

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81228; File No. SR-NYSEMKT-2017-43)

July 27, 2017

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Adopt Transaction Fees in Connection with the Exchange's Transition to a Fully-Automated Cash Equities Market

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 July 19, 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 adopt transaction fees in connection with the Exchange's transition to a fully-automated cash equities market. The Exchange proposes to implement the rule change on July 24, 2017. The proposed 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

On January 29, 2015, the Exchange announced the implementation of Pillar, which is an integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by the Exchange and its affiliates, NYSE Arca, Inc. (“NYSE Arca”) and New York Stock Exchange LLC (“NYSE”).⁴ NYSE Arca Equities, Inc. (“NYSE Arca Equities”),⁵ which operates the cash equities trading platform for NYSE Arca, was the first trading system to migrate to Pillar.⁶

⁴ See Trader Update dated January 29, 2015, available here: <https://www.nyse.com/trader-update/history#13517>.

⁵ NYSE Arca Equities is a wholly-owned corporation of NYSE Arca and operates as a facility of NYSE Arca.

⁶ NYSE Arca filed four rule proposals in connection with the NYSE Arca implementation of Pillar. See Securities Exchange Act Release Nos. 74951 (May 13, 2015), 80 FR 28721 (May 19, 2015) (Notice) and 75494 (July 20, 2015), 80 FR 44170 (July 24, 2015) (SR-NYSEArca-2015-38) (Approval Order of NYSE Arca Pillar I Filing, adopting rules for Trading Sessions, Order Ranking and Display, and Order Execution); Securities Exchange Act Release Nos. 75497

To effect its transition to Pillar, the Exchange adopted the rule numbering framework of the NYSE Arca Equities, Inc. (“NYSE Arca Equities”) rules for Exchange cash equities trading on the Pillar trading platform.⁷ The Exchange’s trading rules for cash equity trading on Pillar are based on the trading rules of NYSE Arca Equities.⁸ As described in the Trading Rules Filing, with Pillar, the Exchange will transition its cash

(July 21, 2015), 80 FR 45022 (July 28, 2015) (Notice) and 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015) (SR-NYSEArca-2015-56) (Approval Order of NYSE Arca Pillar II Filing, adopting rules for Orders and Modifiers and the Retail Liquidity Program); Securities Exchange Act Release Nos. 75467 (July 16, 2015), 80 FR 43515 (July 22, 2015) (Notice) and 76198 (October 20, 2015), 80 FR 65274 (October 26, 2015) (SR-NYSEArca-2015-58) (Approval Order of NYSE Arca Pillar III Filing, adopting rules for Trading Halts, Short Sales, Limit Up-Limit Down, and Odd Lots and Mixed Lots); and Securities Exchange Act Release Nos. 76085 (October 6, 2015), 80 FR 61513 (October 13, 2015) (Notice) and 76869 (January 11, 2016), 81 FR 2276 (January 15, 2016) (SR-NYSEArca-2015-86) (Approval Order of NYSE Arca Pillar IV Filing, adopting rules for Auctions).

⁷ See Securities Exchange Act Release No. 79242 (November 4, 2016), 81 FR 79081 (November 10, 2016) (SR-NYSEMKT-2016-97) (Notice and Filing of Immediate Effectiveness of Proposed Rule Change) (the “Framework Filing”). The rules applicable to cash equities trading on Pillar are denoted with the letter “E”. Additionally, the Exchange filed a proposed rule change to support Exchange trading of securities listed on other national securities exchanges on an unlisted trading privileges basis, including Exchange Traded Products (“ETP”) listed on other exchanges. See Securities Exchange Act Release No. 79400 (November 25, 2016), 81 FR 86750 (December 1, 2016) (SR-NYSEMKT-2016-103) (Notice) (the “ETP Listing Rules Filing”).

