SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73019; File No. SR-NYSEMKT-2014-74)

September 9, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List to Adjust the Pricing Related to the Retail Liquidity Program under Rule 107C – Equities

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 26, 2014, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to adjust the pricing related to the Retail Liquidity Program under Rule 107C – Equities. The Exchange proposes to implement the fee change effective September 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

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1 15 U.S.C.78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 amend its Price List to adjust the pricing related to the Retail Liquidity Program under Rule 107C – Equities. The Exchange proposes to implement the fee change effective September 1, 2014.

The Retail Liquidity Program is a pilot program that is designed to attract additional retail order flow to the Exchange for Exchange-traded securities (including but not limited to Exchange-listed securities and securities listed on the NASDAQ Stock Market, LLC traded pursuant to unlisted trading privileges ("UTP")) while also providing the potential for price improvement to such order flow.[4] Retail order flow is submitted through the Retail Liquidity Program as a distinct order type called a "Retail Order," which is defined in Rule 107C(a)(3) – Equities as an agency order or a riskless principal order that meets the criteria of Financial Industry Regulatory Authority, Inc. Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization ("RMO"), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a

[4] See Rule 107C – Equities. See also Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR-NYSEAmex-2011-84).

trading algorithm or any other computerized methodology.[5] In addition to RMOs, Retail Liquidity Providers ("RLPs") were created as an additional class of market participant under the Retail Liquidity Program. RLPs are required to provide potential price improvement for Retail Orders in the form of "Retail Price Improvement Orders" ("RPIs"), which are non-displayed interest that is better than the best protected bid ("PBB") or best protected offer ("PBO"), as such terms are defined in Regulation NMS Rule 600(b)(57) (together, "PBBO").[6] Member organizations other than RLPs are also permitted, but not required, to submit RPIs.

RLP executions of RPIs against Retail Orders are not currently charged or provided with a credit (i.e., they are free) if the RLP satisfies the applicable percentage requirement of Rule 107C – Equities. The Exchange proposes to instead provide a credit of $0.0003 per share. RPIs of an RLP that does not satisfy the applicable percentage requirement of Rule 107C – Equities would remain subject to the existing fee of $0.0003 per share.

A fee of $0.0003 per share also currently applies to non-RLP member organization executions of RPIs against Retail Orders, unless the non-RLP member organization executes an average daily volume ("ADV") during the month of at least 10,000 shares of RPIs, in which case no charge or credit applies (i.e., the execution is

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5 RMO is defined in Rule 107C(a)(2) – Equities as a member organization (or a division thereof) that has been approved by the Exchange under Rule 107C – Equities to submit Retail Orders.

6 See 17 CFR 242.600(b)(57). RLP is defined in Rule 107C(a)(1) – Equities as a member organization that is approved by the Exchange to act as such and that is required to submit RPIs in accordance with Rule 107C – Equities. RPI is defined in Rule 107C(a)(4) – Equities and consists of non-displayed interest in Exchange-traded securities that is priced better than the PBBO by at least $0.001 and that is identified as such.

free). The Exchange proposes to instead provide a credit of $0.0003 per share to such RPI executions if the non-RLP member organization satisfies the 10,000 ADV threshold.

RMOs currently receive a credit of $0.0005 per share for executions of Retail Orders if executed against RPIs or MPL Orders.[7] The Exchange proposes to eliminate this credit so that such Retail Order executions would be free (i.e., no credit or charge).[8]

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable

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7 Retail Orders are otherwise charged according to standard fees applicable to non-Retail Orders if executed against the Book.

8 The Exchange would continue to charge an RMO according to standard fee applicable to non-Retail Orders for a Retail Order that executes against the Book.

9 In the Exhibit 5 for SR-NYSEMKT-2014-43, the Exchange inadvertently omitted ellipses immediately above new text in the Price List with the heading "Transaction Fees and Credit For ETPs Traded Pursuant to Unlisted Trading Privileges." Ellipses would have indicated that the Retail Liquidity Program pricing table that appeared immediately above that new text was unchanged and part of the newly designated section for non-ETPs traded UTP. Due to the missing ellipses, the Price List was posted on the Exchange's website in May 2014 with that particular Retail Liquidity Program pricing table removed. The Exchange did not intend this result and has billed non-ETPs traded UTP in accordance with that Retail Liquidity Program pricing table, which is the same pricing as listed and ETP securities. The attached Exhibit 5 corrects the omission and reflects that Retail Liquidity Program pricing table for non-ETPs traded UTP as existing text.

10 15 U.S.C. 78f(b).

11 15 U.S.C. 78f(b)(4) and (5).

