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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70286; File No. SR-NYSEARCA-2013-82)

August 29, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Options Fee Schedule and NYSE Arca Equities Fee Schedule to Provide for Fees for a 40 Gigabit Liquidity Center Network Connection in the Exchange 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 August 21, 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, II and III 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 Fee Schedule and, through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the "Equities Fee Schedule" and, together with the Options Fee Schedule, the "Fee Schedules") in order to provide for fees 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.

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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 Fee Schedules in order to provide for fees for a 40 Gb LCN connection in the Exchange's data center.[4] The Exchange proposes to implement the fee change effective September 3, 2013.

Users are currently able to purchase access to the Exchange's LCN, 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 Common Customer Gateway ("CCG") and to the Exchanges' proprietary market data products.[5] LCN access is currently available in one and 10 Gb

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 operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users. 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.

5 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

capacities, for which Users incur an initial and monthly fee per connection. The Exchange also recently submitted a proposal to expand its co-location services to include 40 Gb LCN connections.[6] This higher-capacity LCN access is designed to have lower latency in the transmission of data between Users and the Exchange. The Exchange proposed to expand its co-location services to include 40 Gb LCN connections in order to make an additional service available to its co-location Users and thereby satisfy demand for more efficient, lower-latency connections.

The Exchange hereby proposes to establish the following fees for 40 Gb LCN connections:

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).

6 See Securities Exchange Act Release No. 70173 (August 13, 2013) (SR-NYSEArca-2013-80). The Exchange did not propose making LCN content service provider access ("LCN CSP Access") available at a 40 Gb bandwidth because, at least initially, User demand was not anticipated to exist. Also, the Exchange noted 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 proposes to include language in the Fee Schedules to reflect this fact. The Exchange's affiliates, NYSE MKT LLC ("NYSE MKT") and New York Stock Exchange LLC ("NYSE," and together with NYSE MKT, "Affiliates") have filed substantially the same proposed rule change to expand their co-location services to include 40 Gb LCN connections. See Securities Exchange Act Release No. 70176 (August 13, 2013) (SR-NYSEMKT-2013-67) and Securities Exchange Act Release No. 70206 (August 15, 2013) (SR-NYSE-2013-59).

Type of Service	Description	Amount of Charge
LCN Access	40 Gb Circuit	$15,000 per connection initial charge plus $20,000 monthly per connection
Bundled Network Access, Option 1 (2 LCN connections, 2 SFTI connections, and 2 optic connections to outside access center)	40 Gb Bundle (LCN connections at 40 Gb; SFTI and optic connections at 10 Gb)	$60,000 initial charge plus $64,500 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)	40 Gb Bundle (LCN connections at 40 Gb; SFTI and optic connections at 10 Gb)	$60,000 initial charge plus $71,000 monthly charge
Bundled Network Access, Option 3 (2 LCN connections, 2 SFTI connections, and 2 optic connections in data center)	40 Gb Bundle (LCN connections at 40 Gb; SFTI and optic connections at 10 Gb)	$60,000 initial charge plus $77,500 monthly charge

As with the existing pricing for one and 10 Gb LCN connections, Users of the proposed 40 Gb LCN connections would be subject to an initial charge plus a monthly recurring charge per connection. However, in order to incentivize Users to upgrade to the proposed higher-bandwidth connections, the Exchange proposes that a User that submits a written order for a 40 Gb Circuit or 40 Gb Bundle between September 3, 2013 and September 30, 2013 would not be subject to the portion of the initial charge related to the LCN connections.[7]

[7] For a Bundle, this would mean that a User would not be subject to the $30,000 LCN portion of the initial charge. The Exchange notes that each 40 Gb Bundle would include two 40 Gb LCN connections. The initial charge proposed for a non-Bundled LCN Circuit is $15,000. Therefore, the LCN portion of the initial Bundle charge would be $30,000. A User would remain subject to the remaining $30,000 non-LCN portion of the initial Bundle charge, i.e. for SFTI and optic connections.

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 herein would be completely voluntary and available to all Users on a non-discriminatory basis; [8] 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 of its Affiliates.[9]

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,[10] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[11] in

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8 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.

