

Required fields are shown with yellow backgrounds and asterisks.

Proposed Rule Change by NYSE MKT LLC.
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *		Section 19(b)(3)(B) *		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>		
			Rule					
Pilot	Extension of Time Period for Commission Action *	Date Expires *	19b-4(f)(1)	19b-4(f)(2)	19b-4(f)(3)	19b-4(f)(4)	19b-4(f)(5)	19b-4(f)(6)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Exhibit 2 Sent As Paper Document	Exhibit 3 Sent As Paper Document
<input type="checkbox"/>	<input type="checkbox"/>

Description
Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name * Last Name *
Title *
E-mail *
Telephone * Fax

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date
By
(Name *) (Title *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information (required)

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) NYSE MKT LLC (“NYSE MKT” or the “Exchange”) proposes to amend its Price List to change the monthly fees for the use of ports. The amended section of the Price List is included as Exhibit 5 hereto. A copy of this filing is available on the Exchange’s website at www.nyse.com, at the Exchange’s principal office and at the Public Reference Room of the Securities and Exchange Commission (“Commission”).
- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

Martha M. Redding
Chief Counsel
NYSE Euronext
(212) 656-2938

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange proposes to amend its Price List to change the monthly fees for the use of ports that provide connectivity to the Exchange’s trading systems (i.e., ports for entry of orders and/or quotes (“order/quote entry ports”)) and to implement a fee for ports that allow for the receipt of “drop copies” of order or transaction information (“drop copy ports” and, together with order/quote entry ports, “ports”).¹

¹ 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

Order/Quote Entry Ports

The Exchange currently makes order/quote entry ports available for connectivity to its trading systems and charges \$300 per port pair per month for up to five pairs of ports, then \$1,500 per month for each additional five pairs of ports.²

The Exchange proposes to change the current methodology for order/quote entry port billing, such that order/quote entry ports would be charged on a per port basis, without billing in groups of five and without requiring that ports be in pairs.³ More specifically, the Exchange proposes to charge \$200 per port per month for order/quote entry ports, which are currently charged \$300 per pair per month for activity on NYSE MKT;⁴ provided, however, that (i) users of the Exchange's Risk Management Gateway service ("RMG") would not be charged for order/quote entry ports if such ports are designated as being used for RMG

the information). Such drop copies can only be sent via a drop copy port. Drop copy ports cannot be used to enter orders and/or quotes.

² See Securities Exchange Act Release No. 63072 (October 7, 2010), 75 FR 64368 (October 19, 2010) (SR-NYSEAmex-2010-97) (the port fee "Adopting Release"). See also Securities Exchange Act Release No. 66104 (January 5, 2012), 77 FR 1771 (January 11, 2012) (SR-NYSEAmex-2011-107) (the port fee "Amending Release"). For example, the current fee for six pairs of ports would be \$3,000 total per month (i.e., \$1,500 total for the first five pairs and \$1,500 for the sixth pair). The fee would remain \$3,000 for pairs seven through 10. The fee would increase by \$1,500, to \$4,500 total, for pairs 11 through 15.

³ The Exchange stated in the Adopting Release that the port fee is charged per participant. The Exchange later clarified that "per participant" means per member organization for purposes of the port fees. See Amending Release, at 1772. The proposed fee change would change the current methodology such that ports would not be charged on a per member organization basis. Accordingly, reference to per member organization would be removed from the Price List related to port fees.

⁴ 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. The NYSE Arca trading platform is not integrated in the same manner. Therefore, it does not share its ports with NYSE or NYSE MKT.

purposes, and (ii) Designated Market Makers (“DMMs”) would not be charged for order/quote entry ports that connect to the Exchange via the DMM Gateway.⁵

Two methods are available to DMMs to connect to the Exchange: DMM Gateway and CCG. The two methods are quite distinct, however. Only DMMs may utilize the DMM Gateway, and they may only use DMM Gateway 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. Accordingly, because DMMs are required to utilize DMM Gateway, but not CCG, to be able to fulfill their functions as DMMs, the Exchange proposes that DMMs not be charged for order/quote entry ports that connect to the Exchange via the DMM Gateway, but that DMMs, like other market participants, be charged for order/entry ports that connect to the Exchange via the CCG.

