



This document is scheduled to be published in the Federal Register on 11/01/2011 and available online at <http://federalregister.gov/a/2011-28202>.

8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65625; File No. SR-NYSEARCA-2011-74)

October 26, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Expanding the Scope of Potential “Users” of Its Co-Location Services to Include Any Market Participant that Requests to Receive Co-Location Services Directly From the Exchange and Amending Its Fee Schedule to Establish a Fee for Users that Host Their Customers at the Exchange’s Data Center

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 October 14, 2011, 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 the Substance of the Proposed Rule Change

The Exchange proposes to expand the scope of potential “Users” of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange. In addition, the Exchange proposes to amend its Fee Schedule to establish a fee for Users that host their customers at the Exchange’s data center. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.com.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange operates a data center in Mahwah, New Jersey from which it provides co-location services to Users.⁴ For purposes of its co-location services, the term "User" currently 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)).⁵ The Exchange proposes to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange.⁶ Under the proposed rule change, Users could therefore include ETP Holders, Sponsored Participants, non-ETP Holder broker-dealers and vendors. The Exchange anticipates that the potential additional Users would provide, for example, hosting, service bureau, technical support, risk management, order routing and market data delivery services to

⁴ See Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR-NYSEArca-2010-100).

⁵ Id. at note 7.

⁶ As is the case today, prospective Users must agree to, and be capable of satisfying, any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

their customers while the User is co-located in the Exchange’s data center.⁷ As is the case with all Exchange co-location arrangements, neither a User, nor any of its customers, would be permitted to submit orders directly to the Exchange unless such User or customer is an ETP Holder or a Sponsored Participant. All existing co-location terms, conditions, facilities, services, and applicable fees would apply to these potential new Users.

The Exchange also proposes to amend its Fee Schedule to establish a fee applicable to Users that provide hosting services to their customers (“Hosted Users”) at the Exchange’s data center. “Hosting” would be a service offered by a User to a Hosted User and could include, for example, a User supporting its Hosted User’s technology, whether hardware or software, through the User’s co-location space. Specifically, the Exchange proposes to charge each User a fee of \$500.00 per month for each Hosted User that the User hosts in the Exchange’s data center. Users would independently set fees for their Hosted Users and the Exchange would not receive a share of any such fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁸ in general, and furthers the objectives of Section 6(b)(4)⁹ and 6(b)(5) of the Act,¹⁰ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect

⁷ The Exchange anticipates that a User’s customer(s) could include, under certain circumstances, other Users of the Exchange’s co-location services.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).

the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange's proposal to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange would increase access to the Exchange's co-location facilities by allowing additional types of Users to use those facilities. In this regard, co-location services would be offered by the Exchange to these additional types of Users, as is the case today for existing Users, in a manner that 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.

Additionally, the proposed hosting fee would be applied uniformly for comparable services provided by the Exchange and would not unfairly discriminate between similarly situated Users of co-location services. In this regard, the proposed hosting capability and related fee would be applicable to all interested Users that provide hosting services. In addition, the Exchange believes that the proposed hosting fee is reasonable in that it is designed to defray applicable expenses incurred or resources expended by the Exchange related to such services, including, but not limited to, configuration of Users' connections to their Hosted User customers and subsequent monitoring thereof by Exchange staff.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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-2011-74 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-2011-74. 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 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 NYSE. 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-2011-74, 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.¹¹

Kevin M. O'Neill
Deputy Secretary

[FR Doc. 2011-28202 Filed 10/31/2011 at 8:45 am;
Publication Date: 11/01/2011]

¹¹ 17 CFR 200.30-3(a)(12).