9 See SR-NYSEArca-2013-80, supra note 6. The Exchange's Affiliates have also submitted the same proposed rule change to provide for fees for a 40 Gb LCN connection. See SR-NYSEMKT-2013-67 and SR-NYSE-2013-59.

10 15 U.S.C. 78f(b).

11 15 U.S.C. 78f(b)(4) and (5).

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 change is reasonable because the Exchange proposes to offer the additional services described herein (i.e., the proposed 40 Gb LCN connection) as a convenience to Users, but in doing so will incur certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and ongoing monitoring, support and maintenance of such services.

The Exchange further believes that the proposed change is reasonable because the proposed fees directly relate to the level of services provided by the Exchange and, in turn, received by the User. In this regard, the fees proposed for 40 Gb LCN connections are higher than, for example, the fees for 10 Gb LCN connections because costs for the initial purchase and ongoing maintenance of the 40 Gb connections are generally higher than those of the lower-bandwidth connections. However, these costs are not anticipated to be four times higher than the existing 10 Gb LCN connection. The Exchange therefore notes that while the proposed bandwidth of the 40 Gb LCN connection is four times greater than the existing 10 Gb LCN connection, the proposed fees for the 40 Gb LCN connection are significantly less than four times the fees for the 10 Gb LCN connection. Specifically, the proposed initial charge of $15,000 is only 50% greater than the initial charge of $10,000 for the existing 10 Gb LCN connection and the proposed monthly recurring charge of $20,000 is less than double the $12,000 monthly charge for the existing 10 Gb LCN connection. The Exchange believes that this supports a finding that the proposed pricing is reasonable because the Exchange anticipates realizing efficiencies as customers adopt higher-bandwidth connections, and, in turn, reflecting such efficiencies in the pricing for such connections.

The Exchange also believes that not charging the initial charge to a User that submits a written order for a 40 Gb Circuit or 40 Gb Bundle between September 3, 2013 and September 30, 2013 is reasonable because the Exchange believes it will incentivize Users to upgrade to higher-bandwidth connections during the first month that they are available, which will assist Users in meeting the growing needs of their business operations.

As with fees for existing co-location services, the fees proposed herein would be charged only to those Users that voluntarily select the related services, which would be available to all Users. Accordingly, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory and are equitably allocated because, in addition to the 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 also believes that it is equitable and not unfairly discriminatory to not charge the initial charge to a User that submits a written order for a 40 Gb Circuit or 40 Gb Bundle between September 3, 2013 and September 30, 2013 because not charging such fee will incentivize Users to upgrade to higher-bandwidth connections, which, in turn, will assist Users in meeting the growing needs of their business operations. In this regard, all Users would have the option to submit a written order for a 40 Gb Circuit or 40 Gb Bundle and, if done so between

September 3, 2013 and September 30, 2013, any such User would not be charged the initial charge related thereto.

For the reasons above, the proposed change 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.

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,[12] 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. Instead, the Exchange believes that the proposed change will enhance competition by making a service available to its co-location Users and thereby satisfying demand for more efficient, lower-latency connections. The proposed 40 Gb LCN connection 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 and pay the correspondingly lower fees. Moreover, the Exchange believes that the proposed change will enhance competition between competing marketplaces by enabling the Exchange to provide a service to Users that is similar to services available on other markets. In this regard, the Exchange notes that The NASDAQ Stock Market LLC ("NASDAQ") similarly makes a 40 Gb fiber connection available to users of its co-location

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12 15 U.S.C. 78f(b)(8).

facilities.[13]

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its 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.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[14] of the Act and subparagraph (f)(2) of Rule 19b-4[15] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca.

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)[16] of the Act to determine whether the proposed rule change should be approved or disapproved.

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13 See NASDAQ Rule 7034.

14 15 U.S.C. 78s(b)(3)(A).

15 17 CFR 240.19b-4(f)(2).

16 15 U.S.C. 78s(b)(2)(B).

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-2013-82 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-2013-82. 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-2013-82 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.[17]

Kevin M. O'Neill
Deputy Secretary

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17 17 CFR 200.30-3(a)(12).