

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76373; File No. SR-NYSEMKT-2015-90)

November 5, 2015

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Provide that the Co-location Services Offered by the Exchange Include 40 Gigabit Internet Protocol Network Connections in the Exchange's Data Center and to Amend the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule to Implement Fees for the New Service

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 28, 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 the Substance of the Proposed Rule Change

The Exchange proposes to change its rules to provide that the co-location services offered by the Exchange include 40 gigabit ("Gb") internet protocol ("IP") network connections in the Exchange's data center. The Exchange proposes to amend the NYSE MKT Equities Price List ("Price List") and the NYSE Amex Options Fee Schedule ("Fee Schedule") to implement fees for the new service.

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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 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 change its rules to provide that the co-location⁴ services offered by the Exchange include 40 Gb IP network connections in the Exchange’s data center. The Exchange proposes to amend the Price List and the Fee Schedule to implement fees for the new service.

Currently, the Exchange’s co-location services offer Users⁵ access to two local area networks available in the data center: the IP network and the Liquidity Center Network

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 “Original Co-location Filing”). 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 the 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).

(“LCN”).⁶ IP network access is currently available in 1 and 10 Gb capacities. The Exchange also offers 1, 10, and 40 Gb LCN network access and LCN 10 Gb LX network access.⁷

The IP network and LCN provide Users with access to the Exchange’s trading and execution systems and to the Exchange’s proprietary market data products. The IP network also provides Users with access to away market data products. There is greater latency in the transmission of data between Users and the Exchange for the IP Network than for the LCN. The IP network provides Users that do not need the lower latency of the LCN with a less costly data center network option. Having another data center network also provides Users with the option to create redundancy in their infrastructure.

The proposed rule change would allow Users to purchase 40 Gb IP network connections in the data center. The offering of a 40 Gb IP network connection in addition to the existing 1 and 10 Gb IP network connections would provide a User more choices regarding the bandwidth of its IP network connections, allowing it to select the option that best corresponds to its needs and is most cost-effective for that User.

The 40 Gb IP network connection is expected to be available no later than April 15, 2016. The Exchange will announce the date that the 40 Gb IP network connection will be available through a customer notice.

⁶ See Original Co-location Filing, at 59299 and 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).

⁷ See Original Co-location Filing, at 59299 and Securities Exchange Act Release No. 70886 (November 15, 2013), 78 FR 69904 (November 21, 2013) (SR-NYSEMKT-2013-92) (notice of filing and immediate effectiveness of proposed rule change to include LCN 10 Gb LX connection).

The Exchange proposes to establish the following fees for 40 Gb IP network connections:

Type of Service	Description	Amount of Charge
IP Network Access	40 Gb circuit	\$10,000 per connection initial charge plus \$17,000 monthly per connection

By comparison, the 1 Gb IP network connection costs \$2,500 per connection initial charge plus \$2,500 monthly per connection and the 10 Gb IP network connection costs \$10,000 per connection initial charge plus \$10,000 monthly per connection. The 40 Gb LCN circuit costs \$15,000 per connection initial charge plus \$20,000 monthly per connection.

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;⁸ and (iii) a User would only incur one charge for the particular co-location service described

⁸ 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.⁹

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,¹⁰ in general, and furthers the objectives of Sections 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, 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 40 Gb IP network connection is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because it would make a service available to Users that require the increased IP network bandwidth, but Users that do not require the increased bandwidth could continue to request an existing lower-bandwidth IP network connection. Users that require lower latency levels may utilize LCN connections.

⁹ See SR-NYSEMKT-2013-67, supra note 5 at 50471. The Exchange's affiliates have also submitted the same proposed rule change to propose the changes described herein. See SR-NYSE-2015-54 and SR-NYSEArca-2015-105.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed service 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 the offering of a 40 Gb IP network connection in addition to the existing 1 and 10 Gb IP network connections would provide a User more choices regarding the bandwidth of its IP network connections, allowing it to select the option that best corresponds to its needs and is most cost-effective for that User.

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 member organizations, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Overall, the Exchange believes that the proposed fees for the proposed 40 Gb IP network connection are reasonable because the Exchange proposes to offer the service as a convenience to Users, but in doing so will incur certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and ongoing monitoring, support and maintenance of such service.

The Exchange further believes that the proposed change is reasonable because the proposed fees directly relate to the level of services provided by the Exchange and, in turn, received by the User. In this regard, the fees proposed for 40 Gb IP network connections are higher than, for example, the fees for 10 Gb IP network connections because costs for the initial purchase and ongoing maintenance of the 40 IP network connections are generally higher than those of the lower-bandwidth connections. However, these costs are not anticipated to be four times higher than the existing 10 Gb IP network connection. The Exchange therefore notes that

¹² 15 U.S.C. 78f(b)(4).

while the proposed bandwidth of the 40 Gb IP network connection is four times greater than the existing 10 Gb IP connection, the proposed fees for the 40 Gb IP network connection are significantly less than four times the fees for the 10 Gb IP connection. Specifically, the proposed initial charge of \$10,000 is the same as the initial charge for the existing 10 Gb IP network connection and the proposed monthly recurring charge of \$17,000 is less than double the \$10,000 monthly charge for the existing 10 Gb IP network connection. The Exchange believes that this supports a finding that the proposed pricing is reasonable because the Exchange anticipates realizing efficiencies as customers adopt higher-bandwidth connections, and, in turn, reflecting such efficiencies in the pricing for such connections.

As with fees for existing co-location services, the fees proposed herein would be charged only to those Users that voluntarily select the 40 Gb IP network connection, which would be available to all Users. Accordingly, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory and are equitably allocated because, in addition to the 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). All Users that voluntarily select the proposed 40 Gb IP network service will be charged the same amount for the service.

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 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 service being completely voluntary, it will be available to all Users on an equal basis (i.e. the same products and services are available to all Users).

The Exchange believes that allowing Users to purchase 40 Gb IP network connections will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such service will be available to Users that require the increased IP network bandwidth, but Users that do not require the increased bandwidth could continue to request an existing lower-bandwidth IP network connection. The offering of a 40 Gb IP network connection in addition to the existing 1 and 10 Gb IP network connections would provide a User more choices regarding the bandwidth of its IP network connections, allowing it to select the option that best corresponds to its needs and is most cost-effective for that User. In addition, the Exchange believes that the proposed change will enhance competition, in that The NASDAQ Stock Market LLC ("NASDAQ") similarly makes a 40 Gb fiber connection available to users of its co-location facilities.¹⁴

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. In such an environment, the Exchange must continually review, and

¹³ 15 U.S.C. 78f(b)(8).

¹⁴ See NASDAQ Rule 7034 for a description of NASDAQ's co-location services.

consider adjusting, its services and related 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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁷ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁸ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

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)¹⁹ 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 No. SR-NYSEMKT-2015-90 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 No. SR-NYSEMKT-2015-90. 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

¹⁹ 15 U.S.C. 78s(b)(2)(B).

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-2015-90, 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.²⁰

Robert W. Errett
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).