

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76268; File No. SR-NYSEMKT-2015-70)

October 26, 2015

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Procedures and Credits in Connection with the Relocation of Equipment in the Exchange's Data Center

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 October 22, 2015, 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 establish procedures and credits in connection with the relocation of equipment in the Exchange's Data Center. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 operates a data center in Mahwah, New Jersey, from which it provides co-location services to Users.⁴ The Exchange's co-location services allow Users to rent space in the Data Center so they may locate their electronic servers in close physical proximity to the Exchange's trading and execution system.⁵ The Exchange proposes to establish procedures and waive certain fees in connection with the Exchange's re-location of Users' equipment in the Exchange's Data Center, operative beginning November 1, 2015.⁶

The Data Center opened in 2010, and at that time, the Exchange represented that it offers co-location space based on availability and that it had sufficient space in the Data Center to accommodate demand on an equitable basis for the foreseeable future.⁷ The Exchange continues to believe that there is sufficient space in the Data Center to accommodate demand. However, much of the space available now is available in smaller segments, resulting from an increasing

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) ("2010 Release").

⁵ See id. at 59299.

⁶ As specified in the NYSE MKT Equities Price List and the NYSE Amex Options 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 and NYSE Arca, Inc. See Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR-NYSEMKT-2013-67). The Exchange's affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2015-42 and SR-NYSEArca-2015-85.

⁷ See supra note 4 at 59299.

number of Users, multiple moves within the Data Center, and changes to Users' space requirements – both increases and decreases – since 2010. At this time, the Exchange has determined that, in order to continue to be able to meet its obligation to accommodate demand, and in particular to make available more contiguous, larger spaces for new and existing Users, the Exchange must exercise its right to move some Users' equipment within the Data Center (the "Migration").

The Exchange proposes to put the following procedures in place to manage the process for the Migration.

First, the Exchange would identify Users that would be required to move in the Migration based on (a) the current location of the User and its current equipment and power requirements and (b) the availability of another location in the Data Center that would accommodate the equipment and power requirements for which such User currently subscribes. No User would be required to move more than once within any 12-month period.

Second, the Exchange would notify a User in writing (the "Notice") that the User's equipment and network connections in the Data Center are to be moved as part of the Migration. The Notice would identify the 90-day period during which the User must move its equipment, which period would commence at least 60 days from the date of the Notice. The exact date or dates for the move for each User would be agreed upon between the User and the Exchange. If a move date or dates cannot be agreed on, the Exchange would schedule the move for a date or dates no later than 180 days after the date of the Notice.

Third, each User's move would be facilitated by the Exchange in cooperation with the User, including the un-racking and re-racking of all of the User's equipment, and the re-

installation of the User's networking connections, and the Exchange would make reasonable efforts to ensure that the moves take place outside of the Exchange's hours for business.⁸

Fourth, in connection with facilitating each User's move, the Exchange proposes to waive certain fees. Specifically, the Exchange proposes to waive the monthly recurring fees incurred in connection with the User's new space for the month during which the User's move commences. This waiver of the monthly recurring fees would mean that the User would not incur these fees for the period of overlapping use of the equipment and services in the old and the new locations, as long as the move is completed within one month.

In addition, the Exchange proposes to waive all service-related charges that the User would incur if such a move were to take place at a User's request with respect to the User's existing services and equipment. The service-related charges to be waived would be: (a) the Change Fee, Initial Install Services and Hot Hands Services; (b) the External Cabinet Cable Tray fee and the Custom External Cabinet Cable Tray fee, if the User has such equipment installed in its current location; (c) Shipping and Receiving fees relating to duplicate equipment for the User's new space; and (d) the Badge Request Fee and Visitor Security Escort fee with respect to User representative visits during the User's Migration Period (together, the "Service-Related Fees").

Finally, in consideration for the Migration, the Exchange proposes to waive, for the month following the completion of a User's move, the monthly recurring charges for that User, based on the rate of the monthly recurring fees that the User is paying as of the date of the Notice.

⁸ See NYSE MKT Equities Rule 51 and NYSE Amex Options Rule 900.2NY(15).

The Exchange proposes to modify the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule to reflect the fee waivers in connection with the Migration.

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. The representations that the Exchange made in the 2010 Release to the effect that any difference among the positions of a User's equipment within the Data Center does not create any material difference to Users in terms of access to the Exchange continue to apply.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)(5) of the Act,¹¹ in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls and 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.

⁹ See supra note 4 at 59299.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

Additionally, the proposed changes would be applied uniformly by the Exchange to comparable Users and would not unfairly discriminate between similarly situated Users of co-location services.

The Exchange believes that the proposal to establish procedures and waive certain fees in connection with the movement of equipment at the Exchange's Data Center would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because it would allow the Exchange to have sufficient space in the Data Center to accommodate demand on an equitable basis for the foreseeable future. The Exchange believes that the waiver of overlapping monthly recurring charges, the waiver of the Service-Related Fees, and the waiver of one month of monthly recurring charges is reasonable because Users would be moving at the Exchange's request and the waivers would help to alleviate the burden on the Users that are required to move.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹² 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. Pursuant to the proposed procedures for selecting which Users would be required to move within the Data Center, a User would be required to move only if the Exchange would be able to accommodate such User's current space and power requirements at the new location, so as to minimize the disruption to the User.

¹² 15 U.S.C. 78f(b)(4).

For the reasons above, the proposed change would 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 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,¹³ 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. The Exchange believes that the proposed procedures for identifying the Users that would be moved and the proposed fee waivers are pro-competitive because they facilitate the Migration, which would in turn facilitate use of the Exchange's Data Center, and provide access to the Data Center to current and additional market participants.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if, for example, they deem fee levels at a particular venue to be excessive or if they determine that another venue's products and services are more competitive than on the Exchange. In such an environment, the Exchange must continually review, and consider adjusting, the services it offers as well as any corresponding fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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.

¹³ 15 U.S.C. 78f(b)(8).

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-2015-70 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.

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).

All submissions should refer to File Number SR-NYSEMKT-2015-70. 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 Section, 100 F Street, NE, Washington, DC 20549-1090. 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-2015-70 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

Robert W. Errett
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).