

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78751; File No. SR-NYSEMKT-2016-82)

September 1, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Change Amending the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule to Amend the Date that Two Wireless Connections to Third Party Data Feeds are Expected to be Available

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 24, 2016, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE MKT Equities Price List (“Price List”) and the NYSE Amex Options Fee Schedule (“Fee Schedule”) to amend the date that two wireless connections to third party data feeds are expected to be available. The proposed change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Price List and Fee Schedule to amend the date that two wireless connections to third party data feeds are expected to be available.

The Exchange’s co-location⁴ services include the means for Users⁵ to receive market data feeds from third party markets (“Third Party Data”) through a wireless connection.⁶ The Exchange recently amended the Price List and Fee Schedule to:

- expand the existing wireless connection to Bats Pitch BZX Gig shaped data (“BZX”) to include Bats Pitch BYX Gig shaped data (“BYX”); and
- expand the existing wireless connection to Bats EDGX Gig shaped data

⁴ The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (“Commission”) in 2010. See Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR-NYSEAmex-2010-80). The Exchange operates a data center in Mahwah, New Jersey (the “data center”) from which it provides co-location services to Users.

⁵ For purposes of the Exchange’s co-location services, a “User” means any market participant that requests to receive co-location services directly from the Exchange. See Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR-NYSEMKT-2015-67). As specified in the Price List and Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange’s affiliates New York Stock Exchange LLC (“NYSE LLC”) and NYSE Arca, Inc. (“NYSE Arca”). See Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR-NYSEMKT-2013-67).

⁶ See Securities Exchange Act Release No. 76750 (December 23, 2015), 80 FR 81648 (December 30, 2015) (SR-NYSEMKT-2015-85).

(“EDGX”) to include Bats EDGA Gig shaped data (“EDGA”).⁷

In its filing with the Securities and Exchange Commission (“Commission”) making such amendment, the Exchange stated that the proposed connectivity was expected to be available no later than September 1, 2016, and amended the Price List and Fee Schedule to note that connectivity to the BYX and EDGA data feeds was expected to be available no later than such date.⁸

The Exchange now proposes to amend the Price List and Fee Schedule to update the expected availability date to December 31, 2016. As previously stated, the Exchange will announce the date that such wireless connections will be made available through a customer notice.

No other aspect of the wireless connection to BZX and BYX or EDGX and EDGA (together, the “Additional Third Party Data”) is being amended.

By way of background, as with all wireless connections to Third Party Data, the Exchange would utilize a network vendor to provide a wireless connection to the Additional Third Party Data through wireless connections from an Exchange access center to its data center in Mahwah, New Jersey, through a series of towers equipped with wireless equipment. A User that wished to receive Additional Third Party Data would enter into a contract with the relevant third party provider, which would charge the User the applicable market data fees. The Exchange would charge the User fees for the wireless connection.⁹

⁷ See Securities Exchange Act Release No. 78376 (July 21, 2016), 81 FR 49311 (July 27, 2016) (SR-NYSEMKT-2016-70). The Commission designated the proposed rule change as operative upon filing with the Commission. Id. at 49315.

⁸ Id. at 49312.

⁹ A User only receives the Third Party Data for which it enters into a contract with the third party provider.

The Exchange proposes to offer the wireless connections to provide Users with an alternative means of connectivity to Additional Third Party Data. Currently, Users can receive such Third Party Data from wireless networks offered by third party vendors.¹⁰ Users may also receive connections to Additional Third Party Data through other methods, including, for example, from another User, through a telecommunications provider, or over the internet protocol (“IP”) network.¹¹

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User’s customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (e.g., a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;¹² and (iii) a User would only incur one charge for the particular co-location service described

¹⁰ Currently, at least six third party vendors offer Users wireless network connections using wireless equipment installed on towers and buildings near the data center.

¹¹ The IP network is a local area network available in the data center. See Securities Exchange Act Release No. 74220 (February 6, 2015), 80 FR 7894 (February 12, 2015) (SR-NYSEMKT-2015-08) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections).

¹² As is currently the case, 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 other Users. In this regard, 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 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, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.¹³

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and Section 6(b)(4) of the Act,¹⁵ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(5) of the Act,¹⁶ in particular, because 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change is reasonable, equitable and not unfairly

¹³ See SR-NYSEMKT-2013-67, supra note 5, at 50471. The Exchange's affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2016-61 and SR-NYSEArca-2016-122.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ 15 U.S.C. 78f(b)(5).

discriminatory because amending the Price List and Fee Schedule to update the expected availability date for connectivity to the BYX and EDGA data feeds to December 31, 2016, would add greater clarity to the Price List and Fee Schedule regarding when such connectivity will be available and allow the Exchange more time to establish and test connectivity to the BYX and EDGA data feeds.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because connectivity to the BYX and EDGA data feeds would be available to all Users on an equal basis (i.e., the connectivity to such feeds will be made available to all Users at the same time). Such connectivity is completely voluntary. Users that do not opt to utilize the Exchange's proposed wireless connections would still be able to obtain the Additional Third Party Data through other methods, including, for example, from wireless networks offered by third party vendors, another User, through a telecommunications provider, or over the IP network.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁷ the Exchange believes that the proposed

¹⁷ 15 U.S.C. 78f(b)(8).

rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (i.e. the same products and services are available to all Users).

The Exchange believes that amending the Price List and Fee Schedule to update the expected availability date for connectivity to the BYX and EDGA data feeds to December 31, 2016, will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because connectivity to the BYX and EDGA data feeds would be available to all Users on an equal basis (i.e., the connectivity to such feeds will be made available to all Users at the same time). The proposed change would add greater clarity to the Price List and Fee Schedule regarding when such connectivity will be available and allow the Exchange more time to establish and test connectivity to the BYX and EDGA data feeds. In addition, Users that do not opt to utilize the Exchange's proposed wireless connections would still be able to obtain the Additional Third Party Data through other methods, including, for example, from wireless networks offered by third party vendors, another User, through a telecommunications provider, or over the IP network.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative

strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

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)¹⁸ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁹ 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁰ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(2).

²⁰ 15 U.S.C. 78s(b)(2)(B).

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. Please include File No. SR-NYSEMKT-2016-82 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-NYSEMKT-2016-82. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 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-NYSEMKT-2016-82, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Robert W. Errett
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).