

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91713; File No. SR-NYSEArca-2021-26)

April 29, 2021

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges Schedules

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 April 16, 2021, 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 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 the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges (together, the “Fee Schedules”) regarding colocation services and fees to add further specificity as to how monthly fees for dedicated cabinets are calculated. 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 it

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 its Fee Schedules regarding colocation services and fees⁴ to add further specificity as to how monthly fees for dedicated cabinets are calculated. The proposed change is not substantive and would not change the amount or structure of the fees.

The Exchange offers Users⁵ dedicated and partial cabinets to house their servers and other equipment.⁶ Each dedicated cabinet has a standard power allocation of either 4 kilowatts

⁴ The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (“Commission”) in 2010. See Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR-NYSEArca-2010-100). The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (“ICE”). Through its ICE Data Services business, ICE operates a data center in Mahwah, New Jersey, from which the Exchange provides co-location services to Users.

⁵ For purposes of the Exchange’s co-location services, a “User” means any market participant that requests to receive co-location 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 Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange’s affiliates New York Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc., and NYSE National, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2021-26, SR-NYSEAMER-2021-22, SR-NYSECHX-2021-08, and SR-NYSESTAT-2021-10.

⁶ See Securities Exchange Act Release No. 71130 (December 18, 2013), 78 FR 77765 (December 24, 2013) (SR-NYSEArca-2013-143).

("kW") or 8 kW, but additional power can be added if the User requests.⁷ Users may request that such additional power be allocated to a dedicated cabinet when it is first set up or later.

A User pays a monthly fee based on the power allocated to its dedicated cabinets. As previously indicated,⁸ the tiered fee is based on the total kW's allocated to all of a User's dedicated cabinets, not the kW's allocated to an individual dedicated cabinet. For example, a User that has two dedicated cabinets with a total power allocation of 12 kW has a monthly charge of \$1,200 per kW for the first eight kW and \$1,050 per kW for the next four kW (between 9 kW and 12 kW), for a total of \$13,800, irrespective of how the User divides the 12 kW between its two cabinets.

To further clarify how the fees are calculated, in a non-substantive change, the Exchange proposes to make the following edits to the Fee Schedules:

- revise the title "Monthly Fee per Cabinet" to read "Monthly Fee for Cabinets";
- and
- under the heading "Dedicated Cabinet," add the following text: "Monthly fee is based on total kW's allocated to all of a User's dedicated cabinets".

The Exchange does not propose to change the fees.

Application and Impact of the Proposed Changes

The proposed change is not expected to have any impact on Users. Users are currently subject to the described services and fees, none of which is new or novel. Current Users would not incur any new or changed fees and the Exchange does not expect to attract any new Users as

⁷ Presently, the maximum amount of power that can be allocated to one dedicated cabinet is 15 kW.

⁸ See Securities Exchange Act Release No. 65236 (August 31, 2011), 76 FR 55437 (September 7, 2011) (SR-NYSEArca-2011-65).

a result of the proposed change. The change would simply add clarity to the Fee Schedules concerning the monthly fee for dedicated cabinets.

The proposed change is not targeted at, or expected to be limited in applicability to, a specific segment of market participant, as colocation is available to any market participant that wishes to be a User.

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations 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, 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

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(4).

charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change is reasonable because it would add clarity to the Fee Schedules regarding how the monthly fee for dedicated cabinets is calculated, clarifying that the monthly fee for dedicated cabinets is based on the aggregate number of kW allocated to all the User's dedicated cabinets, and not charged on a per-cabinet basis. It would add detail previously stated in rule filings with the Commission¹² to the Fee Schedules. Doing so would remove impediments to, and perfecting the mechanisms of, a free and open market and a national market system and, in general, protecting investors and the public interest because the change would add clarity and transparency to the Exchange rules, alleviating potential investor or market participant confusion.

The proposed change is equitable, as it would add clarity for all market participants with respect to how the monthly fee for dedicated cabinets is calculated. At the same time, it is a non-substantive change that would not impact the services available to Users or the fees charged for such services. The Exchange does not expect to attract any new Users as a result of the proposed change. The proposed change is not expected to have any impact on Users. Users are currently subject to the described services and fees, none of which is new or novel.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable colocation 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.

¹² See 76 FR 55437, supra note 8.

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

In accordance with Section 6(b)(8) of the Act,¹³ 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 it is ministerial in nature and is not designed to have any competitive impact. Rather, the change would simply add clarity to the Fee Schedules regarding how the monthly fee for dedicated cabinets is calculated, clarifying that the monthly fee for dedicated cabinets is based on the aggregate number of kW allocated to all the User's dedicated cabinets, and not charged on a per-cabinet basis. The change would add clarity and transparency to the Exchange rules, alleviating potential investor or market participant confusion.

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.

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 Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ 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

¹³ 15 U.S.C. 78f(b)(8).

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6).

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹⁶

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)¹⁷ 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2021-26 on the subject line.

Paper comments:

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

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission 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 satisfied this requirement.

¹⁷ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSEArca-2021-26. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that

you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2021-26 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.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).