⁸ See Securities Exchange Act Release Nos. 80590 (May 4, 2017), 82 FR 21843 (May 10, 2017) (Approval Order) and 79993 (February 9, 2017), 82 FR 10814 (February 15, 2017) (SR-NYSEMKT-2017-01) (Notice) (“Trading Rules Filing”). The Exchange also has established market maker obligations when trading on the Pillar trading platform. See Securities Exchange Act Release No. 80577 (May 2, 2017), 82 FR 21446 (May 8, 2017) (SR-NYSEMKT-2017-04) (Approval Order) (“DMM Obligations Filing”). In addition, the Exchange will introduce a delay mechanism on Pillar that will add the equivalent of 350 microseconds of latency to inbound and outbound order messages. See Securities Exchange Act Release Nos. 80700 (May 16, 2017), 82 FR 23381 (May 22, 2017) (SR-NYSEMKT-2017-05) (Approval Order) and 79998 (February 9, 2017), 82 FR 10828 (February 15, 2017) (SR-NYSEMKT-2017-05) (Notice).

equities trading platform from a Floor-based market with a parity allocation model to a fully automated price-time priority allocation model that trades all NMS Stocks.

In connection with this transition, the Exchange proposes to amend its Price List to adopt a new pricing model for trading on the Pillar platform.

The proposed changes would apply to transactions executed in all trading sessions in securities priced at or above and below \$1.00.

The Exchange proposes to implement these changes effective July 24, 2017.

Proposed Rule Change

The Exchange proposes the following transaction fees for trading on its Pillar trading platform.

The Exchange also proposes to add the following legend immediately before those current fees and credits in the current fee schedule that would no longer be applicable when trading on the Pillar platform begins: “The following Fees and Credits are not Applicable to Trading on the Pillar Trading Platform.” The Exchange believes that the proposed legend would clarify which fees and credits in the current fee schedule would not be applicable to trading on the Pillar platform, and thus promote transparency regarding which rules would govern trading on the Exchange once it transitions to Pillar.

General Information Applicable to the Price List

The Exchange proposes to summarize general information applicable to fees for the Pillar trading platform in three bullets under the first heading in the Price List titled “Pillar Trading Platform.”

The first bullet would provide that rebates are indicated by parentheses.

The second bullet would provide that, for purposes of determining transaction

fees and credits based on requirements based on quoting levels, average daily volume (“ADV”), and consolidated ADV (“CADV”), the Exchange may exclude shares traded any day that (1) the Exchange is not open for the entire trading day and/or (2) a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours. The second proposed bullet would reproduce the language in footnote 6 of the current Price List.

Finally, the Exchange would state that Electronic Designated Market Maker (“eDMM”)⁹ liquidity credits based on quoting in Exchange-listed securities in the current month will include scheduled early closing days but will not include days involving one or both of the events described in proposed bullet two described above. Once again, the language on the third proposed bullet would reproduce language in footnote 7 of the current Price List.

Transaction Fees

The Exchange proposes the following transactions fees for all transactions other than transactions by an eDMM in securities assigned to an eDMM under heading I titled “Transaction Fees (other than for Transactions by an eDMM in Securities Assigned to an eDMM)”:

Liquidity Adding Displayed Order Fees

The Exchange does not propose to charge a fee for executions on the Exchange of displayed orders that add liquidity to the Exchange. The proposal would apply to securities priced at or above \$1.00 as well as below \$1.00.

⁹ See note 10, infra.

Liquidity Adding Non-Displayed Order Fees

For securities priced at or above \$1.00, the Exchange proposes to charge \$0.0002 per share for executions on the Exchange of non-displayed orders that add liquidity to the Exchange.

For securities priced below \$1.00, the Exchange proposes to charge 0.25% of the total dollar value of the transaction for executions on the Exchange of non-displayed orders that add liquidity to the Exchange.

Liquidity Removing Order Fees

The Exchange proposes to charge \$0.0002 per share for securities priced at or above \$1.00 and 0.25% of the total dollar value of the transaction for securities priced below \$1.00 for all executions on the Exchange that remove liquidity from the Exchange. As noted below, the same fees would apply to eDMM transactions that remove liquidity from the Exchange.

