

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76750; File No. SR-NYSEMKT-2015-85)

December 23, 2015

Self-Regulatory Organizations; NYSE MKT LLC; Order Approving Proposed Rule Change to the Co-location Services Offered by the Exchange (the Offering of a Wireless Connection to Allow Users to Receive Market Data Feeds from Third Party Markets) and to Reflect Changes to the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule Related to These Services

I. Introduction

On October 23, 2015, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ a proposed rule change to amend the co-location services offered by the Exchange to include a means for co-located Users to receive market data feeds from third party markets through a wireless connection. The proposed rule change was published in the Federal Register on November 12, 2015.⁴ No comment letters were received in response to the Notice. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to change the co-location services offered by the Exchange to include a means for Users to receive market data feeds from third party markets (the “Third Party

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 76366 (November 5, 2015), 80 FR 70047 (November 12, 2015) (“Notice”).

Data”) through a wireless connection.⁵ In addition, the proposed rule change reflects changes to the Exchange’s Price List and the Fee Schedule related to these co-location services.

The Exchange proposes to offer the wireless connection to provide Users with an alternative means of connectivity for Third Party Data. As the Exchange notes, wireless connections involve beaming signals through the air between antennas that are within sight of one another.⁶ Because the signals travel a straight, unimpeded line, and because light waves travel faster through air than through glass (fiber optics), wireless messages have lower latency than messages travelling through fiber optics.⁷

Under the proposed rule change, the Exchange would utilize a network vendor to provide a wireless connection to the Third Party Data through wireless connections from the Exchange access centers in Secaucus and Carteret, New Jersey, to its data center in Mahwah, New Jersey, through a series of towers equipped with wireless equipment.⁸ A User that chooses this optional service would be able to receive data feeds from NASDAQ and BATS Exchange, Inc. over a wireless connection. To receive Third Party Data, the User would enter into a contract with the relevant third party market, which would charge the User the applicable market data fees for the

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).

⁶ See Notice, supra note 4 at 70048.

⁷ See id.

⁸ The NASDAQ Stock Market LLC (“NASDAQ”) offers a similar wireless service. See Securities Exchange Act Release No. 68735 (January 25, 2013), 78 FR 6842 (January 31, 2013) (SR-NASDAQ-2012-119) (approving a proposed rule change to establish a new optional wireless connectivity for co-located clients).

Third Party Data. The Exchange would charge the User fees for the wireless connection for the Third Party Data.⁹

A User would be charged a \$5,000 non-recurring initial charge for each wireless connection and a monthly recurring charge (“MRC”) that would vary depending upon the feed that the User opts to receive. If a User purchased two wireless connections, it would pay two non-recurring initial charges. The MRC for a wireless connection to each of BATS Pitch BZX Gig shaped data, DirectEdge EDGX Gig shaped data, and NASDAQ BX Totalview-ITCH data will be \$6,000; the MRC for a wireless connection of NASDAQ Totalview-ITCH data will be \$8,500; and the MRC for a wireless connection of NASDAQ Totalview-ITCH and BX Totalview-ITCH data will be \$12,000. The Exchange proposes to waive the first month’s MRC, to allow Users to test the receipt of the feed(s) for a month before incurring any MRCs.

The wireless connections would include the use of one port for connectivity to the Third Party Data. A User will only require one port to connect to the Third Party Data, irrespective of how many of the five wireless connections it orders. If a User that has more than one wireless connection wishes to use more than one port to connect to the Third Party Data,¹⁰ the Exchange proposes to make such additional ports available for a monthly fee per port of \$3,000.

The Exchange represents that there is limited bandwidth available on the wireless connection for data feeds from third parties. As a result, the Exchange has decided to offer as Third Party Data only the data feeds that are in high demand from Users. Although constrained

⁹ A User would only receive the Third Party Data for which it had entered into a contract. For example, a User that contracted with NASDAQ for the NASDAQ Totalview-ITCH data feed but did not contract to receive any other Third Party Data would receive only the NASDAQ Totalview-ITCH data feed through its wireless connection.

