

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81015; File No. SR-NYSEMKT-2017-32)

June 23, 2017

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule to Add Access for Users to Two Third Party Systems and Connectivity to Six Additional Third Party Data Feeds

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 June 16, 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 (a) provide Users with access to two additional third party systems, connectivity to six additional third party data feeds, and connectivity to two additional third party testing feeds, and (b) remove a duplicative third party data feed. In addition, the Exchange proposes to change its NYSE MKT Equities Price List (“Price List”) and the NYSE Amex Options Fee Schedule (“Fee Schedule”) related to these co-location services. 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 amend the co-location⁴ services offered by the Exchange to (a) provide Users⁵ with access to two additional third party systems, connectivity to six additional third party data feeds, and connectivity to two additional third party testing feeds, and (b) remove a duplicative third party data feed. In addition the Exchange proposes to make the corresponding changes to the Exchange’s Price List and Fee Schedule related to these co-location services.

As set forth in the Price List and Fee Schedule, the Exchange charges fees for

⁴ The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. See Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR-NYSEAmex-2010-80) (the “Original Co-location Filing”). 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-NYSEMK-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” and, together with NYSE LLC, the “Affiliate SROs”). See Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR-NYSEMK-2013-67).

connectivity to the execution systems of third party markets and other content service providers (“Third Party Systems”), data feeds from third party markets and other content service providers (“Third Party Data Feeds”), and third party testing feeds.⁶ The lists of Third Party Systems and Third Party Data Feeds are set forth in the Price List and Fee Schedule.

The Exchange now proposes to make the following changes:

- add two content service providers to the list of Third Party Systems: Euronext Optiq Cash and Derivatives Unicast (EUA), and Euronext Optiq Cash and Derivatives Unicast (Production) (together, the “Additional Third Party Systems” or “ATPS”);
- add six feeds to the list of Third Party Data Feeds:
 - Euronext Optiq Compressed Cash, Euronext Optiq Compressed Derivatives, Euronext Optiq Shaped Cash and Euronext Optiq Shaped Derivatives (together, the “Additional Euronext Third Party Data Feeds”); and
 - CME Group (“CME”) and International Securities Exchange (“ISE”) (together, with the Additional Euronext Third Party Data Feeds, the “Additional Third Party Data Feeds” or “ATPD”); and
- add two new testing feeds, Euronext Optiq Cash EUA and the Euronext Optiq Derivatives EUA; and
- remove the Euronext Third Party Data Feed (the “Current Euronext Feed”) from the list of Third Party Data Feeds, because the Current Euronext Feed is similar to the Euronext Optiq Compressed Derivatives feed that the Exchange now proposes to add as a Third

⁶ See Securities Exchange Act Release No. 80309 (March 24, 2017), 82 FR 15725 (March 30, 2017) (SR-NYSEMKT-2016-63).

Party Data Feed.⁷

The proposed Additional Third Party Systems, Additional Euronext Third Party Data Feeds and new testing feeds are new services and products from the third party content service provider, Euronext N.V. (collectively, the “Euronext Products”). Euronext N.V. (“Euronext”) is expected to make the Euronext Products available no later than September 30, 2017.

The Exchange would provide access to the Additional Third Party Systems (“Access”) and connectivity to the Additional Third Party Data Feeds and new testing feeds (“Connectivity”) as conveniences to Users. Use of Access or Connectivity would be completely voluntary. The Exchange is not aware of any impediment to third parties offering Access or Connectivity.

Because the Euronext Products are not yet available, the Exchange does not know whether third parties will offer Users access and connectivity options to connect to the Euronext Products. Similarly, the Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users connectivity to the CME and ISE Additional Third Party Data Feeds, as such third parties are not required to make that information public. However, if one or more third parties opt to offer (or, in the case of the CME and ISE Additional Third Party Data Feeds, presently offer) such access and connectivity to Users, a User may opt to access or connect to such services and products through a connection to an Exchange access center outside the data center, through another User, a third party access center or a third party vendor. In such a case, depending on the service offered by the third party, the User would be able to make such connection through the Exchange’s Secure Financial Transaction Infrastructure (“SFTI”) network, through a third party telecommunication provider, third party wireless network, or a

⁷ As discussed infra, the proposed Euronext Optiq Compressed Derivatives third party data feed will be offered in place of the Current Euronext Feed at the same price.

combination thereof.

