (ii) Sponsored Participants, as that term is defined in NYSE Rule 123B.30(a)(ii)(B); and (iii) non-member organization broker-dealers and vendors that request to receive co-location services directly from the Exchange. See, e.g., Securities Exchange Act Release No. 65973 (December 15, 2011), 76 FR 79232 (December 21, 2011) (SR-NYSE-2011-53).

⁶ For purposes of this proposal, the term “Users” hereinafter refers collectively to the Exchanges’ Users.

the User is not charged for such co-location service three separate times.⁷ Similarly, some Users are content service provider Users (“CSP Users”) that do not connect to any Exchange; rather, they provide services to other Users co-located at the data center. CSP Users are nonetheless subject to the relevant fees for the co-location services they use.⁸ Users have been billed for co-location services in this manner beginning with the availability of co-location services in the data center in 2010.

As discussed below, there are a number of reasons for billing co-location in this manner. Co-location services do not directly result in access to any of the Exchanges; other, non-co-location fees apply to access. In addition, the level of co-location services requested by a User does not, in and of itself, depend on whether the User connects only to the Exchange, or to the Exchange and one or both of its Affiliates; and, in fact, as noted above, not all Users connect to an Exchange.

First, the fees for co-location services are not fees for direct access to an Exchange; co-location services do not provide such direct access to an Exchange. Rather, all orders sent to the Exchanges enter their respective trading and execution systems through the same order gateway – the Common Customer Gateway (“CCG”) – regardless of whether the sender is co-located in

⁷ The three Exchanges operate five markets. The NYSE operates an equities market. NYSE Arca operates an options market, and, through its wholly owned subsidiary NYSE Arca Equities Inc., an equities market. NYSE MKT operates an equities market, and, through NYSE Amex Options LLC, an options market. A User can only access a market through co-location services if such User is authorized to obtain such access as a member, OTP Holder, ETP Holder or Sponsored Participant. See supra note 5.

⁸ CSP Users, may, for example, provide order routing/brokerage services and/or market data delivery services to subscriber Users. CSP Users are subject to the same fees as other Users. However, rather than use a standard LCN connection, CSP Users send data to, and communicate with, subscribing users via a dedicated LCN connection (an “LCN CSP” connection). Accordingly, only CSP Users are subject to the fees for LCN CSP connections. See Securities Exchange Act Release Nos. 67669 (August 15, 2012), 77 FR 50746 (August 22, 2012) (SR-NYSEArca-2012-62) and 67667 (August 15, 2012), 77 FR 50743 (August 22, 2012) (SR-NYSEArca-2012-63).

the data center or not. The particular trading and execution systems of the Exchanges to which an order is eventually sent are determined by order/quote entry ports (“ports”). Fees for ports are charged separately based on the particular Exchanges to which the ports are configured to access/connect.⁹ Accordingly, a User that accesses an Exchange pays for that access in the form of a port fee, as does any member that is not a co-location User. In this regard, and as noted in the Original Co-location Approval as well as subsequent rule filings relating to changes in co-location services and pricing, Users that receive co-location services from the Exchange do not receive any means of access to any of the Exchange’s trading and execution systems that is separate from, or superior to, that of other Users.¹⁰

Second, the level of co-location services a User purchases does not, in and of itself, depend on whether the User connects only to the Exchange or to the Exchange and one or both of its Affiliates. Similarly, the cost incurred by the Exchanges to provide co-location services does not vary based on whether the User connects to one or to several of the Exchanges’ markets. The fees charged for co-location services generally fall in three groups: (1) equipment and hardware, (2) labor-based services, and (3) administrative matters. Many of the fees vary depending on the amount of such services used, so that as the level of equipment and hardware

⁹ For a more detailed description of the method of billing for ports, see Securities Exchange Act Release Nos. 68230 (November 14, 2012), 77 FR 69670 (November 20, 2012) (SR-NYSEArca-2012-122) and 68227 (November 14, 2012), 77 FR 69679 (November 20, 2012) (SR-NYSEArca-2012-123).

