

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80077; File No. SR-NYSEMKT-2016-63)

February 22, 2017

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment Nos. 1 - 4, to Amend the Co-location Services Offered by the Exchange to Add Certain Access and Connectivity Fees

On August 16, 2016, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) 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 (1) provide additional information regarding access to various NYSE trading and execution services and establish fees for connectivity to certain NYSE market data feeds; and (2) provide and establish fees for connectivity to data feeds from third party markets and other content service providers; access to the trading and execution services of Third Party markets and other content service providers; connectivity to Depository Trust & Clearing Corporation services; connectivity to third party testing and certification feeds; and the use of virtual control circuits by Users in the Data Center.

The Commission published the proposed rule change for comment in the Federal Register on August 26, 2016.³ The Commission received no comments in response to the proposed rule change.⁴ On October 4, 2016, the Commission extended the time period within which to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 34-78629 (August 22, 2016), 81 FR 58992 (“Notice”).

⁴ The Commission notes that it did receive one comment letter on a related filing, NYSE-2016-45 (the “NYSE Companion Filing”), which is equally relevant to this filing. See letter to Brent J. Fields, Secretary, Commission, from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (IEX), dated September 9, 2016 (“IEX Letter I”).

approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to November 24, 2016.⁵

On November 2, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.⁶ On November 29, 2016, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁷

Following the Order Instituting Proceedings, the Commission received several additional comment letters regarding the proposed rule change.⁸

On December 9, 2016, the Exchange filed Amendment No. 2 to the proposed rule change

On September 23, 2016, the NYSE submitted a response (“Response Letter I”).

⁵ See Securities Exchange Act Release No. 34-78968 (September 28, 2016), 81 FR 68493.

⁶ Amendment No. 1 is available on the Commission’s website at <https://www.sec.gov/comments/sr-nysemkt-2016-63/nysemkt201663-1.pdf>.

⁷ See Securities Exchange Act Release 34-79378 (November 22, 2016), 81 FR 86050.

⁸ See letter to Brent J. Fields, Commission, from Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA, dated December 12, 2016 (“SIFMA Letter I”); letter to Brent J. Fields, Commission, from Joe Wald, Chief Executive Officer, Clearpool Group, dated December 16, 2016 (“Clearpool Letter”); letter to Brent J. Fields, Secretary, Commission, from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC (IEX), dated December 21, 2016 (“IEX Letter II”); letter to Brent J. Fields, Commission, from Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA, dated February 6, 2017 (“SIFMA Letter II”). All comments received by the Commission on the proposed rule change are available on the Commission’s website at: <https://www.sec.gov/comments/sr-nysemkt-2016-63/nysemkt201663.shtml>.

The Commission notes that it did receive additional comment letters on the NYSE Companion Filing which are equally relevant to this filing. See letter to Brent J. Fields, Commission, from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, dated December 12, 2016 (“Citadel Letter”); letter to Brent J. Fields, Commission, from David L. Cavicke, Chief Legal Officer, Wolverine LLC (“Wolverine Letter”); letter to Brent J. Fields, Secretary, Commission, from Stefano Durdic, Managing Director, R2G Services, LLC, dated January 21, 2017 (“R2G Letter”). All comments received by the Commission on the NYSE Companion Filing are available on the Commission’s website at: <https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645.shtml>.

and on December 13, 2016 also filed Amendment No. 3 to the proposed rule change.⁹ Amendment Nos. 2 and 3, which, together supersede and replace the proposed rule change, as modified by Amendment No. 1, in its entirety, were published for comment in the Federal Register on December 29, 2016.¹⁰ On January 17, 2017, the Exchange responded to the comment letters submitted after the OIP and prior to January 17, 2017.¹¹ On February 7, 2017, the Exchange filed Amendment No. 4 to the proposed rule change.¹² On February 13, 2017, the Exchange responded to a comment letter submitted after January 17, 2017.¹³

Section 19(b)(2) of the Act¹⁴ provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was

⁹ The Commission notes that the Exhibit 5 filed with Amendment No. 2 contained erroneous rule text and therefore was corrected in Amendment No. 3. Amendment Nos. 2 and 3 are available at <https://www.sec.gov/comments/sr-nysemkt-2016-63/nysemkt201663.shtml>.

¹⁰ See Securities Exchange Act Release No. 34-79672 (December 22, 2016), 81 FR 96080 (“Notice of Current Proposal”).

¹¹ See NYSE Response Letter II (“Response Letter II”), available at <https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645-1502013-130586.pdf>. The R2G and SIFMA II Letters, *supra* note 8, were submitted after the Response Letter II. The Commission notes that in footnote 4 of Response Letter II the Exchange notes that its response to commenters on the NYSE Companion Filing applies equally to this filing.

¹² Amendment No. 4, as filed by the Exchange, is available at <https://www.sec.gov/comments/sr-nysemkt-2016-63/nysemkt201663-1570727-131699.pdf>.

¹³ See NYSE Response Letter III (“Response Letter III”), available at <https://www.sec.gov/comments/sr-nyse-2016-45/nyse201645-1580192-131885.pdf>.

¹⁴ 15 U.S.C. 78s(b)(2).

published for notice and comment in the Federal Register on August 26, 2016.¹⁵ February 22, 2017 is 180 days from that date, and April 23, 2017 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, as modified by Amendment Nos. 1-4, the issues raised in the comment letters that have been submitted in connection therewith, and the Exchange's response to the comments.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹⁶ designates April 23, 2017 as the date by which the Commission should either approve or disapprove the proposed rule change, as modified by Amendments Nos. 1 - 4.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

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Assistant Secretary

¹⁵ See supra note 3.

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(57).