The Exchange proposes that users of RMG would not be charged for order/quote entry ports if such ports are designated as being used for RMG purposes. RMG enables Sponsoring member organizations to verify whether a Sponsored Participant’s orders comply with order criteria established by the Sponsoring member organization for the Sponsored Participant, including, among other things, criteria related to order size (per order or daily quantity limits), credit limits (per order or daily value), specific symbols or end users.⁶ Currently, users of RMG are required to pay the existing order/quote entry port fees for connectivity to the Exchange’s trading systems, in addition to the RMG connection fees related to such ports.⁷ The Exchange proposes that users of RMG

⁵ Since the Adopting Release, the Exchange has not charged DMMs for order/quote entry ports that have connected to the Exchange via the DMM Gateway. Since 2011, when DMMs first became able to enter orders through CCG, DMM order/quote entry ports connected to the Exchange via the CCG have been, and currently are, charged port fees in accordance with the Price List. DMMs can elect to use the DMM Gateway, the CCG, or both for their connectivity to the Exchange. However, the DMM Gateway must be used for certain DMM-specific functions that relate to the DMM’s role on the Exchange and the obligations attendant therewith.

⁶ See Securities Exchange Act Release No. 59353 (February 3, 2009), 74 FR 6935 (February 11, 2009) (SR-NYSEALTR-2008-12) (order approving RMG). See also Securities Exchange Act Release No. 59429 (February 20, 2009), 74 FR 9016 (February 27, 2009) (SR-NYSEALTR-2009-12) (establishing RMG fees).

⁷ Currently, a \$3,000 charge per month applies for an initial RMG connection and a \$1,000 charge for every additional connection thereafter.

would no longer be required to pay port fees for order/quote entry ports designated as being used for RMG because, in the Exchange's opinion, order/quote entry ports are an integral part of RMG and such users are already charged a fee for RMG, including additional connections related thereto, which the Exchange believes is sufficient to cover its costs related to making the order/quote entry ports available for RMG purposes. Accordingly, the Exchange proposes to specify that port fees are not applicable to order/quote entry ports designated as being used for RMG.

Drop Copy Ports

The Exchange proposes to implement a fee for drop copy ports,⁸ for which the Exchange does not currently charge a fee, provided, however, that DMMs would not be charged for drop copy ports that utilize the DMM Gateway and users of RMG would not be charged for drop copy ports if such ports are designated as being used for RMG purposes. The Exchange proposes to charge \$500 per port per month for drop copy ports.⁹ 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 and/or drop copies for activity on both NYSE and NYSE MKT.¹⁰

DMMs that connect to the Exchange using the DMM Gateway are required to use drop copy ports that utilize the DMM Gateway for their drop copies. Accordingly, the Exchange proposes that DMMs not be charged for drop copy ports that utilize the DMM Gateway, but that DMMs, like other market participants, be charged for drop copy ports that connect to the Exchange via the CCG, as DMMs are not required to use CCG.

In addition, the Exchange proposes that users of RMG would not be charged for drop copy ports if such ports are designated as being used for RMG purposes. The Exchange proposes that users of RMG not be required to pay port fees for drop copy ports designated as being used for RMG because, in the Exchange's opinion, ports are an integral part of RMG and such users are already charged a fee for RMG, including additional connections related thereto, which the Exchange believes is sufficient to cover its costs related to making the ports available for RMG purposes. Accordingly, the Exchange proposes to specify that port fees are not applicable to drop copy ports designated as being used for RMG.

Overall, the Exchange believes that the changes proposed herein will result in the method of billing for ports more closely aligning with the needs of firms with ports. The proposed changes will also permit the Exchange to remain competitive

⁸ See supra note 1.

⁹ The Exchange proposes to add language to the Price List to differentiate between drop copy ports and order/quote entry ports.

¹⁰ See supra note 4.

with other exchanges with respect to fees charged for ports.¹¹ The Exchange notes that the proposed changes are not otherwise intended to address any other issues surrounding ports or port fees and that the Exchange is not aware of any problems that port users would have in complying with the proposed change.

