

Required fields are shown with yellow backgrounds and asterisks.

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

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

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

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to add definitions applicable to certain colocation services to the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule and modify the fee for users that host their customers at the Exchange Data Center

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 action.

First Name * Marija	Last Name * Willen
Title * Counsel NYSE Group Inc	
E-mail * Marija.Willen@theice.com	
Telephone * (212) 656-4440	Fax (212) 656-8101

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.

(Title *)

Date 09/18/2015	Assistant Secretary
By Martha Redding	
(Name *)	

Martha Redding, mredding@nyx.com

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 EFFF website.

Form 19b-4 Information *

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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 *

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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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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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, security-based swap submission, or advance notice 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

Add Remove View

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) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² NYSE MKT LLC (“NYSE MKT” or the “Exchange”) proposes to add definitions applicable to certain co-location services to the NYSE MKT Equities Price List (“Price List”) and the NYSE Amex Options Fee Schedule (“Fee Schedule”) and modify the fee for users that host their customers at the Exchange’s Data Center.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

- (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:

Marija Willen
Counsel
NYSE Group, Inc.
(212) 656-4440

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

- (a) Purpose

The Exchange operates a data center in Mahwah, New Jersey, from which it

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

provides co-location services to Users.³ The Exchange’s co-location services allow Users to rent space in the data center so they may locate their electronic servers in close physical proximity to the Exchange’s trading and execution system.⁴ The Exchange proposes to amend the Price List and the Fee Schedule as they apply to co-location services to add the definitions of User, Hosting User and Hosted Customer. The Exchange also proposes to modify the fee for users that host their customers at the Exchange’s Data Center, effective January 1, 2016.⁵

Definitions of User, Hosting User and Hosted Customer

In 2011, the Exchange changed the definition of the term “User,” for the purposes of co-location services, to include any market participant that requests to receive co-location services directly from the Exchange.⁶ As described in the 2011 Releases, Users could include member organizations, as that term is defined in the definitions section of the General and Floor Rules of the NYSE MKT Equities Rules (“Members”), and ATP Holders, as that term is defined in NYSE Amex Options Rule 900.2NY(5)(“ATP Holders”)(Members and ATP Holders together referred to herein as “Member Organizations”); Sponsored Participants, as that term is defined in NYSE MKT Rule 123B.30(a)(ii)(B) – Equities and NYSE Amex Options Rule 900.2NY(77)(“Sponsored Participants”); and non-Member Organization broker-dealers and vendors that request to receive co-location services directly from the Exchange. At the time, the Exchange contemplated that such definition would encompass Users that would provide, for example, hosting, service bureau, technical support, risk management, order routing and market data delivery services to their customers while such Users are co-located in the Exchange’s data center.

³ The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (“Commission”) in 2010. See Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR-NYSEAmex-2010-80).

⁴ See id. at 59299.

⁵ As specified in the Price List and the Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange’s affiliates New York Stock Exchange LLC and NYSE Arca, Inc. See Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR-NYSEMKT-2013-67).

⁶ See Securities Exchange Act Release Nos. 65974 (December 15, 2011), 76 FR 79249 (December 21, 2011) (SR-NYSEAmex-2011-81) and 65975 (December 15, 2011), 76 FR 79233 (December 21, 2011) (SR-NYSEAmex-2011-82) (the “2011 Releases”).

The Exchange proposes to add the current definition of User to the Price List and the Fee Schedule, without changes from the 2011 Releases, as follows:

A “User” means any market participant that requests to receive co-location services directly from the Exchange.

The proposed definition would, consistent with the 2011 Releases, encompass Member Organizations, Sponsored Participants and non-member broker-dealers, as well as vendors that provide hosting, service bureau and technical support, risk management services, order routing services and market data delivery services to their customers while such Users are co-located in the Exchange’s data center. Any entity that could be a User based on the term as described in the 2011 Releases would be considered a User under the proposed definition.

The Exchange also proposes to make a non-substantive change to the description in the Price List and the Fee Schedule of the Exchange’s billing practice for co-location services received by Users that connect to the Exchange and one or more of its affiliates, by replacing the term, “user,” with the defined term, “User.”

