

trading days; (2) the value of the underlying silver or underlying gold [sic] is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.

Additionally, the ETFS Palladium Trust and ETFS Platinum Trust shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering the ETFS Palladium Trust or the ETFS Platinum Trust, respectively, if the ETFS Palladium Trust or the ETFS Platinum Trust ceases to be an "NMS stock" as provided for in Rule 5.4(b)(5) or the ETFS Palladium Trust or the ETFS Platinum Trust is halted from trading on its primary market.

The addition of the ETFS Palladium Trust and ETFS Platinum Trust to Rule 5.3(g) will not have any effect on the rules pertaining to position and exercise limits<sup>8</sup> or margin.<sup>9</sup>

The Exchange represents that its surveillance procedures applicable to trading in options on the ETFS Palladium Trust and ETFS Platinum Trust will be similar to those applicable to all other options on other ETFs currently traded on the Exchange. Also, the Exchange may obtain information from the New York Mercantile Exchange, Inc. ("NYMEX") (a member of the Intermarket Surveillance Group) related to any financial instrument traded there that is based, in whole or part, upon an interest in or performance of silver or gold [sic].

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>10</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)<sup>11</sup> in particular in that it is designed to 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.

### 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 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date 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 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 No. SR-NYSEArca-2010-25 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 No. SR-NYSEArca-2010-25. 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 NYSE Arca. 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 No. SR-NYSEArca-2010-25 and should be submitted on or before May 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61999; File No. SR-NYSEArca-2010-15]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Amending Its Schedule of Fees and Charges for Exchange Services

April 29, 2010.

#### I. Introduction

On March 5, 2010, NYSE Arca, Inc. ("NYSE Arca" 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to co-location services and related fees. The proposed rule change was published for comment in the **Federal Register** on March 26, 2010.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

<sup>12</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.

<sup>3</sup> See Securities Exchange Act Release No. 61748 (March 19, 2010), 75 FR 14644 ("Notice").

<sup>8</sup> See Rule 6.8 regarding positions limits, and Rule 6.9 regarding exercise limits.

<sup>9</sup> See Rules 4.15 and 4.16 regarding margins.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

**II. Description**

In its proposal, NYSE Arca described certain co-location services offered by the Exchange, and proposed to amend its Schedules of Fees and Charges for Exchange Services for both its equities and options platforms (the “Schedules”) in order to identify fees pertaining to such co-location services.

*Co-Location Services*

The Exchange offers its Users<sup>4</sup> the opportunity to rent space on premises controlled by the Exchange so that they may locate their electronic servers in close physical proximity to the Exchange’s trading and execution systems. These co-location services are currently provided at a data center operated by a private third-party vendor located in New Jersey, and Users may rent space ranging from half cabinets up to two full cabinets, with different power usage capabilities ranging from 2 kilowatts up to 8 kilowatts. The services provided include equipment installation, cross connections, and

miscellaneous post-installation services (including cable installation, equipment racking and “remote-hands” maintenance). In the proposal, the Exchange represents that the fees assessed for the services and space generally reflect the amount of space used and power required.

NYSE Arca further represents that Users that receive co-location services from NYSE Arca do 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. NYSE Arca further represents that 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, the Exchange represents that co-located Users do not receive any market data or data service product that is not available to all Users. Finally, NYSE Arca notes that although Users that receive co-

location services normally would expect reduced latencies when sending orders to the Exchange and receiving market data from the Exchange, NYSE Arca believes that other than these reduced latencies, there are no material differences in terms of access to the Exchange between Users that choose to co-locate and those that do not.

In the proposal, the Exchange explained that it offers co-location space based on availability, and believes that it has sufficient space to accommodate current demand on an equitable basis. In addition, according to the Exchange, any difference among the positions of the cabinets within the data center does not create any material difference among co-location Users in terms of access to the Exchange.

*Co-Location Fees*

The Exchange’s proposed co-location fees, which, in part, reflect power usage priced at \$1000 per kilowatt (“kW”) per month, are reflected below.