The Exchange proposes to implement these changes immediately. In this regard, the Exchange notes that billing for ports would be based, as is currently on the case, on the number of ports on the third business day prior to the end of the month. In addition, the level of activity with respect to a particular port would still not affect the assessment of monthly fees, such that, except for ports that are not charged, even if a particular port is not used, a port fee would still apply.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹² in general, and furthers the objectives of Section 6(b)(4) of the Act,¹³ 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.

Overall, the Exchange believes that the proposed changes, including the rates proposed, are reasonable because the fees charged for order/quote entry ports and drop copy ports are expected to permit the exchange to offset, in part, its connectivity 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 its fees are competitive with those charged by other venues, and that in some cases its port fees are less expensive than many of its primary competitors.¹⁴ The Exchange believes that the changes proposed herein will result in the method of billing for ports more closely aligning with the needs of firms with ports.

¹¹ For example, the charge for connectivity to the NASDAQ Stock Market LLC (“NASDAQ”) NY-Metro and Mid-Atlantic Datacenters is \$500 and a separate charge for Pre-Trade Risk Management ports is applicable, which ranges from \$400 to \$600 and is capped at \$25,000 per firm per month. Also, the BATS Exchange, Inc. (“BZX”) charges \$400 per month per pair (primary and secondary data center) for logical ports. Additionally, EDGA Exchange, Inc. (“EDGA”) and EDGX Exchange, Inc. (“EDGX”) each charge \$500 per port. EDGA and EDGX also provide the first five ports for free.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ See supra note 11.

The Exchange believes that the proposed change to the methodology for billing for order/quote entry ports is reasonable because it will simplify the fees for ports by eliminating the pair requirement and allowing a firm that requires more than five pairs of ports to request, and pay for, the specific number of ports that it requires, rather than requesting ports in pairs and in groups of five. This aspect of the proposed change is also equitable and not unfairly discriminatory because it will result in charges for order/entry ports being based on the number of ports utilized. This aspect of the proposed change is also equitable and not unfairly discriminatory because it will apply on an equal basis for all ports on the Exchange, except for order/quote entry ports related to RMG and ports utilized by DMMs to connect to the Exchange via the DMM Gateway.¹⁵

The Exchange believes that it is reasonable to charge \$200 per port per month for order/quote entry ports because, when combined with the change to the methodology for billing for ports, it could result in a decrease in the overall cost to users of ports. The proposed rate is also reasonable because it is comparable to the rates of other exchanges.¹⁶ 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, subject to the exceptions noted above.

The Exchange also believes that it is equitable and not unfairly discriminatory to not charge DMMs for order/quote entry ports that connect to the Exchange via the DMM Gateway but to charge DMMs for order/quote entry ports that connect to the Exchange via CCG, because 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. Accordingly, the Exchange believes that it is equitable and not unfairly discriminatory to charge DMMs for order/quote entry ports that connect to the Exchange via CCG, as use of the CCG is not necessary for DMMs to fulfill their role as DMMs. In addition, a single order/quote entry port that connects to the Exchange via CCG could be used by a DMM both in its capacity as a DMM and for other securities, for which other market participants would be charged port fees. Consequently, the Exchange believes that it is equitable and not unfairly discriminatory that a DMM that connects to the Exchange via CCG would continue to be charged applicable port fees, as is currently the case.

¹⁵ The Exchange describes below how the proposed changes regarding RMG and DMMs are consistent with the Act.

¹⁶ See supra note 11.

In addition, the Exchange notes that DMM Gateway, unlike CCG, was designed with functionality to help DMMs fulfill their obligations as DMMs efficiently, and so the Exchange believes that to the extent that exempting DMM Gateway from port fees for order/quote entry ports encourages DMMs to use the DMM Gateway to fulfill their obligations helps ensure that they are in the best position to operate efficiently.

