

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2010–56. 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–NYSE–2010–56 and should be submitted on or before September 10, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62731; File No. SR–NYSEAmex–2010–80]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending Its Price List To Reflect Fees Charged for Co-Location Services

August 16, 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 August 4, 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 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 its Price List 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 the Exchange's Web site at <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 Price List 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. The Exchange plans to begin operating a data center in Mahwah, New Jersey, from which it will offer co-location services. The Exchange will offer space at the data center in cabinets with power usage capability of

either four or eight kilowatts (kW).<sup>5</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>6</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 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

<sup>5</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>6</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>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b–4.

<sup>4</sup> For the purposes of this filing, the term “Users” includes any “member organization,” as that term is defined in NYSE Amex Equities Rule 2(b) and any “Sponsored Participant,” as that term is defined in NYSE Amex Equities Rule 123B.30(a)(ii)(B).

<sup>9</sup> 17 CFR 200.30–3(a)(12).

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

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 charts set forth in Exhibit 5 identify the proposed tiered fees for co-location and the proposed fees for related services.

Initial Fee per cabinet .....	\$5,000
Number of kW's	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.
	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 Amex 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 Amex 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 Amex 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 Amex 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 include in the cabinet installation fee.	\$200 per hour.
Equipment Maintenance Call Escalation .....	Hardware maintenance-break fix services available through NYSE arrangement with Delta Computer Group.	\$100 per call.

Type of service	Description	Amount of charge
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>7</sup> in general, and Sections 6(b)(4) and 6(b)(5), of the Act,<sup>8</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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate 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 the 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2010-80 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-NYSEAmex-2010-80. 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-2010-80 and should be submitted on or before September 10, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

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

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and 15 U.S.C. 78f(b)(5).

<sup>9</sup> 17 CFR 200.30-3(a)(12).