

the options included in the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of BOX's automated systems; (4) data reflecting the size and depth of markets, and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>4</sup> in general, and Section 6(b)(5) of the Act,<sup>5</sup> in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest will allow the Penny Pilot Program to remain in effect on BOX without interruption.

### *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 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 either solicited or received.

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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>7</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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BX-2011-083 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-BX-2011-083. 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 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 No. SR-BX-2011-083 and should be submitted on or before January 11, 2012.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011-32661 Filed 12-20-11; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65973; File No. SR-NYSE-2011-53]

### **Self-Regulatory Organizations; New York Stock Exchange 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 Price List 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, New York Stock Exchange LLC ("NYSE" 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 to expand the scope of potential "Users" of its co-location services, and to amend its Price List. The proposed rule change was published for comment in the **Federal Register** on November 1, 2011.<sup>3</sup> 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.<sup>4</sup> For purposes of its co-location services, the term "User" currently includes member organizations, as that term is defined in NYSE Rule 2(b), and Sponsored Participants, as that term is defined in NYSE Rule 123B.30(a)(ii)(B).

<sup>8</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. 65629 (October 26, 2011), 76 FR 67507 ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310.

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

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

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

<sup>7</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of 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 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.<sup>5</sup> Under the proposed rule change, Users could therefore include member organizations, Sponsored Participants, non-member broker-dealers and vendors.<sup>6</sup>

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.<sup>7</sup> "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.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>9</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>10</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 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.<sup>11</sup> 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.<sup>12</sup> The Exchange also represented that the hosting fee is reasonable because it is designed to defray expenses incurred or resources expended by the Exchange.<sup>13</sup> 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,<sup>14</sup> 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.<sup>15</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011-32666 Filed 12-20-11; 8:45 am]

**BILLING CODE 8011-01-P**

## 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> Under the proposed rule change, Users could therefore include ATP Holders, Sponsored Participants,

<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. 65626 (October 26, 2011), 76 FR 67506 ("Notice").

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

<sup>5</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> *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.

<sup>7</sup> *Id.*

<sup>8</sup> 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).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> See Notice, 76 FR at 67508.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).