The Exchange believes that the proposed new fee for drop copy ports is reasonable 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.¹⁷ Furthermore, the Exchange believes that the proposed rate for a drop copy port is reasonable because, when compared to the proposed rate for order/quote entry ports, it reflects the level of resources required of the Exchange to establish and maintain the port, including the various sources from which data comes (i.e., establishing connections to order/quote entry ports as well as, in certain circumstances, to order/quote entry ports on both NYSE and NYSE MKT). The proposed rate is also reasonable in light of the functional/operational differences between a drop copy port and an order/quote entry port (e.g., that configuration and monitoring of the drop copy port is more substantial and because drop copy ports capture cumulative activity).

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 and/or from both NYSE and NYSE MKT, because the purpose of drop copies is such that a trading unit's or a firm's entire order and execution activity is captured. This is also reflected in the rate of \$500 that is proposed for drop copy ports, which is higher than the rate proposed for order/quote entry ports. 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, except for those order/entry ports related to RMG and ports utilized by DMMs to connect to the Exchange via the DMM Gateway.¹⁸ In this regard, all firms are able to request drop copy ports, as is the case with order/quote entry ports.

The Exchange believes that it is equitable and not unfairly discriminatory to not charge DMMs for drop copy ports that connect to the Exchange via the DMM Gateway for the reasons above regarding order/quote entry ports.

The Exchange believes that not charging for ports that are designated to be used for RMG is reasonable because ports are an integral part of RMG and such users are already charged a fee for RMG, including additional connections related thereto, which the Exchange believes is sufficient to cover its costs related to

¹⁷ See supra note 11.

¹⁸ See supra note 15.

making the ports available for RMG purposes.¹⁹ In this regard, ports not designated as being used for RMG purposes would remain subject to port fees. The Exchange also believes that this is equitable and not unfairly discriminatory because it would apply equally to all member organizations that utilize RMG, which is fully-voluntary and is available to any member organization.

Finally, 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 the proposed rule change reflects this competitive environment.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act²⁰ 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.

¹⁹ See supra note 6.

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Publication in the Federal Register

Exhibit 5 – Amendment to the Exchange's Price List

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSEMKT-2012-64)

[Date]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Change the Monthly Fees for the Use of Ports

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 November 6, 2012, 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 change the monthly fees for the use of ports. The text of 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.

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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 ports that provide connectivity to the Exchange’s trading systems (i.e., ports for entry of orders and/or quotes (“order/quote entry ports”)) and to implement a fee for ports that allow for the receipt of “drop copies” of order or transaction information (“drop copy ports” and, together with order/quote entry ports, “ports”).⁴

Order/Quote Entry Ports

The Exchange currently makes order/quote entry ports available for connectivity to its trading systems and charges \$300 per port pair per month for up to five pairs of ports, then \$1,500 per month for each additional five pairs of ports.⁵

⁴ 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). Such drop copies can only be sent via a drop copy port. Drop copy ports cannot be used to enter orders and/or quotes.

⁵ See Securities Exchange Act Release No. 63072 (October 7, 2010), 75 FR 64368 (October 19, 2010) (SR-NYSEAmex-2010-97) (the port fee “Adopting Release”). See also Securities Exchange Act Release No. 66104 (January 5, 2012), 77 FR 1771 (January 11, 2012) (SR-NYSEAmex-2011-107) (the port fee “Amending Release”). For example, the current fee for six pairs of ports would be \$3,000 total per month (i.e., \$1,500 total for the first five pairs and \$1,500 for the sixth

The Exchange proposes to change the current methodology for order/quote entry port billing, such that order/quote entry ports would be charged on a per port basis, without billing in groups of five and without requiring that ports be in pairs.⁶ More specifically, the Exchange proposes to charge \$200 per port per month for order/quote entry ports, which are currently charged \$300 per pair per month for activity on NYSE MKT;⁷ provided, however, that (i) users of the Exchange's Risk Management Gateway service ("RMG") would not be charged for order/quote entry ports if such ports are designated as being used for RMG purposes, and (ii) Designated Market Makers ("DMMs") would not be charged for order/quote entry ports that connect to the Exchange via the DMM Gateway.⁸

pair). The fee would remain \$3,000 for pairs seven through 10. The fee would increase by \$1,500, to \$4,500 total, for pairs 11 through 15.