Executions at the Open and Close

For securities priced at or above \$1.00 as well as below \$1.00, the Exchange proposes to charge a fee of \$0.0005 per share for executions at the open and close.

eDMM Fees and Credits

Following the transition to Pillar, Exchange DMMs will be electronic access only,¹⁰ and the Exchange proposes to refer to them as “eDMMs” in the Price List and in

¹⁰ See DMM Obligations Filing, 82 FR at 21446. In addition, because DMMs in Pillar will not be Floor-based individuals who operate within a DMM unit of a member organization, the Exchange will not assign securities at the natural person level and will not require DMMs to facilitate the opening, reopening, or closing of assigned Exchange-listed securities. Further, the DMM rules do not entitle e-DMMs to a parity allocation of executions, and also would not subject DMMs to heightened capital requirements. Finally, DMMs would continue to be subject to

this Filing. The Exchange proposes new fees and credits applicable to eDMM on transactions in securities assigned to the eDMM under heading II in the Price List titled “Fees and Credits Applicable to eDMMs on Transactions in Securities Assigned to an eDMM.”

Immediately below the new proposed heading, the Exchange proposes to summarize certain general information applicable to eDMM fees and credits in three introductory bullets.

The first bullet would provide that, unless an eDMM qualifies for a higher rebate, eDMMs in NYSE American¹¹-listed securities will receive the specified rebates based on the specified quoting requirement for securities at or above \$1.00.

The second bullet would define “Core Trading Hours” to mean the hours of 9:30 a.m. Eastern Time through 4:00 p.m. Eastern Time or such other hours as may be determined by the Exchange from time to time. The proposed bullet is consistent with Rule 1.1E(j), which defines “Core Trading Hours.”

Finally, the third bullet would provide that, for each eDMM to qualify for the specified credits, each eDMM must meet the heightened quoting obligations set forth in

rules governing allocation of securities and combination of DMM units. See generally id. The registration and obligations of DMMs are set forth in Rule 7.24E.

¹¹ Effective on or before July 24, 2017, the Exchange’s name will change to NYSE American LLC. The Exchange has filed to amend, among other documents, the Price List to reflect the name change. See Securities Exchange Act Release No. 80283 (March 21, 2017), 82 FR 15244 (March 21, 2017). Because the proposed amendments to the Price List described in this proposed rule change will be effective after the Exchange changes its name, the Exchange proposes to reflect the new name in the proposed Price List.

Rule 7.24E(c).¹²

The Exchange proposes three new subheadings A through C setting forth eDMM transaction fee and credits, eDMM monthly credits, and market data revenue.

Transaction Fees and Credits

Beneath a new subheading A titled “Transaction Fees and Credits,” the Exchange would summarize eDMM fees and credits for transactions that (1) add liquidity to the Exchange, (2) remove liquidity from the Exchange, and (3) for executions at the open and close of trading, as follows:

For transactions in securities with a price at or above \$1.00, the Exchange proposes a rebate to eDMMs of \$0.0045 per share for displayed transactions that add liquidity to the Exchange.

The Exchange does not propose to charge for non-displayed transactions that add liquidity to the Exchange in securities with a price at or above \$1.00.

For transactions in securities with a price below \$1.00, the Exchange proposes a rebate of .25% of total dollar value for displayed transactions that add liquidity to the Exchange.

The Exchange does not propose to charge for non-displayed transactions that add liquidity to the Exchange in securities with a price below \$1.00.

¹² Rule 7.24E(c) describes the obligations of DMMs on the Pillar Trading Platform and provides that, in addition to meeting the Market Maker obligations set forth in Rule 7.23E, DMMs are required to maintain a bid or an offer at the National Best Bid and National Best Offer (“NBBO” or “inside”) at least 25% of the day as measured across all Exchange-listed securities that have been assigned to the DMM. Rule 7.24E(c) further provides that time at the inside is calculated as the average of the percentage of time the DMM unit has a bid or offer at the inside and that orders entered by the DMM that are not displayed would not be included in the inside quote calculation.

