

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange. 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.

### 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2011-73 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-NYSE-2011-73. This file number should be included on the subject line if email 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 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-NYSE-2011-73 and should be submitted on or before February 1, 2012.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66104; File No. SR-NYSEAmex-2011-107]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List Changing the Monthly Fees for the Use of Ports That Provide Connectivity to Its Equity Trading Systems

January 5, 2012.

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 December 30, 2011, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III 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 change the monthly fees for the use of ports that provide connectivity to its equity trading systems. The text of the proposed rule change is available at the Exchange's principal office, at <http://www.nyse.com>,

at the Commission's Public Reference Room, and at the Commission's Web site at <http://www.sec.gov>.

#### 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 proposes to amend its Price List to change the monthly fees for the use of ports that provide connectivity to its equity trading systems.

Currently, the monthly fee for ports is \$100 per pair per month up to five pairs, then \$500 for each additional five pairs.<sup>3</sup> For example, the fee for seven pairs of ports is \$1,000 per month. Billing for ports is based on the number of ports on the third business day prior to the end of the month. The level of activity with respect to a particular port does not affect the assessment of monthly fees, so even if a particular port that is available to a participant is not used, the participant is still billed for that port.

The Exchanges proposes that the new fee would be \$300 per pair per month up to five pairs, then \$1,500 for each additional five pairs. For example, the fee for seven pairs of ports would be \$3,000 per month. The Exchange notes that billing for ports would continue to be based on the number of ports on the third business day prior to the end of the month. In addition, the level of activity with respect to a particular port would still not affect the assessment of monthly fees, so even if a participant does not use a particular port that is available to the participant, the participant would still be billed for that port.

<sup>3</sup> See Securities Exchange Act Release No. 63072 (October 7, 2010), 75 FR 64368 (October 19, 2010) (SR-NYSEAmex-2010-97) (the "Adopting Release").

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

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

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

<sup>2</sup> 17 CFR 240.19b-4.

Finally, as stated in the Adopting Release,<sup>4</sup> the port fee is charged per participant. The Exchange proposes to clarify in the Price List that per participant means per member organization for purposes of the port fees.<sup>5</sup>

The Exchange proposes to make the rule change operative on January 1, 2012.

## 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"),<sup>6</sup> in general, and Section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal constitutes an equitable allocation of fees, as all similarly situated member organizations and other market participants would be charged the same amount. In addition, access to the Exchange's market would be offered on fair and non-discriminatory terms.

With respect to the increase in port fees, the proposed fee increase for ports is expected to offset increasing connectivity costs, including additional costs based on gateway software and hardware enhancements and resources dedicated to gateway development, quality assurance, and support. The Exchange believes that its fees are competitive with those charged by other venues, and that, in some cases, its fee for port connectivity is less expensive than many of its primary competitors.<sup>8</sup>

<sup>4</sup> See *supra* note 4.

<sup>5</sup> The Exchange has a Common Customer Gateway ("CCG") that accesses the equity trading systems that it shares with its affiliates, New York Stock Exchange LLC ("NYSE") and NYSE Arca, Inc. ("NYSE Arca"), and all ports connect to the CCG. See, e.g., Securities Exchange Act Release No. 64543 (May 25, 2011), 76 FR 31667 (June 1, 2011) (SR-NYSEAmex-2011-20). In the instance when an NYSE Amex member organization is also an NYSE member organization and it shares its ports, the same member is charged port fees based on the total number of ports connected to the CCG, whether they are used to trade on the Exchange, NYSE, or both because those trading systems are integrated. The NYSE Arca Equities trading platform is not integrated in the same manner; therefore, it does not share its ports with the Exchange or NYSE. An NYSE Arca ETP Holder is charged for each ETP identifier it uses to access the NYSE Arca Equities trading systems via a port connected to the CCG.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> See, e.g., NASDAQ OMX Price List—Trading & Connectivity, available at <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>. The Exchange notes that the charge for connectivity to Nasdaq's NY-Metro and Mid-Atlantic Datacenters is \$500 per port pair/month (there is a separate charge for their

## 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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

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.

## 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:

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Pre-Trade Risk Management ports which fees are capped at \$25,000). See e.g., BZX Exchange Fee Schedule, available at <http://www.batstrading.com/FeeSchedule>. The Exchange notes that BZX charges \$400 per month per pair (primary and secondary data center) of any logical port other than a Multicast PITCH Spin Server Port or GRP Port, but does provide multicast PITCH customers 12 free pairs of Multicast PITCH Spin Server Ports, and, if such ports are used, one free pair of GRP Ports; \$400.00 per month per additional set of 12 pairs of Multicast PITCH Spin Server Ports or additional pair of GRP Ports. However, the Multicast PITCH Spin Server Ports and GRP ports relate to market data dissemination while the proposed port fee charge relates to connectivity to the Exchange, therefore the proposed fee change will still be lower to the equivalent BZX port fee charge of \$400 per month per pair for a logical port.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

Number SR-NYSEAmex-2011-107 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-2011-107. This file number should be included on the subject line if email 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 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-NYSEAmex-2011-107 and should be submitted on or before February 1, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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<sup>11</sup> 17 CFR 200.30-3(a)(12).