In the 2011 Releases, the Exchange also amended the Price List and the Fee Schedule to establish a fee applicable to Users that provide hosting services to their customers at the Exchange’s data center. As described in the 2011 Releases, “hosting” is a service offered by a User to another entity in the User’s space within the data center and can include, for example, a User supporting such other entity’s technology, whether hardware or software, through the User’s co-location space. The 2011 Releases used the term “Hosted User” to describe a customer to which a User provides hosting services.

The Exchange now proposes to include definitions relating to hosting services in the Price List and the Fee Schedule, as follows:

A “Hosting User” means a User that hosts a Hosted Customer in the User’s co-location space.

A “Hosted Customer” means a customer of a Hosting User that is hosted in a Hosting User’s co-location space.

The proposed definition of “Hosting User” incorporates the description of a User that hosts customers in its co-location space as set forth in the 2011 Releases. For the avoidance of doubt, a Hosting User must be a User pursuant to the proposed definition of User. Any User that could be a Hosting User based on the description of a User that hosts customers in the 2011 Releases would be considered a Hosting User under the proposed definition.

The proposed definition of “Hosted Customer” would be a customer of a Hosting User that is hosted in a Hosting User’s co-location space, and would be consistent

with the description of the term “Hosted User” used in the 2011 Releases.⁷ The Exchange proposes to change the name of the term from “Hosted User” to “Hosted Customer” to make it clear that the entities that are hosted are customers of the Hosting Users that do not, in contrast to Users, have a direct contractual relationship with the Exchange vis-à-vis co-location services. For consistency with this proposed change, the Exchange also proposes to change the term “Hosted User” as used in the “Hosting Fee” set forth in the Price List and the Fee Schedule, to “Hosted Customer.” Since, as noted above, only Users can be Hosting Users, a Hosted Customer may not provide hosting services to any other entities in the space in which it is hosted. Other than the change to the name of the definition, no other changes to the definition are intended and all current customers of a Hosting User would be “Hosted Customers” under the proposed definition.

Hosting Fee

In the 2011 Releases, the Exchange amended its Price List and the Fee Schedule to establish a fee charged to Users of \$500.00 per month with respect to each Hosted Customer (defined as “Hosted User” in the 2011 Releases) that a User hosts in the Exchange’s data center (the “Hosting Fee”).

Effective January 1, 2016, the Exchange proposes to modify the Hosting Fee to provide that the Hosting Fee would be assessed to a Hosting User on a per Hosted Customer basis and for each cabinet in which the Hosting User hosts the Hosted Customer. This approach to hosting fees is comparable to the structure used by the NASDAQ Stock Market, Inc. (“NASDAQ”) in its Multi-Firm Cabinets Fee, and would similarly mean that a Hosting User would be assessed the Hosting Fee for each Hosted Customer that occupies space in a cabinet.⁸ Thus, for example, if a Hosting User hosts a Hosted Customer in two of the Hosting User’s cabinets, the Hosting User would be charged two Hosting Fees, one for each cabinet in which the Hosted Customer is hosted. The Exchange also proposes to increase the monthly Hosting Fee from \$500 per Hosted Customer to \$1,000 per Hosted Customer for each cabinet in which the Hosted Customer is hosted, effective January 1, 2016.

As is the case currently, Users may independently set fees for their Hosted Customers and the Exchange would not receive a share of any such fees.

⁷ A “customer of a Hosting User,” as used in the definition of a “Hosted Customer” would be any person that has a contractual relationship with a Hosting User to use that Hosting User’s co-location space. There is no limitation on the types of persons who could be Hosted Customers.

⁸ See Nasdaq Rule 7034(a) and Securities Exchange Act Release No. 71200 (Dec. 30, 2013), 79 FR 677 (Jan. 6, 2014)(SR-NASDAQ-2013-57).