¹⁰ See, e.g., Original Co-location Approval at 70049. See also Securities Exchange Act Release Nos. 65970 (December 15, 2011), 76 FR 79242 (December 21, 2011) (SR-NYSEArca-2011-74); 65971 (December 15, 2011), 76 FR 79267 (December 21, 2011) (SR-NYSEArca-2011-75); 67669 (August 15, 2012), 77 FR 50746 (August 22, 2012) (SR-NYSEArca-2012-62); and 67667 (August 15, 2012), 77 FR 50743 (August 22, 2012) (SR-NYSEArca-2012-63). In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchanges.

or services used increases, so does the cost.¹¹ Therefore, a User that connects only to the Exchange and that receives co-location services in the data center would be charged the same amount as a User that receives the same level of co-location services but connects to the Exchange and one or both of its Affiliates or a User that does not connect to any Exchange.

For example, with respect to equipment and hardware, a User may purchase cross connects, which are fiber cross connects between its cabinets or between its cabinets and those of another User. The number of cross-connects a User purchases directly depends on how it configures its cabinets and whether it is a CSP User, not the number of Exchanges to which it connects. Similarly, a User may purchase a physical cage to house its servers and other equipment in the data center. Fees for cages are based on the size of the cage. The more cabinets a User has, the greater the size of the cage it is likely to request and therefore the greater the cost. The number of the Exchanges to which the User connects is not determinative of the number of cabinets and size of the cage that the User purchases.

With respect to labor-related services, for example, the Exchanges charge an “Initial Install Services” fee of \$800 per cabinet, for initial racking of equipment in a User’s cabinet and the provision of up to 10 cables. A “Rack and Stack Installation” charge of \$200 per server applies for handling, unpacking, tagging, and installation of the server in the User’s cabinet. Additionally, a “Hot Hands Service” is available and allows Users to use on-site data center personnel to maintain User equipment, with hourly charges depending on whether the service is during normal business hours and whether the service is expedited. None of these charges vary

¹¹ The Exchange notes that it also charges a fee to a User that provides “hosting” to its own customers (“Hosted Users”). See SR-NYSEArca-2011-74 and SR-NYSEArca-2011-75, supra note 4. Hosting includes, for example, a User supporting its Hosted User’s technology, whether hardware or software, through the User’s co-location space. As with the fees described above, a User is charged additional fees as the level of co-location services increases.

based on the number of the Exchanges' markets to which a User connects, but rather based on the services sought.

With respect to administrative matters, for example, the Exchange charges \$50 per badge request for provision of a permanent data center site access badge for a User representative. The Exchange also charges \$75 per hour for visitor security escorting, which is required during User visits to the data center. These, like other co-location fees, are not charged differently based on how many of the Exchanges' markets to which a User connects.¹²

Finally, the Exchange notes that not all Users of co-location services actually connect to the Exchanges. If billing for co-location services was based on the Exchanges to which a User connected, CSP Users would not be charged at all. Therefore, billing once per co-location service is also consistent with the fact that some CSP Users do not connect to any of the Exchanges.

The Exchange will amend its equities and options Fee Schedules to describe the Exchange's current billing practice for co-location services received by Users that connect to more than one of the Exchanges.

40 Gb LCN Connection

The LCN is a local area network that is available in the data center and that provides Users with access to the Exchange's trading and execution systems via the CCG and to the Exchanges' proprietary market data products. LCN access is currently available in one and 10 Gb capacities. LCN access with higher capacity is designed to achieve lower latency in the transmission of data between Users and the Exchange. The Exchange proposes to make a 40 Gb

¹² See supra note 4.

LCN connection available in the Exchange's data center.¹³ This Exchange is proposing this change in order to make an additional service available to its co-location Users and thereby satisfy demand for more efficient, lower-latency connections.

As is the case with all Exchange co-location arrangements, neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is an ETP Holder, an OTP Holder or OTP Firm, a Sponsored Participant or an agent thereof (e.g., a service bureau providing order entry services). Additionally, as is the case with existing co-location services, use of the co-location services proposed herein would be completely voluntary and would be available to all Users on a non-discriminatory basis.¹⁴

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 Users would have in complying with the proposed change.

¹³ At this time, the Exchange is not proposing to make LCN CSP connections available at a 40 Gb bandwidth because, at least initially, CSP User demand is not anticipated to exist. Also, the Exchange notes that, for a 40 Gb "Bundle," SFTI and optic connections would be at 10 Gb and only the LCN connections would be at 40 Gb, because 40 Gb bandwidths are not currently offered for SFTI and optic connections. The Exchange will include language in the Price List in the related fee change to reflect this fact.

