

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63275; File No. SR-NYSEArca-2010-100)

November 8, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Applicable Sections of Its Schedules of Fees and Charges for Exchange Services for Both Its Equities and Options Platforms (the “Schedules”) to Reflect Fees Charged for Co-location Services

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 3, 2010, 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 amend the applicable sections of its Schedules of Fees and Charges for Exchange Services for both its equities and options platforms (the “Schedules”) to reflect fees charged for co-location services as described more fully herein. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, on the Commission’s website at <http://www.sec.gov>, and <http://www.nyse.com>.

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

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 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 Schedules to identify fees pertaining to co-location services, which allow Users<sup>4</sup> of the Exchange to rent space on premises controlled by the Exchange in order that they may locate their electronic servers in close physical proximity to the Exchange's trading and execution systems.<sup>5</sup> The Exchange plans to offer these co-location services beginning in January 2011 at its data center in Mahwah New Jersey.<sup>6</sup> The Exchange will offer space at the data center in cabinets with power usage capability of either four or eight

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<sup>4</sup> For the purposes of this filing, the term "Users" includes any ETP Holder or Sponsored Participant who is 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)), or any OTP Holder, OTP Firm or Sponsored Participant that is authorized to obtain access to OX pursuant to NYSE Arca Options Rule 6.2A (*see* NYSE Arca Options Rule 6.1A(a)(19)).

<sup>5</sup> The Commission has approved proposed rule filings submitted by the Exchange's affiliates, the New York Stock Exchange LLC, and NYSE Amex LLC (with respect to its equities business), to offer the same co-location services from the Mahwah data center at the same prices. See Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR-NYSE-2010-56); Securities Exchange Act Release No. 62960 (September 21, 2010) 75 FR 59310 (September 27, 2010) (SR-NYSEAmex-2010-80).

<sup>6</sup> The Exchange will announce the effective date of the fees set forth in this proposed rule change through a notice to Users.

kilowatts (kW).<sup>7</sup> In addition, the Exchange will offer Users services related to co-location, including cross connections, equipment and cable installation, and remote “hot-hands” services.

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 Users that do not receive co-location services. 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, co-located Users do not receive any market data or data service product that is not available to all Users. However, Users that receive co-location services normally would expect reduced latencies in sending orders to the Exchange and receiving market data from the Exchange. In addition, co-located Users have the option of obtaining access to the Exchange’s Liquidity Center Network (“LCN”), a local area network available in the data center.<sup>8</sup> Co-located Users have the option of using either the LCN or the Exchange’s Secure Financial Transaction Infrastructure (“SFTI”) network, to which all Users have access. Because it operates as a local area network within the data center, the LCN provides reduced latencies in comparison with SFTI. Other than the reduced

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<sup>7</sup> The Exchange also allows Users, for a monthly fee (i.e., 40% of the applicable monthly per kW fee), to obtain an option for future use on available, unused cabinet space in proximity to their existing cabinet space. Specifically, Users may reserve cabinet space of up to 30% of the cabinet space under contract, which the Exchange will endeavor to provide as close as reasonably possible to the User’s existing cabinet space, taking into consideration power availability within segments of the data center and the overall efficiency of use of data center resources as determined by the Exchange. (If the 30% measurement results in a fractional cabinet, the cabinet count is adjusted up to the next increment.) If reserved cabinet space becomes needed for use, the reserving User will have 30 business days to formally contract with the Exchange for full payment for the reserved cabinet space needed or the space will be reassigned.

<sup>8</sup> As set forth below, pricing for LCN access is provided on a stand-alone basis and on a bundled basis in combination with SFTI connections and optic connections to outside access centers and within the data center. The SFTI and optic connections are not related to the co-location services.

latencies, the Exchange believes 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. SFTI and LCN both provide Users with access to the Exchange’s trading and execution systems and to the Exchange’s proprietary market data products. User access to non-proprietary market data products is available through SFTI and not through LCN.

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

The following charts identify the proposed tiered fees for co-location and the proposed fees for related services.

<b>Initial Fee per Cabinet</b>	<b>\$5,000</b>
<b>Number of kW</b>	<b>Per kW Fee Monthly</b>
4 - 8	\$1,200
12 - 20	\$1,050
24 - 40	\$950
44 +	\$900

<b>Type of Service</b>	<b>Description</b>	<b>Amount of Charge</b>
LCN Access	1 GB Circuit	\$6,000 per connection initial charge plus \$5,000 monthly per connection

