

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80117; File No. SR-NYSEMKT-2017-09)

February 28, 2017

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Co-location Services Offered by the Exchange Adding a Wireless Connection to Toronto Stock Exchange (TSX) Third Party Data

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 February 15, 2017, 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 the Substance of the Proposed Rule Change

The Exchange proposes to change the co-location services offered by the Exchange to include a means for co-located Users to receive the Toronto Stock Market market data feed through a wireless connection. In addition, the proposed rule change reflects changes to the NYSE MKT Equities Price List (“Price List”) and the NYSE Amex Options Fee Schedule (“Fee Schedule”) related to the proposed service. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to change the co-location⁴ services offered by the Exchange to include a means for Users⁵ to have access to the Toronto Stock Exchange market data feed through a wireless connection. In addition, the proposed rule change reflects changes to the Exchange’s Price List and Fee Schedule related to the proposed service.

The Exchange provides Users with wireless connections to seven market data feeds or

⁴ The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (“Commission”) in 2010. See Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR-NYSEAmex-2010-80). The Exchange operates a data center in Mahwah, New Jersey (the “Data Center”) from which it provides co-location services to Users.

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 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 (“NYSE LLC”) and NYSE Arca, Inc. (“NYSE Arca”). See Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR-NYSEMKT-2013-67).

combinations of feeds from third party markets (the “Existing Third Party Data”).⁶ The Exchange now proposes to add to its Price List and Fee Schedule a new market data feed from the Toronto Stock Exchange (such feed, “TSX” and, together with the Existing Third Party Data, the “Third Party Data”).

Through a new affiliate, the Exchange would provide the proposed wireless connection to TSX through wireless connections into the colocation center in the Data Center. The proposed rule change would become operative when the Exchange acquires such new affiliate (the “Acquisition”), expected to be no later than June 30, 2017. The Exchange will announce the date that the wireless connection to the TSX will be available through a customer notice.

To receive TSX, the User would enter into a contract with the Toronto Stock Exchange, which would charge the User the applicable market data fees for TSX. The Exchange would charge the User fees for the wireless connection for TSX.⁷

For each wireless connection to TSX, a User would be charged a \$5,000 non-recurring initial charge and a monthly recurring charge (“MRC”) of \$8,500. The Exchange proposes to revise its Price List and Fee Schedule to reflect fees related to the connection to TSX.

As with the Existing Third Party Data, if a User purchased two wireless connections, it would pay two non-recurring initial charges. The wireless connection would include the use of one port for connectivity to TSX. A User would not pay a fee for the use of such port. However, a User would not be able to use the same port that it uses for connectivity to TSX to connect to Existing Third Party Data. Accordingly, a User that connects to both TSX and Existing Third

⁶ See Securities Exchange Act Release Nos. 76750 (December 23, 2015), 80 FR 81648 (December 30, 2015) (SR-NYSEMKT-2015-85) (“Wireless Approval Release”); 78376 (July 21, 2016), 81 FR 49311 (July 27, 2016) (SR-NYSEMKT-2016-70).

⁷ A User would only receive TSX if it had entered into a contract with the Toronto Stock Exchange.

Party Data would have at least two ports.⁸

As with the previously approved wireless connections to Third Party Data, the Exchange proposes to waive the first month's MRC, to allow Users to test the receipt of TSX for a month before incurring any MRCs.

The company which the Exchange expects to acquire in the Acquisition currently provides wireless connections to TSX to customers who are also Users (the "Existing Customers"). The Exchange would not charge such Existing Customers the non-recurring initial charge or waive the first month's MRC for their wireless connection to TSX.