¹⁴ As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the CCG, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Sections 6(b)(5) of the Act,¹⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that its billing practice promotes just and equitable principles of trade and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the level of co-location services requested by a User generally does not, in and of itself, depend on whether the User connects only to the Exchange, or to the Exchange and its Affiliates. For example, to charge one User twice for a cage because that User connects to two Exchanges, when another User that buys the same size cage only pays once, would not promote just and equitable principles of trade. Similarly, the cost incurred by the Exchanges to provide co-location services does not vary based on whether the User connects to one or several of the Exchanges' markets. CSP Users do not connect to any of the Exchanges, which would make billing based on connection to the Exchanges impractical. The Exchange also believes that its billing practice is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because charging a User for co-location services based on how many of the

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

Exchanges' markets to which a User connects could result in the Exchanges receiving the proceeds from multiple fees despite only providing a service once.

The Exchange also believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because co-location services do not directly result in access to the Exchanges' markets, and, therefore, co-location fees are not charges that depend on how many of the Exchanges' markets a User connects to. In fact, certain Users do not connect to any of the Exchanges. Instead, all orders sent to the Exchanges enter their respective trading and execution systems through CCG, regardless of whether the sender is co-located in the data center or not. Additionally, the particular trading and execution systems of the Exchanges to which an order is eventually sent are determined by ports, for which fees are charged separately based on the particular Exchanges to which the ports are configured to access/connect. In this regard, Users that receive co-location services from the Exchanges do not receive any means of access to the Exchanges' trading and execution systems that is separate from, or superior to, that of other Users.

The Exchange believes that the proposed 40 Gb LCN connection is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because it would make a service available to Users that require the increased bandwidth, but Users that do not require the increased bandwidth could continue to request an existing lower-bandwidth LCN connection. The Exchange believes that this would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because it would provide Users with additional choices with respect to the optimal bandwidth for their connections.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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

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

In accordance with Section 6(b)(8) of the Act,¹⁷ the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because any 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 could have access to the co-location services provided in the data center. This is also true because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (i.e., the same range of products and services are available to all Users).

The Exchange also believes that its billing practice will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because all Users are only charged once for each co-location service in the data center, even if such User connects to more than one of the Exchanges' markets, or to none of the Exchanges, and the pricing for co-location services is such that as the level of services increases, so does the cost. Additionally, the Exchange believes that its co-location billing practice is consistent with the co-location services billing practice of at least one of its competitors, The NASDAQ Stock Market LLC ("NASDAQ").¹⁸

¹⁷ 15 U.S.C. 78f(b)(8).

¹⁸ See NASDAQ Rule 7034 for a description of NASDAQ's co-location services. The Exchange understands that NASDAQ only charges its co-location users one fee for each co-location service received, even if such user eventually connects to NASDAQ and any of its affiliates (e.g., NASDAQ OMX BX, Inc. or NASDAQ OMX PHLX LLC).

The Exchange also believes that the proposed 40 Gb LCN connections will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will satisfy User demand for more efficient, lower-latency connections. Additionally, the Exchange believes that the proposed change will enhance competition, in that NASDAQ offers a similar service to its co-location users.¹⁹

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if, for example, they deem fee levels at a particular venue to be excessive or if they determine that another venue's products and services are more competitive than on the Exchange. In such an environment, the Exchange must continually review, and consider adjusting, the services it offers as well as any corresponding fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

No written comments were solicited or received with respect to the proposed rule change.

¹⁹ See id.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms does 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange noted that the cost incurred by the Exchange to provide co-location services does not vary based on whether the User connects to one or several of the Exchange's Affiliates, or to none of the Affiliates, and co-location services do not directly result in access to the Exchange or its Affiliates. Also, the proposal of a new 40Gb LCN connection would merely make higher-bandwidth, lower-latency LCN connections available on a voluntary basis to Users that require the increased bandwidth. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. With respect to the Exchange's billing practices for co-location for Users that connect to the Exchange and its Affiliates, the waiver of the 30-day

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

operative delay would allow the Exchange's fee schedule to immediately reflect the Exchange's existing practice. Regarding the proposed 40 Gb LCN Connection, it would allow Users to immediately benefit from an additional choice with respect to the optimal bandwidth for their connections.²² Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

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.

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2013-80 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

²² For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-NYSEArca-2013-80. This file number should be included on the subject line if e-mail 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 (<http://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 10:00 a.m. and 3:00 p.m. Copies of the 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 Number SR-NYSEArca-2013-80 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Kevin M. O'Neill
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).