The proposed rule change relating to the CME and ISE Additional Third Party Data Feeds would become operative upon the effectiveness of the present rule filing. The proposed rule change relating to each Euronext Product would become operative when such Euronext Product became available from Euronext, which is expected to be no later than September 30, 2017 but may not be at the same time for each Euronext Product.⁸ The Exchange will announce the dates that each Euronext Product will be available through customer notices disseminated to all Users simultaneously.

Connectivity to Additional Third Party Systems

The Exchange proposes to revise the Price List and Fee Schedule to provide that Users may obtain connectivity to the two Additional Third Party Systems for a fee. As with the current Third Party Systems, Users would connect to the Additional Third Party Systems over the internet protocol (“IP”) network, a local area network available in the data center.⁹

As with the current Third Party Systems, in order to obtain access to an Additional Third Party System, the User would enter into an agreement with the relevant third party content service provider, pursuant to which the third party content service provider would charge the User for access to the Additional Third Party System. The Exchange would then establish a unicast connection between the User and the relevant third party content service provider over the IP network.¹⁰ The Exchange would charge the User for the connectivity to the Additional

⁸ As discussed infra, the Current Euronext Feed will not be removed until the proposed Euronext Optiq Compressed Derivatives third party data feed is available.

⁹ 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).

¹⁰ Information flows over existing network connections in two formats: “unicast” format, which is a format that allows one-to-one communication, similar to a phone line, in

Third Party System. A User would only receive, and only be charged for, access to Additional Third Party Systems for which it enters into agreements with the third party content service provider.

The Exchange has no ownership interest in the Additional Third Party Systems. Establishing a User's access to an Additional Third Party System would not give the Exchange any right to use the Additional Third Party Systems. Connectivity to an Additional Third Party System would not provide access or order entry to the Exchange's execution system, and a User's connection to an Additional Third Party System would not be through the Exchange's execution system.

The Exchange proposes to charge a monthly recurring fee for connectivity to an Additional Third Party System. Specifically, when a User requests access to an Additional Third Party System, it would identify the applicable content service provider and what bandwidth connection it required.

The Exchange proposes to modify its Price List and Fee Schedule to add the Additional Third Party Systems to its existing list of Third Party Systems. The revised table would be as follows:

Third Party Systems
Americas Trading Group (ATG)
BATS
Boston Options Exchange (BOX)

which information is sent to and from the Exchange; and "multicast" format, which is a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast.

Chicago Board Options Exchange (CBOE)
Credit Suisse
Euronext Optiq Cash and Derivatives Unicast (EUA)
Euronext Optiq Cash and Derivatives Unicast (Production)
International Securities Exchange (ISE)
Nasdaq
NYFIX Marketplace

The Exchange does not propose to change the monthly recurring fee the Exchange charges Users for unicast connectivity to each Third Party System, including the Additional Third Party Systems.

Connectivity to Additional Third Party Data Feeds

The Exchange proposes to revise the Price List and Fee Schedule to provide that Users may obtain connectivity to each of the six Additional Third Party Data Feeds for a fee. The Exchange would receive the Additional Third Party Data Feeds from the content service provider, at its data center. It would then provide connectivity to that data to Users for a fee. Users would connect to the Additional Third Party Data Feeds over the IP network.¹¹

With respect to the Additional Euronext Third Party Data Feeds, the Exchange proposes to offer connectivity to both “compressed” and “shaped” data feeds. The Exchange expects that Euronext’s shaped feeds will include more data than the compressed feeds.

¹¹ See supra note 9, at 7894 (“The IP network also provides Users with access to away market data products”).

In order to connect to an Additional Third Party Data Feed, a User would enter into a contract with the content service provider, pursuant to which the content service provider would charge the User for the Third Party Data Feed. The Exchange would receive the Third Party Data Feed over its fiber optic network and, after the content service provider and User entered into the contract and the Exchange received authorization from the content service provider, the Exchange would re-transmit the data to the User over the User's port. The Exchange would charge the User for the connectivity to the Additional Third Party Data Feed. A User would only receive, and would only be charged for, connectivity to the Additional Third Party Data Feeds for which it entered into contracts.

The Exchange has no affiliation with the sellers of the Additional Third Party Data Feeds. It would have no right to use the Additional Third Party Data Feeds other than as a redistributor of the data. The Additional Third Party Data Feeds would not provide access or order entry to the Exchange's execution system. The Additional Third Party Data Feeds would not provide access or order entry to the execution systems of the third parties generating the feed. The Exchange would receive the Additional Third Party Data Feeds via arms-length agreements and it would have no inherent advantage over any other distributor of such data.