⁶ The Exchange stated in the Adopting Release that the port fee is charged per participant. The Exchange later clarified that "per participant" means per member organization for purposes of the port fees. See Amending Release, at 1772. The proposed fee change would change the current methodology such that ports would not be charged on a per member organization basis. Accordingly, reference to per member organization would be removed from the Price List related to port fees.

⁷ 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. The NYSE Arca trading platform is not integrated in the same manner. Therefore, it does not share its ports with NYSE or NYSE MKT.

⁸ Since the Adopting Release, the Exchange has not charged DMMs for order/quote entry ports that have connected to the Exchange via the DMM Gateway. Since 2011, when DMMs first became able to enter orders through CCG, DMM order/quote entry ports connected to the Exchange via the CCG have been, and currently are, charged port fees in accordance with the Price List. DMMs can

Two methods are available to DMMs to connect to the Exchange: DMM Gateway and CCG. The two methods are quite distinct, however. Only DMMs may utilize the DMM Gateway, and they may only use DMM Gateway 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. Accordingly, because DMMs are required to utilize DMM Gateway, but not CCG, to be able to fulfill their functions as DMMs, the Exchange proposes that DMMs not be charged for order/quote entry ports that connect to the Exchange via the DMM Gateway, but that DMMs, like other market participants, be charged for order/entry ports that connect to the Exchange via the CCG.

The Exchange proposes that users of RMG would not be charged for order/quote entry ports if such ports are designated as being used for RMG purposes. RMG enables Sponsoring member organizations to verify whether a Sponsored Participant's orders comply with order criteria established by the Sponsoring member organization for the Sponsored Participant, including, among other things, criteria related to order size (per order or daily quantity limits), credit limits (per order or daily value), specific symbols or

elect to use the DMM Gateway, the CCG, or both for their connectivity to the Exchange. However, the DMM Gateway must be used for certain DMM-specific functions that relate to the DMM's role on the Exchange and the obligations attendant therewith.

end users.⁹ Currently, users of RMG are required to pay the existing order/quote entry port fees for connectivity to the Exchange's trading systems, in addition to the RMG connection fees related to such ports.¹⁰ The Exchange proposes that users of RMG would no longer be required to pay port fees for order/quote entry ports designated as being used for RMG because, in the Exchange's opinion, order/quote entry ports are an integral part of RMG and such users are already charged a fee for RMG, including additional connections related thereto, which the Exchange believes is sufficient to cover its costs related to making the order/quote entry ports available for RMG purposes. Accordingly, the Exchange proposes to specify that port fees are not applicable to order/quote entry ports designated as being used for RMG.

Drop Copy Ports

The Exchange proposes to implement a fee for drop copy ports,¹¹ for which the Exchange does not currently charge a fee, provided, however, that DMMs would not be charged for drop copy ports that utilize the DMM Gateway and users of RMG would not be charged for drop copy ports if such ports are designated as being used for RMG purposes. The Exchange proposes to charge \$500 per port per month for drop copy ports.¹² Additionally, the Exchange proposes to specify that only one fee per drop copy

⁹ See Securities Exchange Act Release No. 59353 (February 3, 2009), 74 FR 6935 (February 11, 2009) (SR-NYSEALTR-2008-12) (order approving RMG). See also Securities Exchange Act Release No. 59429 (February 20, 2009), 74 FR 9016 (February 27, 2009) (SR-NYSEALTR-2009-12) (establishing RMG fees).

¹⁰ Currently, a \$3,000 charge per month applies for an initial RMG connection and a \$1,000 charge for every additional connection thereafter.

¹¹ See supra note 4.

¹² The Exchange proposes to add language to the Price List to differentiate between drop copy ports and order/quote entry ports.

port would apply, even if the port receives drop copies from multiple order/quote entry ports and/or drop copies for activity on both NYSE and NYSE MKT.¹³

DMMs that connect to the Exchange using the DMM Gateway are required to use drop copy ports that utilize the DMM Gateway for their drop copies. Accordingly, the Exchange proposes that DMMs not be charged for drop copy ports that utilize the DMM Gateway, but that DMMs, like other market participants, be charged for drop copy ports that connect to the Exchange via the CCG, as DMMs are not required to use CCG.

