

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75649; File No. SR-NYSEMKT-2015-60)

August 7, 2015

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the Manner in which It Calculates Certain Volume and Quoting Thresholds Applicable to Billing on the Exchange in Relation to a Suspension of Trading on the Exchange on July 8, 2015

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 July 30, 2015, NYSE MKT LLC (Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 modify the manner in which it calculates certain volume and quoting thresholds applicable to billing on the Exchange in relation to a suspension of trading on the Exchange on July 8, 2015. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 is proposing to modify the manner in which it calculates certain volume and quoting thresholds applicable to billing on the Exchange in relation to a suspension of trading on the Exchange on July 8, 2015 (“trading suspension”).⁴

The trading suspension resulted in a more than 40% decrease in trading volume on the Exchange on July 8, 2015 for that day as compared to average daily volume (“ADV”) on the Exchange for the prior trading days in July 2015. The Exchange believes that the trading suspension prevented member organizations on the Exchange, including Designated Market Makers (“DMMs”), Supplemental Liquidity Providers (“SLPs”) and Retail Liquidity Providers (“RLPs”), from engaging in normal trading and quoting in their assigned securities, leading to decreased quoting and trading volume compared to ADV.

As provided in the Exchange’s Price List, certain of the Exchange’s transaction fees and credits are based on trading and quoting thresholds that member organizations must satisfy in order to qualify for the particular rates. The Exchange believes that the trading suspension may affect the ability of member organizations to meet certain of these thresholds during July 2015.⁵

⁴ See NYSE MKT Informational Message, “NYSE/NYSE MKT – Outage Description” July 9, 2015, available at <https://www.nyse.com/market-status/history>. Trading at the Exchange’s affiliate, New York Stock Exchange LLC, was also suspended.

⁵ The Exchange notes that it does not perform the calculations necessary to determine

Accordingly, the Exchange proposes to exclude July 8, 2015 from such calculations, in order to reasonably ensure that a member organization that would otherwise qualify for a particular threshold during July 2015, and the corresponding transaction rate, would not be negatively impacted by the trading suspension.

First, the Exchange proposes to exclude July 8, 2015 for purposes of determining transaction fees and credits that are based on quoting levels of DMMs, SLPs and RLPs. The calculations of such quoting levels include the amount of time that the relevant DMM, SLP or RLP quoted at the National Best Bid or Offer (“NBBO”).⁶ If the Exchange did not exclude July 8, 2015 when calculating these quoting levels for July, the numerator for the calculation (e.g., time during which the DMM, SLP or RLP quoted at the NBBO) would be lower as a result of the decreased trading volume on July 8, 2015, but the denominator (e.g., total time that the U.S. equity markets quote during regular trading hours) would not be decreased. Excluding July 8, 2015 from the calculation of these quoting levels for the month of July would reasonably ensure that a member organization that would otherwise qualify for a particular threshold during July 2015, and the corresponding transaction rate, would not be negatively impacted by the trading suspension on July 8, 2015.

Second, the Exchange proposes to exclude July 8, 2015 for purposes of determining transaction credits applicable to executions in the Retail Liquidity Program that are based on ADV executed by a non-RLP member organization during the billing month. If the Exchange did not exclude July 8, 2015 when calculating ADV for July, the numerator for the calculation (e.g., trading volume) would be lower as a result of the decreased trading volume on July 8, 2015, but the denominator for the threshold calculations (e.g., the number of trading days) would not be

whether these thresholds have been met until after the particular billing month has ended.

⁶ See Rules 107B(g) and 107C(f).

smaller. Excluding July 8, 2015 from the calculation of ADV for the month of July would reasonably ensure that a non-RLP member organization that would otherwise qualify for that would otherwise qualify for the applicable credit for July 2015, would not be negatively impacted by the trading suspension on July 8, 2015. The Exchange notes that the proposed exclusions would be similar to the current provision in the Price List whereby, for purposes of these non-RLP member organization credits, the calculation of the average daily volume during the month excludes early closing days. Generally, this applies to certain days before or after a holiday observed by the Exchange.⁷

Finally, the Exchange does not propose to exclude July 8, 2015 from the calculation of consolidated average daily volume (“CADV”) for purposes of determining the qualification for certain DMM thresholds in the Price List.⁸ The thresholds that are based on CADV consider volume across all markets, not only the Exchange’s, and therefore the trading suspension would not be expected to significantly impact CADV.

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding billing for activity on the Exchange and the Exchange is not aware of any negative impact on member organizations that would result from the proposed change.

2. Statutory Basis

The Exchange believes that the proposed change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁹ in general, and furthers the objectives of Section

⁷ For example, the Exchange is closed on Thanksgiving Day and closes early on the Friday immediately following Thanksgiving Day (e.g., Friday, November 28, 2014).

⁸ CADV includes all volume reported to the Consolidated Tape Association Plan for Tapes A, B and C securities.

⁹ 15 U.S.C. 78f(b).