The Exchange does not propose to charge for executions at the open and close for securities priced at or above \$1.00 as well as below \$1.00.

The Exchange proposes to charge \$0.0002 per share for securities priced at or above \$1.00 and 0.25% of the total dollar value of the transaction for securities priced below \$1.00 for all eDMM executions on the Exchange that remove liquidity from the Exchange.

Monthly Credits

Beneath a new subheading B titled “Monthly Credits,” the Exchange proposes that, in addition to the current rate on transactions, the Exchange would provide additional per security credits for eDMMs if certain requirements are met.

First, the Exchange proposes a \$100 per security credit in a month that a security is assigned to the eDMM for securities whose CADV during the previous month would be less than 50,000 shares per day and for which the eDMM quotes at the NBBO at least 25% of the time during Core Trading Hours for that symbol in that month. The credit would be prorated to the number of trading days in a month that a security is assigned to the eDMM.

Second, in addition to the current rate on transactions and the \$100 monthly credit, the Exchange proposes to provide a \$500 per security credit in a month that a security is assigned to an eDMM, for each security for which the eDMM quotes at the NBBO at least 25% of the time during Core Trading Hours for that symbol in that month up to a maximum of 20 symbols per month per eDMM.

Market Data Revenue

Under new heading C titled “Market Data Revenue,” the Exchange proposes that,

for securities with a trading price either at, above or below \$1.00, each eDMM would receive all of the market data quote revenue (the “Quoting Share”) in their assigned securities received by the Exchange from the Consolidated Tape Association under the Revenue Allocation Formula of Regulation NMS in any month in which the eDMM quotes at the NBBO at least 25% of time during Core Trading Hours.

Routing Fees for all ETP Holders

Under new heading III titled “Fees for Routing for all ETP Holders,” the Exchange proposes the following fees for routing, which would be applicable to all orders that are routed, including orders from eDMMs in their assigned NYSE American-listed securities.

For executions in securities with a price at or above \$1.00 that route to and execute on Away Markets,¹³ the Exchange proposes to charge a fee of \$0.0016 per share for executions in an Away Market auction, and a fee of \$0.0030 for all other executions.

For securities priced below \$1.00 that route to and execute on Away Markets, the Exchange proposes to charge a fee of 0.30% of the total dollar value of the transaction for executions in an Away Market auction as well as all other executions.

Off-Hours Trading Facility

Following the transition to Pillar, trading on the Exchange’s Off-Hours Trading Facility will be governed by Rule 7.39E for trading in aggregate-price coupled orders, which is also known as “Crossing Session II.” The Exchange currently charges a fee of \$0.0004 per share for multiple stock aggregate priced buy and sell orders in Crossing

¹³ The term “Away Market” is defined in Rule 1.1E(ff) to mean any exchange, alternative trading system (“ATS”) or other broker-dealer (1) with which the Exchange maintains an electronic linkage, and (2) that provides instantaneous responses to orders routed from the Exchange.

Session II. Fees for such executions are currently capped at \$100,000 per month per member organization.

The Exchange proposes to retain this fee structure without any substantive differences for aggregate-price coupled orders executed in the Off-Hours Trading Facility described in Rule 7.39E. Because such trading would be pursuant to a Pillar rule, the Exchange proposes to set forth the fee under a new heading IV titled “Fees for Off-Hours Trading Facility” in the proposed Price List and omit any reference to Crossing Session II.

Port Fees

Under proposed new heading V titled “Port Fees,” the Exchange proposes fees for the use of ports that (1) that provide connectivity to the Exchange’s trading systems (i.e., ports for entry of orders and/or quotes (“order/quote entry ports”)), and (2) allow for the receipt of “drop copies” of order or transaction information (“drop copy ports” and, together with order/quote entry ports, “ports”).¹⁴

For order/quote entry ports, the Exchange proposes to charge \$250 per port per month. The fee would apply to all market participants. The Exchange proposes not to charge for order/quote entry ports until October 1, 2017. Thereafter, the Exchange proposes to implement the \$250 per port per month fee.