The Exchange proposes to offer the wireless connection to provide Users with an alternative means of connectivity for TSX. For example, Users may receive connections to TSX from another User, through a telecommunications provider, or over the internet protocol ("IP") network.⁹

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (e.g., a service bureau providing order entry services); (ii) use of the co-location services proposed

⁸ If a User purchases a wireless connection to TSX, that connection would include the use of one port for connectivity to TSX. If the same User connects to Existing Third Party Data, it would receive the use of one port for connectivity to the Existing Third Party Data. It would not be separately charged for such ports. A User only requires one port to connect to the Existing Third Party Data, irrespective of how many of the wireless connections it orders. It may purchase additional ports. See Wireless Approval Release, at 81649.

⁹ 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).

herein would be completely voluntary and available to all Users on a non-discriminatory basis;¹⁰ and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.¹¹

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and

¹⁰ As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

¹¹ See SR-NYSEMKT-2013-67, supra note 5 at 50471. The Exchange's affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2017-05 and SR-NYSEArca-2017-18.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4), (5).

because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed service is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the wireless connection to TSX would provide Users with an alternative means of connectivity to TSX. Users that do not opt to utilize the Exchange's proposed wireless connections would still be able to obtain TSX through other methods. For example, Users may receive connections to TSX from another User, through a telecommunications provider, or over the IP network. Users that opt to use wireless connections to TSX would receive the TSX that is available to all Users, as all market participants that contract with Toronto Stock Exchange for TSX may receive it.

The Exchange believes that this removes impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest because it would provide Users with choices with respect to the form and optimal latency of the connectivity they use to receive TSX, allowing a User that opts to receive TSX to select the connectivity and number of ports that better suit its needs, helping it tailor its Data Center operations to the requirements of its business operations.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁴ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fees changes are consistent with Section 6(b)(4) of the Act for multiple reasons. The Exchange operates in a highly competitive market

¹⁴ 15 U.S.C. 78f(b)(4).

in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory and are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (i.e., the same products and services are available to all Users). All Users that voluntarily select wireless connections to TSX would be charged the same amount for the same services and would have their first month MRC for wireless connections waived.

The Exchange believes that the proposed charges are reasonable, equitably allocated and not unfairly discriminatory because the Exchange proposes to offer the wireless connection to TSX described herein as a convenience to Users, but in order to do so must provide, maintain and operate the Data Center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of such services, including by responding to any production issues. Since the inception of co-location, the Exchange has made numerous improvements to the network hardware and technology infrastructure and has established additional administrative controls. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users. Specifically, in order to offer wireless connections, the Exchange must install, test, maintain and operate the wireless equipment.

The Exchange believes that it is reasonable and not unfairly discriminatory that a User that has already purchased wireless connections to other Third Party Data would be charged a non-recurring charge when it purchases a wireless connection to TSX, because it would allow the Exchange to defray or cover certain costs it incurs in installing the wireless connection to TSX, which costs it incurs irrespective of whether the User has existing wireless connections to Third Party Data, while providing the User the benefit of the installation, which would allow it to receive TSX within co-location and with a lower latency over the fiber optics option. To do the initial installation, the Exchange must provide the personnel required for initial installation and testing. The costs associated with installing wireless connections are incrementally higher than those associated with installing fiber optics-based solutions.

The Exchange believes that it is reasonable and not unfairly discriminatory that an Existing Customer would not be subject to the non-recurring initial charge, because such User's

wireless connection to TSX would be in place at the time of the Acquisition, and the Exchange would not have to install the wireless connection.

The Exchange believes that it is reasonable and not unfairly discriminatory that a User that connects to both TSX and Existing Third Party Data may not use the same port for connectivity to both, and so would have at least two ports, because the proposed wireless connection would include the use of one port for connectivity to TSX and the Existing Third Party Data includes the use of one port for connectivity to Existing Third Party Data. A User would not pay a separate fee for using such ports.

The Exchange believes the proposed pricing for the wireless connection to TSX is reasonable because it would allow the Exchange to defray or cover the costs associated with offering Users a wireless connection to TSX while providing Users the benefit of receiving TSX within co-location and with a lower latency over the fiber optics option. The wireless connection for TSX allows Users to select the TSX connectivity option that better suits their needs.