6(b)(4) of the Act,¹⁰ 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 excluding July 8, 2015 for purposes of determining transaction fees and credits that are based on quoting levels of DMMs, SLPs and RLPs is reasonable because the calculations of such quoting levels include the amount of time that the relevant DMM, SLP or RLP quoted at the NBBO. In this regard, excluding July 8, 2015 from these quoting calculations is reasonable because, without this exclusion, the numerator for the calculations (e.g., time during which the DMM, SLP or RLP quoted at the NBBO) would be lower as a result of the decreased trading volume on July 8, 2015, but the denominator for the threshold calculations (e.g., total time that the U.S. equity markets quote during regular trading hours) would not be decreased. As a result, without this exclusion, a member organization that would otherwise qualify for a particular threshold for July 2015, and the corresponding transaction rate, may be negatively impacted by the trading suspension. This is equitable and not unfairly discriminatory because DMMs, SLPs and RLPs have specific performance metrics that must be satisfied for assigned securities in order to qualify for the particular rates in the Price List.

The Exchange also believes that excluding July 8, 2015 for purposes of determining transaction fees and credits applicable to executions in the Retail Liquidity Program that are based on ADV executed by a non-RLP member organization during the billing month, is reasonable because trading suspension resulted in a significant decrease in trading volume on the Exchange. This proposed change is reasonable because, without this exclusion, the numerator for

¹⁰ 15 U.S.C. 78f(b)(4).

the calculations of ADV (e.g., trading volume) would be lower as a result of the decreased trading volume on July 8, 2015, but the denominator for the calculations (e.g., the number of trading days) would not be smaller. The Exchange believes that excluding activity on July 8, 2015 for purposes of determining transaction fees and credits that are based on ADV during the billing month is equitable and not unfairly discriminatory because it would apply equally to all market participants on the Exchange. In this regard, excluding July 8, 2015 from such ADV calculations is equitable and not unfairly discriminatory because the exclusion would reasonably ensure that a non-RLP member organization that would otherwise qualify for the applicable credit for July 2015 would not be negatively impacted by the trading suspension.

Finally, the Exchange believes that not excluding activity on July 8, 2015 from the calculation of CADV for purposes of determining the qualification for certain DMM thresholds in the Price List is reasonable. This is because the thresholds that are based on CADV consider volume across all markets, not only the Exchange's, and therefore the trading suspension would not be expected to significantly impact CADV. This is equitable and not unfairly discriminatory because, in addition to applying to all DMMs on the Exchange, the Exchange believes that the trading suspension did not have a significant impact on these thresholds and, therefore, including activity on July 8, 2015 will have an equal impact for all DMMs.

The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(5) of the Act,¹¹ 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,

¹¹ 15 U.S.C. 78f(b)(5).

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 exclusions would remove impediments to and perfect the mechanism of a free and open market and a national market system because they would reasonably ensure that a member organization that would otherwise qualify for a particular threshold during the month, and the corresponding transaction rate, would not be negatively impacted by the trading suspension. In particular, the Exchange believes that the proposed exclusions promote just and equitable principles of trade because they account for the impact on trading volume and quoting that resulted from the trading suspension for all securities traded on the Exchange. The Exchange further believes that the proposed exclusions remove impediments to and perfect the mechanism of a free and open market and a national market system because they provide transparency for member organizations and the public regarding the manner in which the Exchange will calculate certain volume and quoting thresholds related to billing for activity on the Exchange on July 8, 2015 and for the month of July 2015. In this regard, the Exchange believes that the proposed exclusions are consistent with the Act because they address inquiries from member organizations regarding how the Exchange will treat July 8, 2015 for purposes of billing. Also, the proposed exclusions are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, but are instead designed to provide transparency for all member organizations and the public regarding the manner in which the Exchange will calculate certain volume and quoting thresholds in relation to the trading suspension. The Exchange is not aware of any negative impact on member organizations that would result from the proposed change.

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 will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would treat all market participants on the Exchange equally by excluding July 8, 2015 from quoting level and ADV calculations described in the Price List. Moreover, the Exchange believes that the proposed change would enhance competition between competing marketplaces by enabling the Exchange to exclude July 8, 2015 for the purposes of determining transaction fees and credits based on volume and quoting levels as set forth in the Price List.

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 has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6)¹⁴ thereunder because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.¹⁵

¹² 15 U.S.C. 78f(b)(8).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and 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

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁶ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the proposal would allow the Exchange to immediately implement the calculation related to the trading suspension, thereby reducing the potential for confusion among member organizations regarding the volume, liquidity, and quoting thresholds applicable to billing in July 2015. The Commission believes that the waiver would also assist the Exchange in determining transaction fees and credits for member organizations in a timely manner after the end of the billing month of July 2015. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.¹⁷

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.¹⁸

Commission. The Exchange has satisfied this requirement.

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78s(b)(3)(C).

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-2015-60 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-2015-60. 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-2015-60 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

Jill M. Peterson
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).