

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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-NASDAQ-2010-138, and should be submitted on or before December 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010-28548 Filed 11-12-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63274; File No. SR-NYSEAmex-2010-101]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Options Fee Schedule To Reflect Fees Charged for Co-location Services

November 8, 2010.

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 October 26, 2010, NYSE Amex LLC ("NYSE Amex" 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 its Options Fee Schedule 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 Web site 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 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 Options Fee Schedule 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

<sup>4</sup> For the purposes of this filing, the term "Users" includes any "ATP Holder," as that term is defined in NYSE Amex (Options) Rule 900.2NY(4) and any "Sponsored Participant," as that term is defined in NYSE Amex (Options) Rule 900.2NY(77).

<sup>5</sup> The Commission has approved proposed rule filings submitted by the Exchange (with respect to its equities business) and the Exchange's affiliate, the New York Stock Exchange LLC 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).

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 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

<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.

<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.

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C.78s(b)(1).

<sup>3</sup> 15 U.S.C. 78a.

<sup>4</sup> 17 CFR 240.19b-4.

reduced 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.

Initial fee per cabinet	\$5,000
Number of kW	Per kW fee monthly
4–8	\$1,200
12–20	1,050
24–40	950
44 +	900

Type of service	Description	Amount of charge
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.
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).	10 GB Bundle .....	\$50,000 initial charge plus \$47,000 monthly charge.
Bundled Network Access, Option 3 (2 LCN Connections, 2 SFTI connections, and 2 optic connections in data center).	1 GB Bundle .....	\$26,000 initial charge plus \$16,000 monthly charge.
Bundled Network Access, Option 3 (2 LCN Connections, 2 SFTI connections, and 2 optic connections in data center).	10 GB Bundle .....	\$50,000 initial charge plus \$54,250 monthly charge.
Data Center Fiber Cross Connect .....	Cross connect between a single User's cabinets within the data center.	\$27,500 initial charge plus \$19,000 monthly charge.
Initial Install Services (Required per cabinet) ....	Includes initial racking of equipment in cabinet and provision of up to 10 cables (4 hrs).	\$500 per unit initial charge plus \$500 monthly per unit.
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 Amex holidays, Monday to Friday, 9 am to 5 pm if scheduled at least 1 day in advance.	\$800 per cabinet.
Hot Hands Service: Extended Business Hours, Scheduled.	Applies Monday to Friday 5 pm to 9 am, NYSE Amex holidays, and weekends if scheduled at least 1 day in advance.	\$200 per hour.
Hot Hands Service: Normal Business Hours, Expedited.	Applies on non-NYSE Amex holidays, Monday to Friday, 9 am to 5 pm if NOT scheduled at least 1 day in advance.	\$275 per hour.
Hot Hands Service: Extended Business Hours, Expedited.	Applies Monday to Friday 5 pm to 9 am, NYSE Amex holidays, and weekends if NOT scheduled at least 1 day in advance.	\$250 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.	\$325 per hour.
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.	\$200 per server.
Shipping and Receiving .....	Receipt of one shipment of goods at data center from User/supplier. Includes coordination of shipping and receiving.	\$50 per reset.
Badge Request .....	Request for provision of a permanent data center site access badge for a User representative.	\$100 per shipment.
External Cabinet Cable Tray .....	Engineer, furnish and install Rittal 5" H X 12" W cable tray on cabinet.	\$50 per badge.
Custom External Cabinet Cable Tray .....	Engineer, furnish and install 4" H V 24" W custom basket cable tray above client's cabinet rows.	\$400 per tray.
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.	\$100 per linear foot.
Install and Document Cable .....		\$200 per hour.

Type of service	Description	Amount of charge
Equipment Maintenance Call Escalation .....	Hardware maintenance-break fix services available through NYSE arrangement with Delta Computer Group.	\$100 per call.
Visitor Security Escort .....	NYSE 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 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 Schedule 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 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 and the Exchange’s affiliate, the New York Stock Exchange 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-NYSEAmex-2010-101 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

<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).

<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.

<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).

Securities and Exchange Commission,  
100 F Street, NE., Washington, DC  
20549–1090.

All submissions should refer to File Number SR-NYSEAmex–2010–101. 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 Web site (<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 Web site 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 a.m. and 3 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-NYSEAmex–2010–101 and should be submitted on or before December 6, 2010.

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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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–63277; File No. SR–FINRA–2010–058]**

### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Effective Date of the Changes to the FINRA Trade Reporting and Order Audit Trail System Rules Approved in SR–FINRA–2010–043**

November 8, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on November 5, 2010, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by FINRA. FINRA has designated the proposed rule change as “constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule” under Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b–4(f)(1) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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**

FINRA is proposing a rule change to delay the effective date of the changes to the FINRA trade reporting and Order Audit Trail System (“OATS”) rules as proposed in SR–FINRA–2010–043 and approved by the SEC on October 4, 2010.<sup>5</sup> The new effective date will be the new compliance date of the amendments to SEC Regulation SHO.

The proposed rule change would not make any changes to the text of FINRA rules.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, FINRA 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 these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

On February 26, 2010, the SEC adopted changes to SEC Regulation SHO with a compliance date of November 10, 2010.<sup>6</sup> On November 4, 2010, the SEC delayed the compliance date of these amendments to SEC Regulation SHO until February 28, 2011.<sup>7</sup>

On August 6, 2010, FINRA filed a proposed rule change, including amendments to FINRA's trade reporting and OATS rules consistent with the amendments to SEC Regulation SHO (SR–FINRA–2010–043) (the “Short Exempt Filing”). The Short Exempt Filing was approved by the Commission on October 4, 2010 with an effective date of November 10, 2010. In light of the delay of the compliance date for the amendments to SEC Regulation SHO, FINRA is proposing to likewise delay the effective date of the FINRA amendments proposed in the Short Exempt Filing until the new compliance date of SEC Regulation SHO.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be the new compliance date of SEC Regulation SHO.

##### **2. Statutory Basis**

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes that delaying the effective date of the

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

<sup>2</sup> 17 CFR 240.19b–4.

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

<sup>4</sup> 17 CFR 240.19b–4(f)(1).

<sup>5</sup> See Securities Exchange Act Release No. 63032 (October 4, 2010), 75 FR 62439 (October 8, 2010) (Order Approving File No. SR–FINRA–2010–043).

<sup>6</sup> See Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010).

<sup>7</sup> See Securities Exchange Act Release No. 63247 (November 4, 2010).

<sup>8</sup> 15 U.S.C. 78o–3(b)(6).