The Exchange believes that the proposed waiver of the first month's MRC is reasonable and not unfairly discriminatory as it would allow Users to test the receipt of TSX for a month before incurring any monthly recurring fees and may act as an incentive to Users to connect to TSX. The Exchange believes that it is reasonable and not unfairly discriminatory that an Existing Customer would not have its first month's MRC for the wireless connection waived, as such User's wireless connection to TSX would be in place prior to the Acquisition, and therefore would not need to be tested. From the perspective of the Existing Customer, the wireless connection to TSX would continue without interruption, before and after the Acquisition.

Moreover, the fees are equitably allocated, reasonable and not unfairly discriminatory because the wireless connection for TSX would provide Users with an alternative means of

connectivity for TSX. Users that do not opt to utilize the Exchange's proposed wireless connections would still be able to obtain TSX through other methods. For example, Users may receive connections to TSX from another User, through a telecommunications provider, or over the IP network. Users that opt to use wireless connections for TSX would receive the TSX that is available to all Users, as all market participants that contract with the Toronto Stock Exchange for TSX may receive it.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁵ the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (i.e. the same products and services are available to all Users).

The Exchange believes that allowing Users to receive TSX through a wireless connection will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such access will satisfy User demand for additional options for

¹⁵ 15 U.S.C. 78f(b)(8).

connectivity to TSX. The proposed wireless connection to TSX would compete with fiber optic network connections to TSX, which may be more attractive to some Users as they are more reliable and less susceptible to weather conditions. Users that do not opt to utilize the proposed wireless connection would be able to obtain TSX through other methods, including, for example, from another User, through a telecommunications provider, or over the IP network.¹⁶ In this way, the proposed changes would enhance competition by helping Users tailor their connectivity for TSX to the needs of their business operations by allowing them to select the form and optimal latency of the connectivity they use to receive TSX that best suits their needs, helping them tailor their Data Center operations to the requirements of their business operations.

Through an affiliate, the Exchange would provide the proposed wireless connection to TSX through wireless connections into the co-location center in the Data Center. The proposed connection to TSX will not traverse through the pole on the grounds of the Data Center utilized for the Existing Third Party Data, as the wireless network utilized for the Existing Third Party Data has exclusive rights to operate wireless equipment on the Data Center pole.¹⁷

Finally, the Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations.

¹⁶ Currently, at least four third party vendors offer Users wireless network connections using wireless equipment installed on towers and buildings near the data center. The Exchange does not believe that any of such vendors offer Users connections to TSX, but is not aware of any impediment to a third party wireless network doing so.

¹⁷ The Exchange will not sell rights to third parties to operate wireless equipment on the Data Center pole due to space limitations, security concerns, and the interference that would arise between equipment placed too closely together. In addition to space issues, there are contractual restrictions on the use of the roof that the Exchange has determined would not be met if it offered space on the roof for third party wireless equipment. Moreover, access to the pole or roof is not required for third parties to establish wireless networks that can compete with the Exchange's proposed service, as witnessed by the existing wireless networks currently serving Users.

Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁹ A proposed rule change filed

¹⁸ 15 U.S.C. 78s(b)(3)(a)(iii).

¹⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change,

under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing.²⁰ Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.²¹

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiver of the operative delay will ensure that Existing Customers are able to continue their existing wireless connectivity to TSX after the Acquisition, without any cessation of service. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and hereby waives the 30-day operative delay and designates the proposal operative upon filing.²²

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) of the Act²³ to determine whether the proposed rule change should be approved or disapproved.

or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

²¹ Id.

²² For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²³ 15 U.S.C. 78s(b)(2)(B).

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. Please include File No. SR-NYSEMKT-2017-09 on the subject line.

Paper comments:

- 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 No. SR-NYSEMKT-2017-09. 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 such 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 No. SR-NYSEMKT-2017-09, 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.²⁴

Eduardo A. Aleman
Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12).