

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80397; File No. SR-NYSEMKT-2017-18)

April 7, 2017

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Change Amending Its Price List

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 March 28, 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, 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 its Price List to provide that the monthly DMM credit for certain securities will be prorated to the number of trading days in a month that a security is assigned to a DMM. The Exchange proposes to implement this change to its Price List effective March 29, 2017. The proposed 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to provide that the monthly DMM credit for certain securities will be prorated to the number of trading days in a month that a security is assigned to a DMM. The proposed change is the same as that adopted by the Exchange's affiliate New York Stock Exchange LLC for its DMMs.<sup>4</sup>

The proposed changes would apply to both credits in transactions in securities priced \$1.00 or more and those priced below \$1.00.

The Exchange proposes to implement this change to its Price List effective March 29, 2017.

Currently, DMMs are eligible for a monthly credit of \$100 for each security whose consolidated average daily volume or CADV during the current month is less than 50,000 shares per day and for which the DMM has met its 10% quoting requirement in that month. The flat dollar credit supplements the DMM credit in securities that do not trade actively and is applicable to all Exchange-listed securities regardless of price.

The Exchange proposes to revise its Price List to provide that the rebate would be prorated to the number of trading days in a month that a stock is assigned to a DMM. The Exchange believes prorating the rebate to the number of trading days that a stock is assigned to a DMM would [sic] to ensure that the monthly rebate has a nexus to the time for which a DMM

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<sup>4</sup> See Securities Exchange Act Release No. 73021 (September 9, 2014), 79 FR 55047 (September 15, 2014) (SR-NYSE-2014-47).

has affirmative obligations for that stock pursuant to Rule 104 – Equities. For example, if a stock is assigned to more than one DMM unit within a month, such as when a stock is transferred temporarily from one DMM to another and then returned to the original DMM, the Exchange does not believe that it is appropriate that both DMMs that were assigned that stock in a given month should both be eligible for the full monthly rebate.

Similarly, if a stock begins trading at the Exchange mid-month, because of an initial public offering or transfer of a listed security from another exchange, the Exchange does not believe it is appropriate for a DMM to receive a full monthly credit. For example, in a month with 20 trading days, assume a less active security transfers from DMM 1 to DMM 2 after the 15th trading day. The DMM monthly rebate would be prorated for the two DMM firms as follows: DMM 1 would be rebated \$75 (15 assigned trading days/20 trading days in the month x \$100) and DMM 2 would be rebated \$25 (5 assigned trading days/20 trading days in the month x \$100).

The Exchange believes that prorating the rebate for the number of trading days in a month that a stock is assigned to a DMM is appropriate and would ensure that the DMM with responsibility for the stock receives the appropriate rebate for the responsibilities performed for that symbol in the month.<sup>5</sup>

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The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

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<sup>5</sup> The Exchange also proposes a non-substantive change to the heading “Fees and Credits applicable to Designated Market Makers on Transactions in Securities with a Per Share Price of \$1.00 or more” to capitalize the letter “a” in “applicable.”

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>7</sup> 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 prorating of the DMM monthly rebate is reasonable because it would provide a nexus between the rebate paid to a DMM and the number of days that a DMM has been assigned a stock. The Exchange therefore believes that the proposed prorating of the monthly DMM rebate is equitable and not unfairly discriminatory because it directly ties the monthly rebate to the number of trading days for which a DMM has regulatory responsibility for a stock pursuant to Rule 104 – Equities. The Exchange also believes that the proposed prorating is equitable and not unfairly discriminatory because all DMMs would be treated the same.

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

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) & (5).

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

In accordance with Section 6(b)(8) of the Act,<sup>8</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would not burden competition because it would be applicable to DMMs only and ensures that an existing rebate is associated more closely with when a DMM is assigned a stock, which may be shorter than a full month.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

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.

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<sup>8</sup> 15 U.S.C. 78f(b)(8).

### 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)<sup>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</sup> 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)<sup>11</sup> 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 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-2017-18 on the subject line.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

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-2017-18. 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-2017-18, 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>12</sup>

Eduardo A. Aleman  
Assistant Secretary

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