

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 Web site 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 such filing also will be available for inspection and copying at the principal offices 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-NYSE-2015-43, and should be submitted on or before October 30, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Robert W. Errett,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76071; File No. SR-NYSEMKT-2015-72]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List To Change the Monthly Fees for the Use of Certain Ports

October 5, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 23, 2015, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 change the monthly fees for the use of certain ports. The Exchange proposes to implement the fee change effective October 1, 2015. The text of the proposed rule change is available on the Exchange's Web site 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 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 change the monthly fees for the use of certain ports.<sup>3</sup> The Exchange proposes to implement the fee changes on October 1, 2015.

The Exchange currently makes ports available that provide connectivity to the Exchange's trading systems (*i.e.*, ports for entry of orders and/or quotes ("order/quote entry ports")) and charges \$200 per port per month for users of 1-5 ports, and \$500 per port per month for users of 6 or more ports. The Exchange

<sup>3</sup> The Exchange has a Common Customer Gateway ("CCG") that accesses the equity trading systems that it shares with its affiliates, New York Stock Exchange LLC ("NYSE") and NYSE Arca, Inc. ("NYSE Arca"), and all ports connect to the CCG. *See, e.g.*, Securities Exchange Act Release No. 64543 (May 25, 2011), 76 FR 31667 (June 1, 2011) (SR-NYSEAmex-2011-20). All NYSE MKT member organizations are also NYSE member organizations and, accordingly, a member organization utilizes its ports for activity on both NYSE and/or NYSE MKT and is charged port fees based on the total number of ports connected to the CCG, whether the ports are used to quote and trade on NYSE, NYSE MKT, and/or both, because those trading systems are integrated. *See* Supplementary Material .10 to Rule 2. The NYSE Arca trading platform is not integrated in the same manner. Therefore, it does not share its ports with NYSE or NYSE MKT.

also currently makes ports available for drop copies and charges \$500 per port per month.<sup>4</sup>

The Exchange proposes to standardize the port fee for connecting to CCG and charge \$550 per port per month, regardless of the number of users and whether the port is used for order/quote entry or for drop copies. The Exchange believes that standardizing the port fees will permit the Exchange to offset, in part, its infrastructure costs associated with making such ports available. The proposed change would also encourage users to become more efficient with their usage of the ports thereby resulting in a corresponding increase in the efficiency that the Exchange would be able to realize with respect to managing its own infrastructure. In this regard, as users decrease the number of ports that they utilize, the Exchange would similarly be able to decrease the amount of its hardware that it is required to support to interface with such ports.

The proposed change is 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,<sup>5</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>6</sup> in particular, because it provides for the

<sup>4</sup> Only one fee per drop copy port applies, even if receiving drop copies from multiple order/quote entry ports. In addition, the Price List provides that (i) users of the Exchange's Risk Management Gateway service ("RMG") are not charged for order/quote entry ports if such ports are designated as being used for RMG purposes, and (ii) Designated Market Makers ("DMMs") are not charged for order/quote entry ports that connect to the Exchange via the DMM Gateway. *See* Securities Exchange Act Release No. 68261 (November 19, 2012), 77 FR 70522 (November 26, 2012) (SR-NYSEMKT-2012-64). Two methods are available to DMMs to connect to the Exchange: DMM Gateway and CCG. Only DMMs may connect to the DMM Gateway and only when acting in their capacity as a DMM. DMMs are required to use the DMM Gateway for certain DMM-specific functions that relate to the DMM's role on the Exchange and the obligations attendant therewith, which are not applicable to other market participants on the Exchange. By contrast, non-DMMs as well as DMMs may use the CCG. Use of the CCG by a DMM is optional, and a DMM that connects to the Exchange via CCG can use the relevant order/quote entry port for orders and quotes both in its capacity as a DMM and for orders and quotes in other securities. Because DMMs are required to utilize DMM Gateway, but not CCG, to fulfill their functions as DMMs, DMMs are not charged for order/quote entry ports that connect to the Exchange via the DMM Gateway. However, DMMs, like other market participants, are charged for order/entry ports that connect to the Exchange via the CCG.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 proposal to amend the port fees constitutes an equitable allocation of fees because all similarly situated member organizations and other market participants would be charged the same rates. The Exchange believes that the proposed change to the monthly rates is reasonable because the proposed port fees are expected to permit the Exchange to offset, in part, its infrastructure costs associated with making such ports available, including costs based on gateway software and hardware enhancements and resources dedicated to gateway development, quality assurance, and support. In this regard, the Exchange believes that the proposed fees are competitive with those charged by other exchanges.<sup>7</sup> The proposed change is also reasonable because the proposed per port rates would encourage users to become more efficient with, and reduce the number of ports used, thereby resulting in a corresponding increase in the efficiency that the Exchange would be able to realize with respect to managing its own infrastructure.

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.

#### *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. Rather, the Exchange believes that the proposed change will permit the Exchange to set fees for ports that are competitive with those charged by other exchanges.<sup>9</sup> Moreover, the Exchange believes that the proposal to amend the port fees would encourage users to become more efficient with, and reduce the number of

ports used. In this regard, the Exchange believes that the proposal would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange believes that a reduction in the number of ports would result in a decrease in the infrastructure that the Exchange is required to support for connectivity to its trading systems. This would also provide incentive for users to become more efficient with their use of ports and could therefore result in such users becoming more competitive due to decreased costs.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that this proposal promotes a 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**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>11</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>12</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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2015-72 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEMKT-2015-72. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 such filing also will be available for inspection and copying at the principal offices 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-2015-72, and should be submitted on or before October 30, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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<sup>7</sup> For example, the charge on the NASDAQ for a FIX Trading Port is \$550 per port per month. See NASDAQ Rule 7015. A separate charge for Pre-Trade Risk Management ports also is applicable, which ranges from \$400 to \$600 and is capped at \$25,000 per firm per month. See NASDAQ Rule 7016.

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

<sup>9</sup> See *supra* note 7.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>13</sup> 17 CFR 200.30-3(a)(12).