LCN Access	10 GB Circuit	\$10,000 per connection
Bundled Network Access, Option 1 (2 LCN connections, 2 SFTI connections, and 2 optic connections to outside access center)	1 GB Bundle	\$25,000 initial charge plus \$13,000 monthly charge
	10 GB Bundle	\$50,000 initial charge plus \$47,000 monthly charge
Bundled Network Access, Option 2 (2 LCN connections, 2 SFTI connections, 1 optic connection to outside access center, and 1 optic connection in data center)	1 GB Bundle	\$26,000 initial charge plus \$16,000 monthly charge
	10 GB Bundle	\$50,000 initial charge plus \$54,250 monthly charge
Bundled Network Access, Option 3 (2 LCN Connections, 2 SFTI connections, and 2 optic connections in data center)	1 GB Bundle	\$27,500 initial charge plus \$19,000 monthly charge
	10 GB Bundle	\$50,000 initial charge plus \$61,500 monthly charge
Data Center Fiber Cross Connect	Cross connect between a single User's cabinets within the data center.	\$500 per unit initial charge plus \$500 monthly per unit
Initial Install Services (Required per cabinet)	Includes initial racking of equipment in cabinet and provision of up to 10 cables (4 hrs).	\$800 per cabinet
Hot Hands Service: Normal Business Hours, Scheduled (Note: Hot Hands Service allows Users to use on-site data center personnel to maintain User equipment.)	Applies on non-NYSE Arca holidays, Monday to Friday, 9am to 5pm if scheduled at least 1 day in advance.	\$200 per hour
Hot Hands Service: Extended Business Hours, Scheduled	Applies Monday to Friday 5pm to 9am, NYSE Arca holidays, and weekends if scheduled at least 1 day in advance.	\$275 per hour

Hot Hands Service: Normal Business Hours, Expedited	Applies on non-NYSE Arca holidays, Monday to Friday, 9am to 5pm if NOT scheduled at least 1 day in advance.	\$250 per hour
Hot Hands Service: Extended Business Hours, Expedited	Applies Monday to Friday 5pm to 9am, NYSE Arca holidays, and weekends if NOT scheduled at least 1 day in advance.	\$325 per hour
Rack and Stack	Installation of one server in User's cabinet. Service encompasses handling, unpacking, tagging, and installation of the server as well as 1 network connection within the User rack.	\$200 per server
Power Recycling	Reboot of power on one server or switch as well as observing and reporting on the status of the reboot back to the User.	\$50 per reset
Shipping and Receiving	Receipt of one shipment of goods at data center from User/supplier. Includes coordination of shipping and receiving.	\$100 per shipment
Badge Request	Request for provision of a permanent data center site access badge for a User representative.	\$50 per badge
External Cabinet Cable Tray	Engineer, furnish and install Rittal 5"H x 12"W cable tray on cabinet.	\$400 per tray
Custom External Cabinet Cable Tray	Engineer, furnish and install 4" H x 24" W custom basket cable tray above client's cabinet rows.	\$100 per linear foot
Install and Document Cable	Labor charges to install and document the fitting of a cable(s) in a User's cabinet(s) in excess of the 10 copper cables included in the cabinet installation fee.	\$200 per hour

Equipment Maintenance Call Escalation	Hardware maintenance-break fix services available through NYSE Arca arrangement with Delta Computer Group.	\$100 per call
Visitor Security Escort	NYSE Arca employee escort, which is required during User visits to the data center. (Note: all User representatives are required to have a visitor security escort during visits to the data center, including User representatives who have a permanent data center site access badge.)	\$75 per hour
Technician Support Service- Non Emergency	Network technician equipped to support User network troubleshooting activity and to provide all necessary testing instruments to support the User request. Prior day notice is required.	\$200 per hour
Technician Support Service- Emergency	Network technician equipped to support User network troubleshooting activity and to provide all necessary testing instruments to support the User request. Two hour notice is required.	\$325 per hour

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the “Act”),<sup>9</sup> in general, and Sections 6(b)(4) and 6(b)(5), of the Act,<sup>10</sup> in particular, in that it is designed to (i) provide for the equitable

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4) and 15 U.S.C. 78f(b)(5).

allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities, and (ii) prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the proposed changes to the Schedules are equitable in that they apply fees for comparable co-location services uniformly to our Users. Moreover, the Exchange believes that, as described herein, access to its market is offered on fair and non-discriminatory terms.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> 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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 Commission notes that the Exchange satisfied this five-day pre-filing requirement.



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.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the co-location fees sought to be codified here are based on filings by the Exchange's affiliates, the New York Stock Exchange LLC and NYSE Amex LLC, which have already been approved by the Commission, and that accelerated approval of the co-location fees will ensure that the co-location services and fees are made available to all interested parties without delay. For this reason, the Commission designates the proposed rule change as operative upon filing.<sup>13</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-

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<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

2010-100 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.

All submissions should refer to File Number SR-NYSEArca-2010-100. 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 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 Number SR-NYSEArca-2010-100 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.<sup>14</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).