

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82297; File No. SR-NYSEAMER-2017-36)

December 12, 2017

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Amend the NYSE American Equities Price List and the NYSE American Options Fee Schedule Relating to Co-location Services to Implement a Fee Change for Fiber Cross Connects

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 November 29, 2017, NYSE American LLC (“Exchange” or “NYSE American”) filed with the Securities and Exchange Commission (“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 American Equities Price List (“Price List”) and the NYSE American Options Fee Schedule (“Fee Schedule”) relating to co-location services to implement a fee change for fiber cross connects. The Exchange proposes to implement the proposed change on January 1, 2018. The proposed 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 amend its Price List and Fee Schedule relating to co-location⁴ services that the Exchange offers Users⁵ to implement a fee change for fiber cross connects. The Exchange proposes to implement the proposed change on January 1, 2018.

Cross connects are fiber connections used to connect cabinets and equipment within the data center. Cross connects may be used between a User’s own cabinets, between its cabinet(s) and those of another User, and between a User’s cabinet and a non-User’s equipment within the

⁴ The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. See Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR-NYSEAmex-2010-80). The Exchange operates a data center in Mahwah, New Jersey (the “data center”) from which it 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. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR-NYSEMKT-2015-67). As specified in the Price List and Fee Schedule, 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 LLC”) and NYSE Arca, Inc. (“NYSE Arca” and, together with NYSE LLC, the “Affiliate SROs”). See Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR-NYSEMKT-2013-67).

data center.⁶ For example, a cross connect may be used to connect cabinets of separate Users when a User receives technical support, order routing and/or market data delivery services from another User in the data center. Similarly, a User may utilize a cross connect with a non-User to connect to a carrier's equipment in order to access the carrier's network outside the data center.⁷

A User is able to purchase cross connects individually or in bundles (i.e., multiple cross connects within a single sheath) of six, 12, 18 or 24 cross connects. Since 2010, the initial charge for individual cross connects has been \$500 and the monthly charge \$500.⁸ The pricing for bundled cross connects has not changed since their introduction in 2012.⁹

The Exchange proposes to amend the Price List and Fee Schedule to increase the monthly recurring charges of the individual and bundled cross connects. More specifically, for individual cross connects, the monthly charge would be \$600; for a bundle of six cross connects, the monthly charge would be \$1,800; 12 cross connects would be \$3,000 per month; 18 cross connects would be \$3,840 per month; and 24 cross connects would be \$4,680 per month. The Exchange does not propose to amend the initial charges.

As is the case with all Exchange co-location arrangements, (i) 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 a member organization, a Sponsored Participant or an agent thereof (e.g., a service bureau providing order entry services); (ii) use of the co-location services proposed

⁶ See Securities Exchange Act Release No. 74220 (February 6, 2015), 80 FR 78894 (February 12, 2015) (SR-NYSEMKT-2015-08).

⁷ Id. at 7895.

⁸ See Securities Exchange Act Release No. 62731 (August 16, 2010), 75 FR 51515 (August 20, 2010) (SR-NYSEAmex-2010-80). See also 75 FR 59299, supra note 4, at 59299.

⁹ See Securities Exchange Act Release No. 67664 (August 15, 2012), 77 FR 50733 (August 22, 2012) (SR-NYSEMKT-2012-10).

herein would be completely voluntary and available to all Users on a non-discriminatory basis;¹⁰ and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both the Affiliate SROs.¹¹

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.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹³ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fee changes are consistent with Section 6(b)(4) of the Act for multiple reasons. The Exchange operates in a highly competitive market in which

¹⁰ 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 same order gateway, 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.

¹¹ See 78 FR 50471, supra note 5, at 50471 . The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2017-63 and SR-NYSEArca-2017-135.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that 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. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

The Exchange believes that the proposed increase in the monthly recurring charge for cross connects would be reasonable, equitably allocated and not unfairly discriminatory because, in addition to the use of cross connects being completely voluntary, cross connects would continue to be available to all Users on an equal basis (i.e., the same products and services would be available to all Users). All Users that voluntarily selected to purchase cross connects would be charged the same amount for the same services.

The Exchange believes that the proposed fee change would be reasonable, equitably allocated and not unfairly discriminatory because the Exchange offers the cross connects as conveniences to Users, but in order to do so must provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of co-location services, including by

responding to any production issues. Since the inception of co-location, the Exchange has made numerous improvements to the network hardware and technology infrastructure and has established additional administrative controls. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users.

The Exchange believes the proposed increased monthly recurring fee for cross connects would be reasonable because it would allow the Exchange to defray or cover the costs associated with offering Users cross connects, individually and in bundles, while providing each User the convenience of receiving cross connects that may be used between the User's own cabinets, between its cabinet(s) and those of another User, and between a User's cabinet and a non-User's equipment within the data center, helping Users tailor their data center operations to the requirements of their business operations. The Exchange believes that the proposed increase is representative of the value provided to Users of cross connects. The Exchange notes that it has not increased the fee for individual cross connects since 2010 or for bundled cross connects since their introduction in 2012.¹⁴ The proposed increase would provide for an equitable allocation of the reasonable cost among Users that choose to use individual cross connects.

For the reasons above, the proposed changes would 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

In accordance with Section 6(b)(8) of the Act,¹⁵ the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in

¹⁴ See 75 FR 51515, supra note 8, and 77 FR 50733, supra note 9.

¹⁵ 15 U.S.C. 78f(b)(8).

furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (i.e. the same products and services are available to all Users).

The Exchange believes that the proposed fee change for cross connects would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because in addition to the use of cross connects being completely voluntary, cross connects would continue to be available to all Users on an equal basis (i.e., the same products and services would be available to all Users). All Users that voluntarily selected to purchase cross connects would be charged the same amount for the same services. Each User would have the convenience of receiving cross connects that may be used between the User's own cabinets, between its cabinet(s) and those of another User, and between a User's cabinet and a non-User's equipment within the data center, helping Users tailor their data center operations to the requirements of their business operations. The Exchange believes that the proposed increase is representative of the value provided to Users of cross connects. The Exchange notes that it has not increased the fee for individual cross connects since 2010 or for bundled cross connects since their introduction in 2012.¹⁶ The proposed increase would provide for an equitable allocation of the reasonable cost among Users that choose to use individual cross connects.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange

¹⁶ See 75 FR 51515, *supra* note 8, and 77 FR 50733, *supra* note 9.

charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that 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. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)¹⁷ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁸ thereunder. 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

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(2).

19(b)(2)(B)¹⁹ 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-NYSEAMER-2017-36 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.

All submissions should refer to File Number SR-NYSEAMER-2017-36. 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

¹⁹ 15 U.S.C. 78s(b)(2)(B).

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-NYSEAMER-2017-36 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.²⁰

Robert W. Errett
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).