Half cabinet (up to 2 kW) .....	\$2,000 per month.
Full cabinet (up to 2.5 kW) .....	\$2,500 one time installation fee.
Full cabinet (up to 4 kW) .....	\$2,500 per month.
Full cabinet (up to 8 kW) .....	\$5,000 one time installation fee.
Miscellaneous services post installation (including cable installation services, equipment racking services, and ongoing remote-hands maintenance).	\$4,000 per month.
Fiber cross connections (local and interfloor) .....	\$5,000 one time installation fee.
Less than half cabinet <sup>5</sup> .....	\$8,000 per month.
	\$5,000 one time installation fee.
	\$200 per hour.
	\$600 per month.
	\$950 one time installation fee.
	\$150 per Rack Unit.

**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.<sup>6</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>7</sup> 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,<sup>8</sup> 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 Commission believes that the proposed co-location fees are equitably allocated insofar as they are applied on the same terms to similarly-situated market participants. In addition, the Commission believes that the co-location services described in the proposed rule change are not unfairly discriminatory because: (1) Co-location services are offered to all Users who request them and pay the appropriate fees; (2) the Exchange has represented

that Users receiving co-location services do 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; (3) the Exchange has represented 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, other than co-located Users’ reduced latencies due to proximity; and (4) the Exchange has stated that it has sufficient space to accommodate current demand for co-location services on an equitable basis.

<sup>4</sup> The term “User” means any ETP Holder or Sponsored Participant who is authorized to obtain access to the NYSE Arca Marketplace pursuant to Rule 7.29, and any OTP Holder, OTP Firm or Sponsored Participant that is authorized to obtain access to OX pursuant to Rule 6.2A. See NYSE Arca

Equities Rule 1.1(yy) and NYSE Arca Options Rule 6.1A(a)(19).

<sup>5</sup> The Exchange represents that it supports existing arrangements to provide Users with less than a half cabinet, but it does not offer that option to new co-location Users.

<sup>6</sup> In approving this proposal, the commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

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

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NYSEArca-2010-15) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-10595 Filed 5-5-10; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62003; File No. SR-NYSEArca-2010-32]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Rule Change Amending Its Fee Schedule

April 29, 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 April 21, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") 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 its Schedule of Fees and Charges for Exchange Services (the "Schedule"). Changes to the Schedule pursuant to this proposal will become operative on April 21, 2010. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office, on the Commission's Web site at <http://www.sec.gov> and at the Commission's Public Reference Room.

#### 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 change the pricing for Mid-Point Passive Liquidity ("MPL") Orders. Currently the rebate for MPL Orders that provide liquidity in Tape A and Tape C securities is \$0.002 per share, and the rebate for MPL Order that provide liquidity in Tape B securities is \$0.001 per share. There is currently no fee for MPL Orders that remove liquidity across all Tapes. Under this proposal, MPL Orders will receive a rebate of \$0.0010 per share for orders that provide liquidity and a fee of \$0.0010 for orders that take liquidity in Tape A, Tape B, and Tape C securities. These changes apply to all pricing levels.

The proposed changes to the Schedule are part of the Exchange's continued effort to attract and enhance participation on the Exchange by offering attractive rates for removing liquidity and rebates for providing liquidity. The Exchange believes the proposed fees are reasonable and equitable in that they apply uniformly to all ETP Holders. The proposed changes will become operative on April 21, 2010.

###### 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>4</sup> in general, and Section 6(b)(4) of the Act,<sup>5</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 proposed changes to the Schedule are part of the Exchange's continued effort

to attract and enhance participation on the Exchange by offering attractive rates for removing liquidity and rebates for providing liquidity to the Exchange. The proposed changes to the Schedule are reasonable and equitable in that they apply uniformly to all ETP Holders.

##### 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>6</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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-NYSEArca-2010-32 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 17 CFR 240.19b-4.

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

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).