In addition, the Exchange proposes that users of RMG would not be charged for drop copy ports if such ports are designated as being used for RMG purposes. The Exchange proposes that users of RMG not be required to pay port fees for drop copy ports designated as being used for RMG because, in the Exchange's opinion, ports are an integral part of RMG and such users are already charged a fee for RMG, including additional connections related thereto, which the Exchange believes is sufficient to cover its costs related to making the ports available for RMG purposes. Accordingly, the Exchange proposes to specify that port fees are not applicable to drop copy ports designated as being used for RMG.

Overall, the Exchange believes that the changes proposed herein will result in the method of billing for ports more closely aligning with the needs of firms with ports. The proposed changes will also permit the Exchange to remain competitive with other exchanges with respect to fees charged for ports.¹⁴ The Exchange notes that the proposed

¹³ See supra note 7.

¹⁴ For example, the charge for connectivity to the NASDAQ Stock Market LLC ("NASDAQ") NY-Metro and Mid-Atlantic Datacenters is \$500 and a separate charge for Pre-Trade Risk Management ports is applicable, which ranges from \$400 to \$600 and is capped at \$25,000 per firm per month. Also, the BATS

changes are not otherwise intended to address any other issues surrounding ports or port fees and that the Exchange is not aware of any problems that port users would have in complying with the proposed change.

The Exchange proposes to implement these changes immediately. In this regard, the Exchange notes that billing for ports would be based, as is currently on the case, on the number of ports on the third business day prior to the end of the month. In addition, the level of activity with respect to a particular port would still not affect the assessment of monthly fees, such that, except for ports that are not charged, even if a particular port is not used, a port fee would still apply.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹⁵ in general, and furthers the objectives of 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.

Overall, the Exchange believes that the proposed changes, including the rates proposed, are reasonable because the fees charged for order/quote entry ports and drop copy ports are expected to permit the exchange to offset, in part, its connectivity costs associated with making such ports available, including costs based on gateway software

Exchange, Inc. (“BZX”) charges \$400 per month per pair (primary and secondary data center) for logical ports. Additionally, EDGA Exchange, Inc. (“EDGA”) and EDGX Exchange, Inc. (“EDGX”) each charge \$500 per port. EDGA and EDGX also provide the first five ports for free.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

and hardware enhancements and resources dedicated to gateway development, quality assurance, and support. In this regard, the Exchange believes that its fees are competitive with those charged by other venues, and that in some cases its port fees are less expensive than many of its primary competitors.¹⁷ The Exchange believes that the changes proposed herein will result in the method of billing for ports more closely aligning with the needs of firms with ports.

The Exchange believes that the proposed change to the methodology for billing for order/quote entry ports is reasonable because it will simplify the fees for ports by eliminating the pair requirement and allowing a firm that requires more than five pairs of ports to request, and pay for, the specific number of ports that it requires, rather than requesting ports in pairs and in groups of five. This aspect of the proposed change is also equitable and not unfairly discriminatory because it will result in charges for order/entry ports being based on the number of ports utilized. This aspect of the proposed change is also equitable and not unfairly discriminatory because it will apply on an equal basis for all ports on the Exchange, except for order/quote entry ports related to RMG and ports utilized by DMMs to connect to the Exchange via the DMM Gateway.¹⁸

The Exchange believes that it is reasonable to charge \$200 per port per month for order/quote entry ports because, when combined with the change to the methodology for billing for ports, it could result in a decrease in the overall cost to users of ports. The proposed rate is also reasonable because it is comparable to the rates of other

¹⁷ See supra note 14.

¹⁸ The Exchange describes below how the proposed changes regarding RMG and DMMs are consistent with the Act.

exchanges.¹⁹ 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, subject to the exceptions noted above.