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 the proposed changes to the rates under the Retail Liquidity Program are reasonable. The Exchange originally introduced the existing rates approximately two years ago.[12] At that time, the Exchange stated that, because the Retail Liquidity Program was a pilot program, the Exchange anticipated that it would periodically review applicable pricing to seek to ensure that it contributes to the goal of the Retail Liquidity Program, which is designed to attract additional retail order flow to the Exchange for Exchange-traded securities while also providing the potential for price improvement to such order flow. The proposed new rates are a result of this review.

The Exchange believes that providing a credit of $0.0003 per share for RLP executions of RPIs against Retail Orders if the RLP satisfies the applicable percentage requirement of Rule 107C – Equities is reasonable because it would further incentivize member organizations to become RLPs and therefore could result in greater price improvement for Retail Orders. Providing a credit of $0.0003 per share for non-RLP member organization executions of RPIs against Retail Orders if the non-RLP member organization executes an ADV during the month of at least 10,000 shares of RPIs also is reasonable because it would incentivize such non-RLPs to submit RPIs for interaction with Retail Orders.

The Retail Order credit was designed to create a financial incentive for RMOs to bring additional retail order flow to a public market during the initial implementation of

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[12] See Securities Exchange Act Release No. 67609 (August 7, 2012), 77 FR 48193 (August 13, 2012) (SR-NYSEMKT-2012-35).

the Retail Liquidity Program. Despite the elimination of the credit, RMOs, and indirectly their customers, would continue to receive significant benefits in the form of price improvement by interacting with RPIs. Additionally, Retail Order executions are always considered to remove liquidity, whether against contra-side interest in the Retail Liquidity Program or against the Book.[13] Orders that remove liquidity are generally charged a fee according to the Price List, but Retail Orders would continue to be subject to alternative pricing (i.e., no charge rather than a fee) that would continue to contribute to maintaining or increasing the proportion of retail flow in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods).

The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.[14] While the Exchange believes that markets and

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13 A Retail Order is an Immediate or Cancel Order. See Rule 107C(a)(3) – Equities. See also Rule 107C(k) – Equities for a description of the manner in which a member or member organization may designate how a Retail Order will interact with available contra-side interest.

14 See Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) ("Concept Release") (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). See also Mary Jo White, Focusing on Fundamentals: The Path to Address Equity Market Structure (Speech at the Security Traders Association 80th Annual Market Structure Conference, Oct. 2, 2013) (available on the Commission's website) ("White Speech"); Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's website) ("Schapiro Speech"). In her speech, Chair White noted a steadily increasing percentage of trading that occurs in "dark" venues, which appear to execute more than half of the orders of long-term investors. Similarly, in her speech, only three years earlier, Chair Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

price discovery optimally function through the interactions of diverse order flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types. The proposed new rates would be set at levels that would continue to reasonably incentivize RMOs to direct Retail Orders to the Exchange and would contribute to robust amounts of RPI liquidity submitted by RLPs and non-RLP member organizations being available for interaction with the Retail Orders. Together, this would increase the pool of robust liquidity available on the Exchange, thereby contributing to the quality of the Exchange's market and to the Exchange's status as a premier destination for liquidity and order execution. The Exchange believes that, because Retail Orders are likely to reflect long-term investment intentions, they promote price discovery and dampen volatility. Accordingly, the presence of Retail Orders on the Exchange has the potential to benefit all market participants. For this reason, the Exchange believes that the proposed pricing is equitable and not unfairly discriminatory and would continue to encourage greater retail participation on the Exchange.

The pricing proposed herein, like the Retail Liquidity Program itself, is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market, and the pricing related thereto, would result in better prices for retail investors. The proposed change is also equitable and not unfairly discriminatory because it would contribute to investors' confidence in the fairness of their transactions and because it would benefit all investors by deepening the Exchange's

liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

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,[15] 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 encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed rule change is consistent with the Act in this regard, because it strikes an appropriate balance between fees and credits, which will encourage submission of orders to the Exchange, thereby promoting competition.

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

[15] 15 U.S.C. 78f(b)(8).

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.

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)[16] of the Act and subparagraph (f)(2) of Rule 19b-4[17] 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

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16 15 U.S.C. 78s(b)(3)(A).

17 17 CFR 240.19b-4(f)(2).

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)[18] 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-2014-74 on the subject line.

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-2014-74. 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

[18] 15 U.S.C. 78s(b)(2)(B).

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 Section, 100 F Street, NE, Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at www.nyse.com. 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-2014-74 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.[19]

Kevin M. O'Neill
Deputy Secretary

[19] 17 CFR 200.30-3(a)(12).