

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74884; File No. SR-NYSEMKT-2015-35)

May 6, 2015

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees for NYSE MKT Order Imbalances to Add a Late Fee In Connection with Failure to Submit the Non-display Use Declaration

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 April 27, 2015, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend the fees for NYSE MKT Order Imbalances to add a late fee in connection with failure to submit the non-display use declaration, operative on May 1, 2015. The text of the proposed rule 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the fees for NYSE MKT Order Imbalances, as set forth on the NYSE MKT Equities Proprietary Market Data Fee Schedule (“Fee Schedule”), to add a late fee in connection with failure to submit an updated non-display use declaration. The proposed change to the Fee Schedule would be operative on May 1, 2015.

The Exchange established the current fees for non-display services for NYSE MKT OpenBook, NYSE MKT Trades and NYSE MKT BBO in April 2013 and amended those fees and added non-display fees for NYSE MKT Order Imbalances in September 2014.⁴ The 2013 Non-Display Filing established a requirement that data recipients that receive real-time NYSE MKT market data subject to Non-Display Use fees submit a

⁴ See Securities Exchange Act Release Nos. 69285 (April 3, 2013), 78 FR 21172 (April 9, 2013) (SR-NYSEMKT-2013-32)(“2013 Non-Display Filing”) and 72020 (Sept. 9, 2014), 79 FR 55040 (Sept. 15, 2014) (SR-NYSEMKT-2014-72)(“2014 Non-Display Filing”).

declaration with respect to their use of non-display data.⁵ In connection with the fee changes in the 2014 Non-Display Filing, the Exchange required data recipients that receive real-time NYSE MKT market data subject to Non-Display Use fees to complete and submit an updated Non-Display Use Declaration by September 1, 2014.⁶ The 2014 Non-Display Filing also established that data recipients are required to submit an updated annual Non-Display Use Declaration by January 31st of each year beginning in 2016. In addition, if a data recipient's use of real-time NYSE MKT market data changes at any time after the data recipient submits a Non-Display Use Declaration, the data recipient must inform the Exchange of the change by completing and submitting at the time of the change an updated declaration reflecting the change of use.

The Exchange notes that if a data recipient does not timely submit a Non-Display Use Declaration, the Exchange does not have up-to-date information about the data recipient's data use and therefore may not be charging the correct fees to the data recipient. In order to correctly assess fees for the non-display use of NYSE MKT Order Imbalances, the Exchange needs to have current and accurate information about the use of NYSE MKT Order Imbalances. The failure of data recipients to submit the Non-Display Use Declaration on time leads to potentially incorrect billing and administrative

⁵ The non-display fee structure established in the 2013 Non-Display Filing replaced a monthly reporting obligation with respect to non-display devices with the requirement to submit the non-display use declaration. The Exchange also notes that if a data recipient only subscribes to products for which there are no non-display usage fees, e.g., NYSE MKT Realtime Reference Prices, then no declaration is required.

⁶ The current form of the Non-Display Use Declaration reflected the changes to the non-display fees set forth in the 2014 Non-Display Filing and replaced the NYSE Euronext Non-Display Use Declaration established in connection with the 2013 Non-Display Filing.

burdens, including tracking and obtaining late Non-Display Use Declarations and correcting customer records in connection with late Non-Display Use Declarations. The purpose of the proposed late fee is to incent data recipients to submit the Non-Display Use Declaration promptly to avoid the administrative burdens associated with the late submission of Non-Display Use Declarations.

The Exchange proposes to establish a Non-Display Declaration Late Fee of \$1,000 per month. The proposed fee would be charged to any data recipient that pays an Access Fee for NYSE MKT Order Imbalances that has failed to timely complete and submit a Non-Display Use Declaration.

With respect to the Non-Display Use Declaration that was due by September 1, 2014, the Non-Display Declaration Late Fee would apply to NYSE MKT Order Imbalances data recipients that have not submitted the Non-Display Use Declaration by June 30, 2015, and would apply beginning July 1, 2015 and for each month thereafter until the data recipient has completed and submitted the Non-Display Use Declaration. With respect to the annual Non-Display Use Declaration due by January 31st of each year beginning in 2016, the Non-Display Declaration Late Fee would apply to data recipients that fail to complete and submit the annual Non-Display Use Declaration by the January 31st due date, and would apply beginning February 1st and for each month thereafter until the data recipient has completed and submitted the annual Non-Display Use Declaration.⁷ A Non-Display Use Declaration that is clearly incomplete would not be considered to have been completed and submitted to the Exchange on time.

⁷ The Exchange has established the Non-Display Declaration Late Fee with respect to NYSE MKT OpenBook and in that filing adopted endnote 2, which specifies the effective dates for the Non-Display Declaration Late Fee as described above. See SR-NYSEMKT-2015-34.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general, and Sections 6(b)(4) and 6(b)(5) of the Act,⁹ in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Exchange believes that it is reasonable to impose a late fee in connection with the submission of the Non-Display Use Declaration. In order to correctly assess fees for the non-display use of NYSE MKT Order Imbalances, the Exchange needs to have current and accurate information about the use of NYSE MKT Order Imbalances. The failure of data recipients to submit the Non-Display Use Declaration on time leads to potentially incorrect billing and administrative burdens, including tracking and obtaining late Non-Display Use Declarations and correcting and following up on payments owed in connection with late Non-Display Use Declarations. The purpose of the late fee is to incent data recipients to submit the Non-Display Use Declaration promptly to avoid the administrative burdens associated with the late submission of Non-Display Use Declarations. The Non-Display Declaration Late Fee is equitable and not unfairly discriminatory because it will apply to all data recipients that choose to subscribe to the NYSE MKT Order Imbalances feed.

The Non-Display Declaration Late Fee is also consistent with similar pricing

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4), (5).

adopted in 2013 by the Consolidated Tape Association (“CTA”).¹⁰ The CTA imposes a monthly fee of \$2,500 for each of Network A and Network B for firms that fail to comply with their reporting obligations in a timely manner.

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. An exchange’s ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange’s proprietary data. In addition to being able to choose which proprietary data products (if any) to use and how to use them, a user can avoid the late fees that are the subject of this filing entirely by simply complying with the requisite deadlines.

In setting the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of fierce competition to sell proprietary data products and for order flow, as well as numerous alternatives to the Exchange’s products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that

¹⁰ See Securities Exchange Act Release No. 70010 (July 19, 2013), 78 FR 44984 (July 25, 2013)(SR-CTA/CQ-2013-04).

any particular vendor or data recipient would achieve through the purchase (the returns on use being a particularly important aspect of non-display uses of proprietary data).

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)¹¹ of the Act and subparagraph (f)(2) of Rule 19b-4¹² 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)¹³ 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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 15 U.S.C. 78s(b)(2)(B).

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 Number SR-NYSEMKT-2015-35 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2015-35. 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 the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at www.nyse.com. 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-2015-35 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.¹⁴

Robert W. Errett
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).