

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77973; File No. SR-NYSEMKT-2016-57)

June 2, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Change Amending the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule to Eliminate Certain Services that are No Longer Utilized by Users and to Remove Obsolete Text

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 May 23, 2016, 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 amend the NYSE MKT Equities Price List (“Price List”) and the NYSE Amex Options Fee Schedule (“Fee Schedule”) to eliminate certain services that are no longer utilized by Users and to remove obsolete text. The proposed 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Price List and Fee Schedule for the co-location⁴ services offered by the Exchange to eliminate certain services that are no longer utilized by Users⁵ and to remove obsolete text.

LCN CSP Access

The “Liquidity Center Network” (“LCN”) is a local area network available in the data center. A User is currently able to act as a content service provider (a “CSP” User) and deliver services to another User in the data center (a “Subscribing” User).⁶ These services could include, for example, order routing/brokerage services and/or data delivery services.

Currently, the Exchange offers CSP Users specific, dedicated 10 gigabyte (“Gb”) LCN

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 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 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).

⁶ See Securities Exchange Act Release No. 67665 (August 15, 2012), 77 FR 50734 (August 22, 2012) (SR-NYSEMKT-2012-11).

connections (“LCN CSP”) that would allow CSP Users to send data to, and communicate with, all their properly authorized Subscribing Users at once. In such a case, a Subscribing User would receive the services via its standard LCN connection and would be charged an initial and monthly fee (“CSP Subscriber fee”) reflecting the benefit of receiving services from the CSP User in this manner.⁷

However, Users no longer utilize the LCN CSP connection offering. Accordingly, the Exchange proposes to discontinue LCN CSP connections, and to remove references to LCN CSP access and CSP Subscriber fees from the Price List and Fee Schedule. A CSP User would remain able to deliver services to a Subscribing User via direct cross connect, as is currently the case and as was the case prior to the introduction of the LCN CSP connection offering.

Bundled Network Access

A User is currently able to select from two “bundled” connectivity options when connecting to the data center: “Bundled Network Access Option 1” and “Bundled Network Access Option 2”.⁸ The Exchange proposes to discontinue Bundled Network Access Option 2, as Users no longer utilize it, and to remove references to related pricing from the Price List and Fee Schedule. In addition, the Exchange proposes to rename “Bundled Network Access Option 1” as “Bundled Network Access,” as it would be the sole remaining option.

IP Network Access

The internet protocol (“IP”) network is a local area network available in the data center.⁹

⁷ Id. Previously, the Exchange also offered a one Gb LCN CSP connection, but it was discontinued as it was no longer utilized by Users. See Securities Exchange Act Release No. 72719 (July 30, 2014), 79 FR 45502 (August 5, 2014) (SR-NYSEMKT-2014-61).

⁸ Previously, the Exchange offered other “bundled” connectivity options, but they were discontinued as they were no longer utilized by Users. See id., at 45503.

⁹ See Securities Exchange Act Release No. 74220 (February 6, 2015), 80 FR 7894 (February 12, 2015) (SR-NYSEMKT-2015-08) (notice of filing and immediate

IP network access is offered in 1, 10 and 40 Gb capacities. The Exchange proposes to delete statements in the Price List and Fee Schedule that the 40 Gb circuit of the IP network is expected to be available no later than April 15, 2016,¹⁰ as such statements are obsolete. This proposed change would have no impact on pricing.

General

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;¹¹ and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.¹²

effectiveness of proposed rule change to include IP network connections and fiber cross connects between a User's cabinet and a non-User's equipment).

¹⁰ See Securities Exchange Act Release No. 76373 (November 5, 2015), 80 FR 70024 (November 12, 2015) (SR-NYSEMKT-2015-90) (notice of filing and immediate effectiveness of proposed rule change to include IP 40 Gb network connections).

¹¹ 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.

¹² See SR-NYSEMKT-2013-67, supra note 5, at 50471. The Exchange's affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2016-39 and SR-NYSEArca-2016-77.

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,¹³ in general, and Section 6(b)(4) of the Act,¹⁴ 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 also believes that the proposed rule change furthers the objectives of Section 6(b)(5) of the Act,¹⁵ 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 change is reasonable, equitable and not unfairly discriminatory because discontinuing the LCN CSP and Bundled Network Access Option 2 in the data center would permit the Exchange to streamline the offerings available to Users in the data center by eliminating services that Users no longer utilize and, by removing references to related pricing from the Price List and Fee Schedule, make the Price List and Fee Schedule

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78f(b)(5).

easier to read, understand and administer. The Exchange believes that, because no Users utilize such services, it would be equitable and not unfairly discriminatory to discontinue the services.

The Exchange believes that it is reasonable to discontinue the services in the data center that are no longer utilized by Users and to remove references to related pricing from the Price List and Fee Schedule because the Exchange offers the services described herein as a convenience to Users, but in doing so incurs 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 services. Removing services that Users do not utilize from the co-location offerings would contribute to a more efficient process for managing the various services offered to Users, which would improve the utilization of the data center resources, both with respect to personnel and infrastructure, including hardware and software.

The Exchange believes that eliminating references in the Price List and Fee Schedule that state that the 40 Gb circuit of the IP network is expected to be available no later than April 15, 2016, is reasonable, equitable and not unfairly discriminatory because these references are obsolete and no longer have an impact on pricing. The proposed change would result in the removal of obsolete text from the Price List and Fee Schedule and therefore add greater clarity to the Price List and Fee Schedule regarding the services offered and the applicable fees.

For the reasons above, the proposed changes do 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,¹⁶ 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 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).

The Exchange believes that discontinuing the LCN CSP and Bundled Network Access Option 2 in the data center and removing references to related pricing and obsolete text from the Price List and Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because no Users utilize the services proposed to be discontinued. A CSP User would remain able to deliver services to a Subscribing User via direct cross connect, as is currently the case and as was the case prior to the introduction of the LCN CSP connection offering. The proposed rule change is not intended to address competitive issues.

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 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.

¹⁶ 15 U.S.C. 78f(b)(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)¹⁷ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁸ 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)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-2016-57 on the subject line.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(2).

¹⁹ 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 No. SR-NYSEMKT-2016-57. 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, 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-2016-57, 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

Brent J. Fields
Secretary

²⁰ 17 CFR 200.30-3(a)(12).