

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67664; File No. SR-NYSEMKT-2012-10)

August 15, 2012

Self-Regulatory Organizations; NYSE MKT LLC; Order Approving a Proposed Rule Change Amending the NYSE MKT Price List to Provide for Additional Co-location Services and Establish Related Fees

I. Introduction

On June 13, 2012, NYSE MKT LLC (“NYSE MKT” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the NYSE MKT Price List to provide for additional co-location services and establish related fees. The proposed rule change was published for comment in the Federal Register on July 2, 2012.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange provides co-location services to Users from a data center in Mahwah, New Jersey.⁴ The Exchange’s co-location services allow Users to rent space in the data center so that they may locate their electronic servers in close physical proximity to the Exchange’s trading and execution system.⁵ The Exchange proposes to make multiple changes to provide for additional co-location services and establish related fees.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 67261 (June 26, 2012), 77 FR 39309 (“Notice”).

⁴ See Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR-NYSEAmex-2010-80).

⁵ For purposes of its co-location services, the term “User” includes (i) member

Cabinet Cross Connects

Currently the Exchange allows Users with more than one cabinet within the data center to purchase one or more fiber cross connects between its cabinets. The Exchange proposes that each User be permitted to purchase cross connects between its own cabinets, as is currently permitted, as well as between its cabinet(s) and the cabinets of separate Users within the data center.⁶ A cross connect between Users could be requested in order to receive technical support, order routing and/or market data delivery services from another User. In addition, the Exchange proposes to bundle cross connects such that a single sheath can hold either one cross connect or several cross connects in multiples of six (e.g., six, twelve, eighteen or twenty-four cross connects). The Exchange proposes to charge a \$500 initial fee for either single or bundled cross connects and a monthly charge contingent upon the number of cross connects established.⁷

10 Gb LCN Connections

Users are currently able to purchase access to the Exchange's Liquidity Center Network ("LCN"), a local area network available in the data center, in either one or ten gigabit ("Gb") capacities, for which Users incur an initial and monthly fee per connection. The Exchange proposes that a User that purchases five 10 Gb LCN connections would only be charged the

organizations, as that term is defined in Rule 2(b) – Equities; (ii) Sponsored Participants, as that term is defined in Rule 123B.30(a)(ii)(B) – Equities; and (iii) non-member organization broker-dealers and vendors that request to receive co-location services directly from the Exchange.

⁶ The Exchange notes that only the User requesting the cross connect would be charged the related initial and monthly fees; the counterparty User would simply be required to give permission for the cross connection.

⁷ The Exchange proposes to charge \$500 monthly to furnish and install one cross connect between cabinets. For a bundle of six cross connects, the monthly charge would be \$1,500; 12 cross connects would be \$2,500 per month; 18 cross connects would be \$3,200 per month; and 24 cross connects would be \$3,900 per month.

initial fee for a sixth 10 Gb LCN connection and would not be charged the monthly fee that would otherwise be applicable.

LCN CSP Connections

A User may act as a content service provider (a “CSP User”) and deliver services to another User in the data center (a “Subscribing User”), such as order routing or market data delivery services. The services can be provided either via direct cross connect between the CSP User and Subscribing Users; or in addition, CSP Users can send data to, and communicate with, all their properly authorized Subscribing Users at once, via a dedicated LCN Connection (an “LCN CSP” connection). The Exchange proposes an initial connection fee for CSP Users establishing a LCN CSP connection as well as a monthly charge depending on whether the connection is a 1 or 10 Gb circuit. The Subscribing User receives the services via its standard LCN connection and is charged an initial and monthly fee that reflects the benefit of receiving services in this manner.⁸

Cages

A User may purchase a cage to house its cabinets within the data center. The Exchange charges fees for cages based on the size of the cage, which corresponds to the number of cabinets housed therein. The Exchange is proposing the following fees for cages:

- For 1-14 cabinets, a \$5,000 initial charge plus \$2,700 monthly charge;
- For 15-28 cabinets, a \$10,000 initial charge plus \$4,100 month charge; and
- For 29 cabinets or more, a \$15,000 initial charge plus \$5,500 monthly charge.

⁸ For a CSP User, a 1Gb Circuit for a LCN CSP connection has a \$6,000 connection charge plus a \$500 monthly fee. A 10Gb Circuit for a LCN CSP connection has a \$10,000 initial connection charge plus a \$5,000 monthly fee. A CSP Subscriber has an initial charge of \$950 plus a \$300 monthly fee per LCN CSP.

Change Fee

A User may arrange for the Exchange to reconfigure, modify, or otherwise change a co-location service that the Exchange has already established for the User. The Exchange proposes to charge a User a fee of \$950 per order if the User requests a change to one or more existing co-location services.⁹

Expedite Fee

A User may request that the Exchange expedite the completion of co-location services purchased or ordered by the User. The Exchange proposes to charge Users \$4,000 for expedited completion of co-location services.

Power Not Utilized Cabinet

A User may obtain unused cabinet space that the User intends to employ in the future in proximity to the User's existing cabinet space. The Exchange proposes to charge a fee for this cabinet space, in which the power is not utilized, of \$360 per month.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among

⁹ If a User orders two or more services at one time, the User would be charged a one-time Change Fee of \$950, which would cover the multiple services.

¹⁰ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(4).

its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,¹² which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In offering co-location services, the Exchange incurs certain costs, including costs related to the data center facility, hardware and equipment costs, and costs related to personnel required for installation and ongoing support. The Exchange has represented that the fees charged are designed to defray expenses incurred or resources expended by the Exchange.¹³

For example, the Exchange proposes to charge the same \$500 connection fee for installing either a single cross connect or a bundled cross connect because the cost to the Exchange is generally equivalent. With regard to the cages offered by the Exchange, the initial and monthly cost increases in correlation to the size of the cage and how many cabinets it needs to contain because its size represents the opportunity cost of not using that space to sell additional cabinets, or for other Exchange purposes. In a similar vein, the expedite fee proposed corresponds to the additional Exchange resources needed to expedite customer requests, including the potential need for overtime compensation for data center staff. Respecting LCN CSP connections, the Exchange charges the same initial fee as for a standard LCN connection since the connection is physically the same, but the monthly fee is lower because LCN CSP connections are functionally limited in comparison to the standard LCN connection.¹⁴ Additionally, the Exchange represents

¹² 15 U.S.C. 78f(b)(5).

¹³ See Notice supra note 3.

¹⁴ A LCN CSP connection may only be used for providing services to Subscribing Users

that there is no differentiation among Users regarding the fees charged for a particular product, service or piece of equipment. In light of the Exchange's representations, the Commission believes that the co-location fees proposed are consistent with Section 6(b)(4) and 6(b)(5) of the Exchange Act.

The Exchange is offering additional co-location services as a convenience to Users. For instance, the cross connects and LCN CSP connections provide Users within the data center with another alternative to transmit data or provide services, such as order routing or market data delivery services. The cages offered to Users can help prevent the discovery of the hardware employed by Users for co-location. As noted by the Exchange, these additional co-location services are available to all Users on an equal basis. The Commission believes that these additional services are also consistent with Section 6(b)(5) of the Exchange Act, as they are designed to remove impediments to and perfect the mechanism of a free and open market and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁵ that the

and may not be used for other purposes, such as accessing the Exchange.

¹⁵ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-NYSEMKT-2012-10) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Kevin M. O'Neill
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).