Similarly, the Exchange proposes to charge \$250 per drop copy port per month.

¹⁴ Firms receive confirmations of their orders and receive execution reports via the order/quote entry port that is used to enter the order or quote. A “drop copy” contains redundant information that a firm chooses to have “dropped” to another destination (e.g., to allow the firm’s back office and/or compliance department, or another firm – typically the firm’s clearing broker – to have immediate access to the information). Drop copies can only be sent via a drop copy port. Drop copy ports cannot be used to enter orders and/or quotes.

The fee would apply to all market participants. Additionally, the Exchange proposes to specify that only one fee per drop copy port would apply, even if the port receives drop copies from multiple order/quote entry ports.

The Exchange proposes not to charge for drop copy ports until October 1, 2017. Thereafter, the Exchange proposes to implement the \$250 per port per month fee.

Equity Trading Permit (“ETP”) Fee

The Exchange proposes a new heading VI titled “ETP Fee.” The Exchange does not propose to charge a fee to obtain an ETP.¹⁵

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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.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷ 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.

¹⁵ See Rule 1.1E (m) (definition of ETP).

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) & (5).

Transaction Fees

Liquidity Adding Displayed Order Fees

The Exchange believes that not charging a fee for liquidity adding displayed orders would encourage price discovery and enhance market quality by encouraging more competitive pricing of displayed orders. The Exchange believes that not charging a fee for liquidity adding displayed orders is equitable and not unfairly discriminatory because it is designed to facilitate execution of, and enhance trading opportunities for, displayable orders, thereby further incentivizing entry of displayed orders on the Exchange.

Liquidity Adding Non-Displayed Order Fees

The Exchange believes that charging \$0.0002 per share for securities priced at or above \$1.00 and 0.25% of the total dollar value of the transaction for securities priced below \$1.00 for executions on the Exchange of non-displayed orders that add liquidity to the Exchange is reasonable and not unfairly discriminatory because the proposed rate would be lower than the fee charged by other exchanges.¹⁸ The Exchange further believes that the proposed fee increase is equitable and not unfairly discriminatory because it would apply to all non-displayed orders that add liquidity to the Exchange.

Liquidity Removing Order Fees

The Exchange believes that charging \$0.0002 per share for securities priced at or above \$1.00 and 0.25% of the total dollar value of the transaction for securities priced

¹⁸ IEX, for instance, charges a fee of \$0.0009 per share for providing non-displayed liquidity for securities priced at or above \$1.00 and 0.30% of TDVT (i.e., the total dollar value of the transaction calculated as the execution price) for securities below \$1.00. See Investors Exchange Fee Schedule 2017, available at <https://www.iextrading.com/trading/fees/>.

below \$1.00 for executions on the Exchange that remove liquidity, including eDMM transactions, is reasonable and consistent with the Act. The Exchange notes that the proposed fees are less than the comparable fees on other exchanges.¹⁹

Executions at the Open and Close

The Exchange believes that charging \$0.0005 per share for executions at the open and close for all securities would encourage order flow to maintain the quality of the Exchange's closing auctions for the benefit of all market participants. The Exchange's closing auction is a recognized industry benchmark,²⁰ and member organizations receive a substantial benefit from the Exchange in obtaining high levels of executions at the Exchange's closing price on a daily basis.

eDMM Fees and Credits

Transaction Fees and Credits

The Exchange believes that the proposed rebate of \$0.0045 per share for eDMM displayed transactions that add liquidity to the Exchange in securities with a price at or above \$1.00 and the proposed rebate of .25% of total dollar value for eDMM displayed transactions that add liquidity to the in securities with a price below \$1.00 are reasonable and not unfairly discriminatory. To qualify for the proposed adding liquidity, monthly and market data credits, each eDMM must satisfy the heightened quoting obligation in for eDMMs in Rule 7.24E(c), which requires the eDMM to maintain a bid or an offer at

¹⁹ For example, IEX charges a fee of \$0.0009 per share for taking non-displayed liquidity for securities priced at or above \$1.00 and 0.30% of TDVT (for securities below \$1.00. See Investors Exchange Fee Schedule 2017, available at <https://www.iextrading.com/trading/fees/>.

