

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71889; File No. SR-NYSEMKT-2014-29)

April 7, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Price List for Certain Executions at the Opening

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 26, 2014, NYSE MKT LLC (“Exchange” or “NYSE MKT”) 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 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 Price List for certain executions at the opening. The Exchange proposes to implement the fee change effective April 1, 2014. The text of the proposed rule 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 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 for certain executions at the opening.⁴

The Exchange proposes to implement the fee change effective April 1, 2014.

The Exchange currently charges a fee of \$0.0005 per share for executions of at the opening or at the opening only orders, subject to a monthly fee cap of \$15,000 per member organization for such executions. The Exchange proposes to raise the fee to \$0.0010 per share and decrease the monthly fee cap to \$10,000 per member organization.

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that members and member organizations 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,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ 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 believes that it is reasonable to increase the fee for executions at the

⁴ The proposed pricing would only apply to securities priced \$1.00 or greater. The existing pricing for executions at the opening in securities priced below \$1.00 would remain unchanged (i.e., 0.3% of the total dollar value of the transaction). Designated Market Maker ("DMM") executions at the opening would continue to not be charged.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

opening because members and member organizations benefit from the substantial amounts of liquidity that are present on the Exchange during such time. The proposed new rate of \$0.0010 for the fee is reasonable because it will strike a more appropriate balance between encouraging liquidity at the opening and generating adequate revenues for the Exchange. The Exchange notes that it has not increased the fee in nearly two years.⁷ The proposed new rate for the fee is also reasonable because it is comparable to the rate for executions at the opening on other markets.⁸

The pricing at the opening is only applicable to NYSE MKT-listed securities, and the fee cap was implemented on the Exchange nearly two years ago.⁹ Based on a review of such time period the Exchange has determined that the current fee cap level of \$15,000 may be too high for certain member organizations to reach. A decreased fee cap is therefore reasonable because it would be set at a level that is more representative of the volume during the opening on the Exchange, which is significantly lower than, for example, the opening on the Exchange's affiliate NYSE.¹⁰ The decrease to the fee cap is also reasonable because it would incentivize member organizations to submit additional liquidity at the open so that they may reach the fee cap as quickly as possible. In this regard, a member organization that reaches the fee cap would

⁷ See Securities Exchange Act Release No. 66959 (May 10, 2012), 77 FR 28912 (May 16, 2012) (SR-NYSEAmex-2012-28).

⁸ For example, the Nasdaq Stock Market, LLC ("NASDAQ") similarly charges \$0.0010 per share for certain orders executed in the NASDAQ Opening Cross. See NASDAQ Rule 7018(e). The Exchange's affiliate, New York Stock Exchange LLC ("NYSE") has also proposed an increase for its fee at the opening from \$0.0005 to \$0.0010 per share. See SR-NYSE-2014-18.

⁹ See supra note 7.

¹⁰ The Exchange notes that, while NYSE has similarly proposed to increase its fee for executions at the opening from \$0.0005 to \$0.0010 per share, NYSE has proposed to increase the corresponding fee cap from \$15,000 to \$20,000 rather than the decrease that is proposed herein. See SR-NYSE-2014-18, supra note 8.

continue to be charged a marginal [sic] rate for its transactions at the opening that is lower than the \$0.0010 rate that would be applicable without the cap (i.e., once a member organization reaches the cap, its per-transaction rate thereafter will be zero and its marginal [sic] rate will decrease for each additional transaction at the open thereafter). It is also reasonable to increase the fee and decrease the fee cap because member organizations would pay a higher per-transaction fee for opening executions than they currently do, but could benefit over the course of the month by potentially reaching the lower fee cap quicker.

The proposed new rate of \$0.0010 for the fee and the decreased fee cap of \$10,000 are equitable and not unfairly discriminatory because this pricing would continue to encourage robust levels of liquidity at the opening, which benefits all market participants. This pricing is also equitable and not unfairly discriminatory because it would apply equally to all similarly situated member organizations.¹¹

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 proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,¹² the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would contribute to the Exchange's market quality and ultimately competition. The proposed

¹¹ As noted in note 4 above, DMM executions at the opening would continue to not be charged. The Exchange believes that this is reasonable because of the liquidity-providing function that DMMs serve. This is also equitable and not unfairly discriminatory because DMMs are subject to certain obligations to which other members and member organizations are not.

¹² 15 U.S.C. 78f(b)(8).

change would also lead to increased competition among execution venues, including by permitting the Exchange to compete with other markets that apply comparable pricing for executions at the opening.¹³ The proposed change also would not impose any burden on competition among market participants. Instead, the pricing for executions at the opening would remain at relatively low levels and would continue to reflect the benefit that market participants receive through the ability to have their orders interact with other liquidity at the opening. The decreased fee cap would also be set at a level that would make it easier to reach for all member organizations and could therefore contribute to competition between member organizations with varying levels of liquidity and executions at the opening.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

¹³ See supra note 8.

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)¹⁴ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁵ 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)¹⁶ of the Act to determine whether the proposed rule change should be approved or 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. Please include File Number SR-NYSEMKT-2014-29 on the subject line.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

Paper comments:

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

All submissions should refer to File Number SR-NYSEMKT-2014-29. 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, DC 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 Number SR-NYSEMKT-2014-29 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.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).