As it does with the existing Third Party Data Feeds, the Exchange proposes to charge a monthly recurring fee for connectivity to each Additional Third Party Data Feed. The monthly recurring fee would be per Additional Third Party Data Feed. Depending on its needs and bandwidth, a User may opt to receive all or some of the feeds or services included in an Additional Third Party Data Feed.

The Exchange proposes to add the connectivity fees for the Additional Third Party Data to its existing list in the Price List and Fee Schedule. The additional items would be as follows:

Third Party Data Feed	Monthly Recurring Connectivity Fee per Third Party Data Feed
CME Group	\$3,000
Euronext Optiq Compressed Cash	\$900
Euronext Optiq Compressed Derivatives	\$600
Euronext Optiq Shaped Cash	\$1,200
Euronext Optiq Shaped Derivatives	\$900
International Securities Exchange (ISE)	\$1,000

In addition, the Exchange proposes to remove the Current Euronext Feed from the list of Third Party Data Feeds when the proposed Euronext Optiq Compressed Derivatives third party data feed is available. The Exchange understands that the proposed Euronext Optiq Compressed Derivatives third party data feed is a similar platform to the Current Euronext Feed. The proposed Euronext Optiq Compressed Derivatives data feed will be offered at the same price as the Current Euronext Feed. A User of the Current Euronext Feed that wishes to continue to receive such data would enter into a contract with the content service provider to purchase the proposed Euronext Optiq Compressed Derivatives data feed, when available. The Exchange will not cease to offer connectivity to the Current Euronext Feed until the Euronext Optiq Compressed Derivatives data feed is available.

Connectivity to Third Party Testing and Certification Feeds

The Exchange offers Users connectivity to third party certification and testing feeds. Certification feeds are used to certify that a User conforms to any of the relevant content service provider's requirements for accessing Third Party Systems or receiving Third Party Data, while

testing feeds provide Users an environment in which to conduct tests with non-live data. Such feeds, which are solely used for certification and testing and do not carry live production data, are available over the IP network.

The Exchange charges a connectivity fee of \$100 per month per third party certification and testing feed. The Exchange proposes to offer Users connectivity to the Euronext Optiq Cash EUA and the Euronext Optiq Derivatives EUA testing data feeds for the same connectivity fee of \$100 per month per feed.

General

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 herein would be completely voluntary and available to all Users on a non-discriminatory basis;¹² 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 the Affiliate SROs.¹³

The proposed change is not otherwise intended to address any other issues relating to co-

¹² 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.

¹³ See SR-NYSEMKT-2013-67, supra note 5 at 50471. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2017-25 and SR-NYSEArca-2017-62.

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,¹⁴ in general, and furthers the objectives of Sections 6(b)(5) of the Act,¹⁵ 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 because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering additional services, the Exchange would give each User additional options for addressing its access and connectivity needs, responding to User demand for access and connectivity options. Providing additional services would help each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of access and connectivity that best suits its needs.

The Exchange would provide Access and Connectivity as conveniences to Users. Use of Access or Connectivity would be completely voluntary. The Exchange is not aware of any

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

impediment to third parties offering Access or Connectivity. Because the Euronext Products are not yet available, the Exchange does not know whether third parties will offer Users access and connectivity options to connect to the Euronext Products. Similarly, the Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users connectivity to the CME and ISE Additional Third Party Data Feeds. However, if one or more third parties opt to offer (or, in the case of the CME and ISE Additional Third Party Data Feeds, presently offer) such access and connectivity to Users, a User may opt to access or connect to such services and products through a connection to an Exchange access center outside the data center, through another User, a third party access center or a third party vendor. In such a case, the User potentially would be able to make such connection through the Exchange's SFTI network, through a third party telecommunication provider, third party wireless network, or a combination thereof.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering connectivity to each of the Euronext Products as they come into production by Euronext, and offering connectivity to the CME and ISE data feeds to Users upon the effective date of this filing, the Exchange would give Users additional options for connectivity and access to new services as soon as they are available, responding to User demand for access and connectivity options.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, the Exchange proposes not to remove the Current Euronext Feed from the list of Third Party Data Feeds until the proposed Euronext Optiq

Compressed Derivatives third party data feed is available. The proposed Euronext Optiq Compressed Derivatives data feed will be offered to Users at the same price at the Current Euronext Feed and the Exchange understands that the proposed Euronext Optiq Compressed Derivatives data feed is a similar platform to the Current Euronext Feed. All Users, whether or not they currently subscribe to the Current Euronext Feed, will have the opportunity to enter into a contract with Euronext to purchase the proposed Euronext Optiq Compressed Derivatives data feed, when available.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁶ 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 fee changes are consistent with Section 6(b)(4) of the Act for multiple reasons. 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. 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-

¹⁶ 15 U.S.C. 78f(b)(4).