²⁰ For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

the NBBO at least 25% of the day as measured across all Exchange-listed securities that have been assigned to the eDMM. The Exchange believes that the proposed rebates based on the heightened quoting obligations in Rule 7.24E(c) would encourage additional displayed liquidity on the Exchange in Exchange-listed securities. Further, the Exchange believes that the proposed rebates are equitably allocated and not unfairly discriminatory because they would apply equally to all eDMMs.

Further, the Exchange believes that not charging eDMMs for non-displayed transactions that add liquidity to the Exchange in all securities is reasonable and not unfairly discriminatory because it would encourage additional non-displayed liquidity on the Exchange in Exchange-listed securities. The Exchange believes that not charging eDMMs for adding non-displayed liquidity is not unfairly discriminatory because it would apply equally to all eDMMs. In addition, eDMMs have higher quoting obligations than other market participant, which contributes to price discovery and benefits all market participants. As such, it is equitable and not unfairly discriminatory to offer eDMMs fees that are relatively lower than other market participants that do not have such obligations.

The Exchange believes that not charging eDMMs for executions at the open or close in all securities does not constitute an inequitable allocation of dues, fees and other charges as it provides the eDMMs appropriate incentives to act as liquidity providers and would support them in performing their market making function in the Exchange's new automated price-time priority allocation market model on Pillar.

Monthly Credits

The Exchange believes that the proposed \$100 per security credit and the

proposed prorating is reasonable in light of lower trading volumes in the applicable securities relatively [sic] to those securities that have a consolidated ADV of less than 50,000 shares. The Exchange believes it is appropriate to prorate the rebate to the number of trading days because it would provide a nexus between, and directly tie, the rebate paid to a eDMM and the number of trading days for which an eDMM has regulatory responsibility for a stock pursuant to Rule 7.24E(c). The Exchange also believes that the proposal is equitable and not unfairly discriminatory because all eDMMs would be treated the same. The Exchange believes that the proposed additional \$500 per security credit is reasonable and not unfairly discriminatory for the same reasons.

Market Data Revenue

The Exchange believes that the proposed DMM quoting requirement at the NBBO at least 25% of the time during Core Trading Hours in order to receive in each applicable security 100% of the Quoting Share is reasonable because the proposed requirement would improve quoting and increase adding liquidity across thinly traded securities where there may be fewer liquidity providers. Moreover, the requirement is equitable and not unfairly discriminatory because it would apply equally to all eDMMs. The Exchange notes that the Quoting Share is in addition to the eDMM rebate for providing liquidity and the monthly credit payable to eDMMs for securities with an ADV of less than 50,000 shares during the billing month.

Routing Fees

The Exchange believes that its proposed routing fees are a reasonable and not an unfairly discriminatory allocation of fees because the fee would be applicable to all ETP Holders in an equivalent manner. Moreover, the proposed fees for routing shares are also

reasonable and not unfairly discriminatory because they are consistent with fees charged on other exchanges. In particular, the Exchange's proposal to charge a fee of \$0.0016 per share for executions that route to and execute on Away Market auctions in securities priced at or above \$1.00 is reasonable and not unfairly discriminatory because it is consistent with fees charged on other exchanges.²¹

The proposal to charge \$0.0030 for all other executions in securities priced at or above \$1.00 that route to and execute on Away Market auctions is reasonable and not unfairly discriminatory because it is consistent with fees charged on other exchanges.²²

