

The Exchange proposed 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.⁵ Under the proposed rule change, Users could therefore include member organizations, Sponsored Participants, non-member broker-dealers and vendors.⁶

The Exchange also proposed to amend its Price List to establish a fee applicable to Users that provide hosting services to their customers (“Hosted Users”) at the Exchange’s data center.⁷ “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 proposed 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.

III. Discussion and Commission’s Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁹ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market

⁵ As stated by the Exchange, 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. See Notice, 76 FR at 67508.

⁶ *Id.* The Exchange anticipated that the potential additional Users would provide, for example, hosting, service bureau, technical support, risk management, order routing and market data delivery services to their customers while the User is co-located in the Exchange’s data center.

⁷ *Id.*

⁸ In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).

system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange noted that the expansion of the scope of potential Users of the Exchange’s co-location services increases access to the Exchange’s co-location facilities and that the co-location services would be offered to these additional Users in a manner that is not unfairly discriminatory.¹¹ The Commission believes that this expansion of the scope of potential Users is consistent with the Exchange Act and should increase access to the Exchange co-location facilities by allowing additional categories of market participants to access the Exchange’s co-location services.

Regarding the proposed hosting fee, the Exchange represented that it will be applied uniformly and will not unfairly discriminate between Users of co-location services, as the hosting fee will be applicable to all interested Users that provide hosting services.¹² The Exchange also represented that the hosting fee is reasonable because it is designed to defray expenses incurred or resources expended by the Exchange.¹³ In light of the Exchange’s representations, the Commission believes that the hosting fee is consistent with Section 6(b)(4) of the Exchange Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR–NYSE–2011–53) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Kevin M. O’Neill,

Deputy Secretary.

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¹¹ See Notice, 76 FR at 67508.

¹² *Id.*

¹³ *Id.*

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65975; File No. SR–NYSEAmex–2011–82]

Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a 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

December 15, 2011.

I. Introduction

On October 14, 2011, NYSE Amex LLC (“NYSE Amex” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change to expand the scope of potential “Users” of its co-location services, and to amend its Fee Schedule. The proposed rule change was published for comment in the **Federal Register** on November 1, 2011.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

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 “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). The Exchange proposed 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.⁵ Under the proposed rule change, Users could therefore include ATP Holders, Sponsored Participants,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 65626 (October 26, 2011), 76 FR 67506 (“Notice”).

⁴ See Securities Exchange Act Release No. 63274 (November 8, 2010), 75 FR 69722.

⁵ As stated by the Exchange, 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. See Notice, 76 FR at 67506.

non-ATP Holder broker-dealers and vendors.⁶

The Exchange also proposed to amend its Price List to establish a fee applicable to Users that provide hosting services to their customers (“Hosted Users”) at the Exchange’s data center.⁷ “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 proposed 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.

III. Discussion and Commission’s Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁹ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange noted that the expansion of the scope of potential Users of the Exchange’s co-location services increases access to the Exchange’s co-location facilities and that the co-location services would be offered to these additional Users in a

manner that is not unfairly discriminatory.¹¹ The Commission believes that this expansion of the scope of potential Users is consistent with the Exchange Act and should increase access to the Exchange co-location facilities by allowing additional categories of market participants to access the Exchange’s co-location services.

Regarding the proposed hosting fee, the Exchange represented that it will be applied uniformly and will not unfairly discriminate between Users of co-location services, as the hosting fee will be applicable to all interested Users that provide hosting services.¹² The Exchange also represented that the hosting fee is reasonable because it is designed to defray expenses incurred or resources expended by the Exchange.¹³ In light of the Exchange’s representations, the Commission believes that the hosting fee is consistent with Section 6(b)(4) of the Exchange Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR–NYSEAmex–2011–82) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Kevin M. O’Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65977; File No. SR–NYSEArca–2011–93]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .02 to NYSE Arca Options Rule 6.72 in Order To Extend the Penny Pilot in Options Classes in Certain Issues Through June 30, 2012

December 15, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on December 2, 2011, NYSE Arca, Inc. (the

“Exchange” or “NYSE Arca”) 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 Exchange. 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 Commentary .02 to NYSE Arca Options Rule 6.72 in order to extend the Penny Pilot in options classes in certain issues (“Pilot Program”), previously approved by the Securities and Exchange Commission (“Commission”), through June 30, 2012. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and 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 Exchange 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. 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 hereby proposes to amend Commentary .02 to NYSE Arca Options Rule 6.72 to extend the time period of the Pilot Program,³ which is currently scheduled to expire on December 31, 2011, through June 30, 2012. The Exchange also proposes that the date to replace issues in the Pilot Program that have been delisted be revised to the second trading day following January 1, 2012⁴ and that the replacement issues will be selected

⁶ *Id.* The Exchange anticipated that the potential additional Users would provide, for example, hosting, service bureau, technical support, risk management, order routing and market data delivery services to their customers while the User is co-located in the Exchange’s data center.

⁷ *Id.*

⁸ In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See Notice, 76 FR at 67507.

¹² *Id.*

¹³ *Id.*

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 63376 (November 24, 2010), 75 FR 75527 (December 3, 2010) (SR–NYSEArca–2010–104).

⁴ The Exchange is proposing to extend the Pilot Program only for an additional six months. Therefore, a date for adding replacement issues to the Pilot Program during the second half of the calendar year, *i.e.*, after June 30, 2012, is not applicable, as reflected in the proposed change to Commentary .02.