The Exchange also believes that it is equitable and not unfairly discriminatory to not charge DMMs for order/quote entry ports that connect to the Exchange via the DMM Gateway but to charge DMMs for order/quote entry ports that connect to the Exchange via CCG, because 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. Accordingly, the Exchange believes that it is equitable and not unfairly discriminatory to charge DMMs for order/quote entry ports that connect to the Exchange via CCG, as use of the CCG is not necessary for DMMs to fulfill their role as DMMs. In addition, a single order/quote entry port that connects to the Exchange via CCG could be used by a DMM both in its capacity as a DMM and for other securities, for which other market participants would be charged port fees. Consequently, the Exchange believes that it is equitable and not unfairly discriminatory that a DMM that connects to the Exchange via CCG would continue to be charged applicable port fees, as is currently the case.

¹⁹ See supra note 14.

In addition, the Exchange notes that DMM Gateway, unlike CCG, was designed with functionality to help DMMs fulfill their obligations as DMMs efficiently, and so the Exchange believes that to the extent that exempting DMM Gateway from port fees for order/quote entry ports encourages DMMs to use the DMM Gateway to fulfill their obligations helps ensure that that they are in the best position to operate efficiently.

The Exchange believes that the proposed new fee for drop copy ports is reasonable 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.²⁰ Furthermore, the Exchange believes that the proposed rate for a drop copy port is reasonable because, when compared to the proposed rate for order/quote entry ports, it reflects the level of resources required of the Exchange to establish and maintain the port, including the various sources from which data comes (i.e., establishing connections to order/quote entry ports as well as, in certain circumstances, to order/quote entry ports on both NYSE and NYSE MKT). The proposed rate is also reasonable in light of the functional/operational differences between a drop copy port and an order/quote entry port (e.g., that configuration and monitoring of the drop copy port is more substantial and because drop copy ports capture cumulative activity).

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 and/or from both NYSE and NYSE MKT, because the purpose of drop copies is such that a trading unit's or a firm's entire order and execution activity is captured. This

²⁰ See supra note 14.

is also reflected in the rate of \$500 that is proposed for drop copy ports, which is higher than the rate proposed for order/quote entry ports. 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, except for those order/entry ports related to RMG and ports utilized by DMMs to connect to the Exchange via the DMM Gateway.²¹ In this regard, all firms are able to request drop copy ports, as is the case with order/quote entry ports.

The Exchange believes that it is equitable and not unfairly discriminatory to not charge DMMs for drop copy ports that connect to the Exchange via the DMM Gateway for the reasons above regarding order/quote entry ports.

The Exchange believes that not charging for ports that are designated to be used for RMG is reasonable because ports are an integral part of RMG and such users are already charged a fee for RMG, including additional connections related thereto, which the Exchange believes is sufficient to cover its costs related to making the ports available for RMG purposes.²² In this regard, ports not designated as being used for RMG purposes would remain subject to port fees. The Exchange also believes that this is equitable and not unfairly discriminatory because it would apply equally to all member organizations that utilize RMG, which is fully-voluntary and is available to any member organization.

Finally, 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

²¹ See supra note 18.

²² See supra note 9.

remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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)²³ of the Act and subparagraph (f)(2) of Rule 19b-4²⁴ thereunder, because it establishes a due, fee, or other charge imposed by the NYSE MKT.

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.

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:

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f)(2).

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-2012-64 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2012-64. 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 Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at www.nyse.com. 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-2012-64 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.²⁵

Kevin M. O'Neill
Deputy Secretary

²⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Additions underscored
Deletions [bracketed]

NYSE MKT Equities
Price List 2012

Last Updated: November 6[August 1], 2012

* * * * *

Port Fees [per member organization] (not applicable to ports used for RMG, which are not charged [ports available for equity trading])

[1 – 5 pairs] Ports for order/quote entry..... \$[3]200 per port per month [per pair], except that DMMs shall not be charged for ports that connect to the Exchange via the DMM Gateway

[More than 5 pairs] Ports for drop copies \$[1,]500 per port per month [for each additional 5 pairs](only one fee per drop copy port shall apply, even if receiving drop copies from multiple order/quote entry ports), except that DMMs shall not be charged for ports that connect to the Exchange via the DMM Gateway

* * * * *