

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72709; File No. SR-NYSEMKT-2014-62)

July 29, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Clarifying the Exchange's Use of Certain Data Feeds for Order Handling and Execution, Order Routing, and Regulatory Compliance

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on July 18, 2014, 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 and II 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 Substance of the Proposed Rule Change

The Exchange proposes to clarify the Exchange's use of certain data feeds for order handling and execution, order routing, and regulatory compliance. The text of the proposed rule change is available on the Exchange's website at [www.nyse.com](http://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 received on the proposed rule change. The text of those statements may be examined at the places

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

On June 5, 2014, in a speech entitled “Enhancing Our Market Equity Structure,” [sic] Mary Jo White, Chair of the Securities and Exchange Commission (“SEC” or the “Commission”) requested the equity exchanges to file with the Commission the data feeds used for purposes of (1) order handling and execution (e.g., with pegged or midpoint orders); (2) order routing, and (3) regulatory compliance, if applicable.<sup>4</sup> Subsequent to the Chair’s speech, the Division of Trading and Markets stated that it “believes there is a need for clarity regarding whether (1) the SIP data feeds, (2) proprietary data feeds, or (3) a combination thereof,” are used for these purposes and requested that proposed rule changes be filed that disclose such information.<sup>5</sup> The stated goal of disclosing this information is to provide broker-dealers and investors with enhanced transparency to better assess the quality of an exchange’s execution and routing services.

The data feeds available for the purposes of order handling and execution, order routing, and regulatory compliance include the exclusive securities information processor (“SIP”) data

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<sup>4</sup> See Mary Jo White, Chair, Securities and Exchange Commission, Speech at the Sandler, O’Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available at [www.sec.gov/News/Speech/Detail/Speech/1370542004312#.U5HI-fmwJiw](http://www.sec.gov/News/Speech/Detail/Speech/1370542004312#.U5HI-fmwJiw)).

<sup>5</sup> See Letter from James Burns, Deputy Director, Division of Trading and Markets, Securities and Exchange Commission, to Jeffrey C. Sprecher, Chief Executive Officer, Intercontinental Exchange, Inc., dated June 20, 2014.

feeds<sup>6</sup> or proprietary data feeds from individual market centers.

(i) Overview of Exchange rules governing order handling, execution, and routing

Before executing any arriving or resting interest, the Exchange evaluates whether the execution would trade through a protected quotation<sup>7</sup> in violation of Rule 611 of Regulation NMS (“Rule 611”),<sup>8</sup> and if so, whether it is eligible for an exception to Rule 611. The Exchange also evaluates whether displaying a bid or offer would result in locking or crossing a protected quotation in violation of Rule 610(d) of Regulation NMS (“Rule 610(d)”)<sup>9</sup> or if it is eligible for an exception to Rule 610(d).

If any protected quotation is superior to the Exchange’s best bid or offer, the Exchange may route a marketable order as an Intermarket Sweep Order (“ISO”)<sup>10</sup> (if consistent with the

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<sup>6</sup> The SIP feeds are disseminated pursuant to effective joint-industry plans as required by Rule 603(b) of Regulation NMS. 17 CFR 242.603(b). The three joint-industry plans are: (1) the CTA Plan, which is operated by the Consolidated Tape Association and disseminates transaction information for securities with the primary listing market on exchanges other than NASDAQ Stock Market LLC (“Nasdaq”); (2) the CQ Plan, which disseminates consolidated quotation information for securities with their primary listing on exchanges other than Nasdaq; and (3) the Nasdaq UTP Plan, which disseminates consolidated transaction and quotation information for securities with their primary listing on Nasdaq.

<sup>7</sup> A “protected bid” or “protected offer” means a quotation in an NMS stock that (i) is displayed by an automated trading center; (ii) is disseminated pursuant to an effective national market system plan; and (iii) is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc. 17 CFR 242.600(b)(57). A “protected quotation” means a protected bid or a protected offer. See 17 CFR 242.600(b)(58). The PBBO is the best-priced protected bid and the best-priced protected offer.

<sup>8</sup> 17 CFR 242.611.

<sup>9</sup> 17 CFR 242.610(d).

<sup>10</sup> An ISO is defined as a limit order for a NMS Stock that (i) when routed to a trading center, is identified as an ISO; and (ii) simultaneously with the routing of the ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed

order's instructions), unless a trade-through exception applies under Rule 611(b). Likewise, if the display of an order would lock or cross a protected quotation, the Exchange may route such interest to one or more protected quotations, if consistent with the order's instructions. The Exchange notes that it only routes to away markets for purposes of compliance with Rules 611 and 610(d). The Exchange further notes that its routing brokers do not have any discretion about where to route such interest.<sup>11</sup>

- (ii) Exchange's stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule regarding how and for what purpose it uses data feeds

The Exchange uses the SIP data feeds to determine protected quotations on markets other than the Exchange for purposes of compliance with Rule 611 and Rule 610(d), including identifying where to route ISOs, to calculate the PBBO for purposes of order types that are priced based on the PBBO, and to determine the national best bid ("NBB")<sup>12</sup> for purposes of compliance with Rule 201 of Regulation SHO and Rule 440B - Equities.<sup>13</sup>

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size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the MNMS [sic] stock with a price that is superior to the limit price of the ISO.

<sup>11</sup> See Rule 17(c)(1)(A)(i) - Equities.

<sup>12</sup> The NBBO is defined as the best bid and best offer of an NMS security that is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan. 17 CFR 242.600(b)(3). The Exchange notes that the NBB may differ from the PBB because the NBB includes Manual Quotations, which are defined as any quotation other than an automated quotation. 17 CFR 242.600(b)(37). By contrast, a protected quotation is an automated quotation that is the best bid or offer of a national securities exchange. 17 CFR 242.60(b)(57)(iii) [sic].

<sup>13</sup> Rule 440B(b) - Equities requires that Exchange systems not execute or display a short sale order with respect to a covered security at a price that is less than or equal to the current NBB if the price of that security decreases by 10% or more, as determined by the Exchange, from the security's closing price on the Exchange at the end of regular trading hours on the prior day.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>15</sup> 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 facilitating transactions in securities, 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. The Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market because it provides enhanced transparency to better assess the quality of an exchange’s execution and routing services.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather would provide the public and investors with information about what data feeds that the Exchange uses for execution and routing decisions.

### 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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition;

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<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

and (iii) become operative for 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

At any time within 60 days of the filing of the 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 will institute proceedings 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](mailto:rule-comments@sec.gov). Please include File Number SR-

NYSEMKT-2014-62 on the subject line.

##### Paper Comments:

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

- 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 Number SR-NYSEMKT-2014-62. 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, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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 Number SR-NYSEMKT-2014-62 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.<sup>18</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).