Finally, the proposal to charge a fee of 0.30% of total dollar value for transactions in securities with a price under \$1.00 are reasonable and not unfairly discriminatory because it is consistent with fees charged on other exchanges.²³

Off-Hours Trading Facility

The Exchange believes that retaining the current fee structure for off-hours aggregate-price coupled orders in Pillar without substantive change and moving the fee to the new Pillar section of the Price List utilizing updated references is reasonable because the proposed changes are designed to provide greater specificity and clarity to the Price List, reduce potential confusion, and make the Exchange's rules easier to navigate,

²¹ For example, the NASDAQ Stock Market ("NASDAQ") charges a rate of \$0.0016 per executed share for Tier F. See NASDAQ Fee Schedule at <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

²² For example, NASDAQ charges a rate of \$0.0030 to remove liquidity for shares executed at or above \$1.00. See NASDAQ Fee Schedule at <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

²³ NASDAQ, for example, charges a fee of 0.30% (i.e. 30 basis points) of total dollar volume to remove liquidity for shares executed below \$1.00. See NASDAQ Fee Schedule at <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

Port Fees

The Exchange believes that the proposed rates for order/quote entry ports and drop copy ports are reasonable because the fees charged for both types of ports are expected to permit the Exchange to offset, in part, its connectivity costs associated with making such ports available, including costs based on software and hardware enhancements and resources dedicated to gateway development, quality assurance, and support. The proposed port fees are also reasonable because the proposed fees are comparable to the rates charged by other venues, and in some cases are less expensive than many of the Exchange's competitors.²⁴

The Exchange believes that the proposed fee for order/quote entry ports is equitable and not unfairly discriminatory because charges for order/entry ports being [sic] will be based on the number of ports utilized. This aspect of the proposed rule change is also equitable and not unfairly discriminatory because it will apply on an equal basis for all ports on the Exchange. The Exchange also believes that these changes to the fees are equitable and not unfairly discriminatory because they would apply to all users of order/quote entry ports on the Exchange.

The Exchange believes that the proposed fee for drop copy ports is reasonable

²⁴ For example, NASDAQ charges \$575 for order entry ports and \$550 for DROP ports. See NASDAQ Fee Schedule at <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#connectivity>. Also, BZX charges \$550 per month per pair for logical ports. Additionally, EDGA and EDGX each charge \$550 per port per month.

because it will result in a fee being charged for the use of technology and infrastructure provided by the Exchange. In this regard, the Exchange believes that the rate is reasonable because it is comparable to the rate charged by other exchanges for drop copy ports.²⁵

The Exchange also believes that it is reasonable that only one fee per drop copy port would apply, even if the port receives drop copies from multiple order/quote entry ports, because the purpose of drop copies is such that a trading unit's or a firm's entire order and execution activity is captured. The Exchange believes that the proposed new fee for drop copy ports is equitable and not unfairly discriminatory because it will apply on an equal basis to all users of drop copy ports and to all drop copy ports on the Exchange. In this regard, all firms will be able to request drop copy ports, as would be the case with order/quote entry ports.

ETP Fee

The Exchange believes that not charging member organization [sic] a fee to obtain an ETP on the Exchange is reasonable because it may incentivize broker-dealers to become Exchange member organizations and to direct order flow to the Exchange, which benefits all market participants through increased liquidity and enhanced price discovery.

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 [sic]

²⁵ See note 24, supra.

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

In accordance with Section 6(b)(8) of the Act,²⁶ 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 changes would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

Finally, 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

²⁶ 15 U.S.C. 78f(b)(8).

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.

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)²⁷ of the Act and subparagraph (f)(2) of Rule 19b-4²⁸ 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)²⁹ 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:

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f)(2).

²⁹ 15 U.S.C. 78s(b)(2)(B).

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-2017-43 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-2017-43. 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-2017-43 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.³⁰

Eduardo A. Aleman
Assistant Secretary

³⁰ 17 CFR 200.30-3(a)(12).