¹⁰ For example, a User with two wireless connections for Third Party Data may opt to purchase an additional port in order to route the options and equity data it receives to different cabinets.

by bandwidth with respect to the number of feeds it can carry, the Exchange represents that the wireless network offered by the Exchange can be made available to an unlimited number of Users.

The wireless connection would provide Users with an alternative means of connectivity for Third Party Data. Currently, Users can receive Third Party Data through other methods, including, for example, from another User, through a telecommunications provider, or over the internet protocol (“IP”) network.¹¹ In addition, Users can receive Third Party Data from wireless networks offered by third party vendors. The Exchange represents that there are currently at least four third party vendors that offer Users wireless network connections using wireless equipment installed on towers and buildings near the data center. The Exchange states that its proposed wireless connection would traverse wireless connections through a series of towers equipped with wireless equipment, including a pole on the grounds of the data center.¹² The Exchange states that access to such pole or the roof is not required for third parties to establish wireless networks that can compete with Exchange’s proposed service and, in particular, represents that based on the information available to it, the proposed wireless connection would provide data at the same or similar speed, and at the same or similar cost, as existing wireless networks, thereby enhancing competition.¹³

The wireless connection to the Third Party Data is expected to be available no later than March 1, 2016. The Exchange will announce the date that the wireless connection to the Third

¹¹ The IP network is a local area network available in the data center. 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 effectiveness of proposed rule change to include IP network connections).

¹² See Notice, supra note 4 at 70050.

¹³ See Notice, supra note 4 at 70049-50.

Party Data will be available through a customer notice.

III. Discussion and Commission 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.¹⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁵ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,¹⁶ 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 addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,¹⁷ which requires that the rules of the exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the Exchange's proposal to provide this additional connectivity option is consistent with the requirement of Section 6(b)(5) of the Act. The Commission believes that the proposal is not designed to permit unfair discrimination between

¹⁴ 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).

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78f(b)(8).

customers, issuers, brokers, or dealers because the Exchange makes wireless connectivity available to all Users on an equal basis. All Users that voluntarily select this service option will be charged the same amount for the same services, and there would be no differentiation among Users with regard to the fees charged for the service. Further, the Exchange represents that Users of the new wireless connection would not receive Third Party Data that is not available to all Users. In addition, the Exchange represents that Users that do not opt to utilize the Exchange's wireless connections would still be able to obtain Third Party Data through other methods, such as from wireless networks offered by third party vendors, other Users, through telecommunications providers, or over the IP network.

The Commission also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act.¹⁸ All Users that voluntarily select this service option will be charged the same amount for the same services, and there would be no differentiation among Users with regard to the fees charged for the service. The Commission notes the Exchange's representation that the fees associated with providing the wireless connections are reasonable because the Exchange 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 monitoring, support and maintenance of such services. The Exchange states that the costs associated with the wireless connections are incrementally higher than fiber optics-based solutions due to the expense of the wireless equipment, cost of installation and testing and ongoing maintenance of the network, and that the fees also reflect the benefit received by Users in terms of lower latency over the fiber optics option. In addition, the Exchange believes that the proposed waiver of the first month's MRC is reasonable as it would allow Users to test the receipt of the feed(s) for a

¹⁸ 15 U.S.C. 78f(b)(4).

month before incurring any monthly recurring fees and may act as an incentive to Users to utilize the new service.

The Commission also finds that consistent with Section 6(b)(8) of the Act the proposed rule change does not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange states that Users currently can receive Third Party Data from competing wireless networks offered by third party vendors, including at least four third party vendors that offer Users wireless network connections using wireless equipment installed on towers and buildings near the data center. The Exchange represents, based on the information available to it, that the proposed wireless connection would provide data at the same or similar speed, and at the same or similar cost, as existing wireless networks, thereby enhancing competition.¹⁹ The Exchange also notes that the proposed wireless connection would compete not just with other wireless connections, but also with fiber optic networks, which may be more attractive to some Users as they are more reliable and less susceptible to weather conditions. For these reasons, the Commission does not believe that the proposed rule change imposes a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

¹⁹ See supra notes 12 and 13 and accompanying text.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-NYSEMKT-2015-85) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Brent J. Fields
Secretary

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).