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 additional services and fees proposed herein would be equitably allocated and not unfairly discriminatory because, in addition to the services being completely voluntary, they would be available to all Users on an equal basis (i.e., the same products and services would be available to all Users). All Users that voluntarily selected to receive Access or Connectivity would be charged the same amount for the same services. Users that opted to use Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contracted with the relevant market or content provider would receive access or connectivity.

The Exchange believes that the proposed charges would be reasonable, equitably allocated and not unfairly discriminatory because the Exchange would offer the Access and Connectivity as conveniences 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, including resilient and redundant feeds. In addition, in order to provide Access and Connectivity, the Exchange would maintain multiple connections to each ATPD and ATPS, allowing the Exchange to provide resilient and redundant connections; adapt to any changes made by the

relevant third party; and cover any applicable fees charged by the relevant third party, such as port fees. In addition, Users would not be required to use any of their bandwidth for Access and Connectivity unless they wish to do so.

The Exchange believes the proposed fees for connectivity to the ATPD would be reasonable because they would allow the Exchange to defray or cover the costs associated with offering Users connectivity to ATPD while providing Users the convenience of receiving such ATPD within co-location, helping them tailor their data center operations to the requirements of their business operations. In regards to the Additional Euronext Third Party Data Feeds, the Exchange expects that the shaped feeds will include more data than the compressed feeds. The Exchange accordingly believes that the proposed fees for the compressed and shaped data feeds for both the new Euronext cash and new Euronext derivatives services are reasonable because they would allow the Exchange to defray or cover the costs associated with offering such connectivity, including the maintenance and operating costs associated with the transatlantic Euronext data feeds, while providing Users the benefit of receiving such Additional Euronext Third Party Data Feeds within co-location, helping them tailor their data center operations to the requirements of their business operations by allowing them to select the form and latency of connectivity that best suits their needs, including by selecting between shaped and compressed formats.

The Exchange believes that the addition of the two new Euronext testing feeds for the same price as the monthly connectivity fees currently charged for other third party testing and certification feeds offered by the Exchange would be reasonable, equitably allocated and not unfairly discriminatory because it would provide Users with the benefit of having an environment in which to conduct tests with non-live data, including testing for upcoming

releases and product enhancements or the User's own software development.

For the reasons above, the proposed changes would 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.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,¹⁷ 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 providing Users with additional options for connectivity and access to new services when available would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such proposed Access and Connectivity would satisfy User demand for access and connectivity options. The Exchange would provide Access and Connectivity as conveniences equally to all Users. Because the Euronext Products are not yet available, the Exchange does not know whether third parties will offer Users access and connectivity options to connect to the Euronext Products. Similarly, the Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users connectivity to the CME and ISE Additional Third Party Data Feeds, as such third parties are not required to make that information public. However, if one or more third parties opt to offer (or, in the case of the CME and ISE Additional Third Party Data Feeds, presently offer)

¹⁷ 15 U.S.C. 78f(b)(8).

such access and connectivity to Users, a User may opt to access or connect to such services and products through a connection to an Exchange access center outside the data center, through another User, a third party access center or a third party vendor. In such a case, depending on the service offered by the third party, the User would be able to make such connection through the SFTI network, through a third party telecommunication provider, third party wireless network, or a combination thereof. Users that opt to use the proposed Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contract with the content provider may receive access or connectivity. In this way, the proposed changes would enhance competition by helping Users tailor their Access and Connectivity to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

In addition, the Exchange believes that providing Users with connectivity to each of the Euronext Products as they become available would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such proposed Access and Connectivity would satisfy User demand for additional options for connectivity and access to new services by providing them as soon as Euronext makes them available, responding to User demand for access and connectivity options.

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. 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 under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of

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

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 asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay will permit Users to obtain the benefits of the proposed new access and connectivity services and help Users tailor their data center operations to the requirements of their business operations without delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change 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)²³ of the Act to determine whether the proposed rule change should be approved or disapproved.

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-2017-32 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-2017-32. 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-2017-32, 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).