General

As is the case with all Exchange co-location arrangements (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a Member Organization, a Sponsored Participant or an agent thereof (e.g., a service bureau providing order entry services) and (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis.⁹ In addition, a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.¹⁰

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(5) of the Act,¹² in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and

⁹ As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of others with access to the Exchange's trading and execution systems. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to users that have access to the Exchange's trading and execution systems, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

¹⁰ See SR-NYSEMKT-2013-67, supra note 5 at 50471. The Exchange's affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2015-40 and SR-NYSEArca-2015-82.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, broker, or dealers. First, the proposed addition of the definitions for User, Hosting User and Hosted Customer to the Price List and the Fee Schedule, would, by their addition to the Price List and the Fee Schedule, make the application of such definitions more accessible and transparent. There is no change to the definition of User. There is no change to the definition of “Hosted User” as described in the 2011 Releases other than to change the name to “Hosted Customer” to add clarity to the use and the application of the definition. The proposed new term, “Hosting User” reflects the description of a User that hosts customers in its co-location space as set forth in the 2011 Releases. Finally, an entity that could be a User, a User that hosts customers and a Hosted User based on the 2011 Releases, would be considered a User, Hosting User or Hosted Customer, respectively, under the proposed definitions. The proposed definitions would be applied uniformly for comparable services provided by the Exchange.

The Exchange believes that the proposal would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because by including definitions in the Price List and the Fee Schedule, the proposed change would provide Users with clarity as to the availability and application of co-location hosting services and fees.

The proposed change to the Hosting Fee would be applied uniformly for comparable services provided by the Exchange to comparable Hosting Users and their customers and would not unfairly discriminate between similarly situated Hosting Users. The Exchange notes that assessing a fee per Hosted Customer per cabinet is comparable to the approach that NASDAQ takes to the same type of services in its Multi-Firm Cabinets Fee.¹³ The Exchange also notes that the Hosting Fee has not been changed since it was established in 2011. The Exchange believes the proposed Hosting Fee is reasonable in that the fee is designed to reflect the expenses and resources expended by the Exchange in connection with hosting services. In addition, while Hosting Users may independently set fees for their Hosted Customers, and the Exchange would not receive a share of any such fees, the Hosting Fee on a per Hosted Customer per cabinet basis continues to be lower than the fees a Hosted Customer would pay for co-location space purchased directly from the Exchange.

¹³

See supra note 8.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁴ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its Member Organizations, 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 change is consistent with the Act because the Exchange offers the co-location services described herein as a convenience to Users, but in so doing incurs certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and ongoing monitoring, support and maintenance of such services.

For the reasons above, the proposed change would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

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

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

In accordance with Section 6(b)(8) of the Act,¹⁵ 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 because any market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange could have access to the co-location services provided in the data center. This is also true because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (i.e., the same range of products and services are available to all Users).

The Exchange believes that incorporating the definitions of User, Hosting User and Hosted Customer into the Price List and the Fee Schedule, the change to the Hosting Fee and the change to the application of the Hosting Fee will not impose any burden on competition that is not necessary or appropriate in further of the purposes of the Act because the definitions have been previously filed with the

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78f(b)(8).

Commission¹⁶ and their inclusion in the Price List and the Fee Schedule will provide further clarity in the application of the fees. The Exchange believes that the changes to the Hosting Fee will not impose any burden on competition that is not necessary or appropriate in further of the purposes of the Act because they are designed to reflect the expenses and resources expended by the Exchange in connection with hosting services and because NASDAQ takes the same approach to the same type of services in its Multi-Firm Cabinets Fee.¹⁷

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if, for example, they deem fee levels at a particular venue to be excessive or if they determine that another venue's products and services are more competitive than on the Exchange. In such an environment, the Exchange must continually review, and consider adjusting, the services it offers as well as any corresponding 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.

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 Exchange believes that the proposal qualifies for immediate effectiveness upon filing as a "non-controversial" rule change in accordance with Section 19(b)(3)(A) of the Act¹⁸ and Rule 19b-4(f)(6), thereunder.¹⁹

The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any

¹⁶ See 2011 Releases, supra note 6.

¹⁷ See supra note 8

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(6).

significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as the Commission may designate.

The Exchange believes that the proposal to add the definitions of User, Hosting User and Hosted Customer to the Price List and the Fee Schedule and to change the defined term, “Hosted User” to “Hosted Customer,” is noncontroversial and does not significantly affect the protection of investors or the public interest because the definitions as proposed are the same as these terms as they are described in the 2011 Releases and because the changes increase clarity in the Price List and the Fee Schedule by including definitions that were previously filed with the Commission.

The Exchange believes that proposed change to the Hosting Fee is noncontroversial, does not significantly affect the protection of investors of the public interest and is reasonable because the changes are designed to reflect the expenses and resources expended by the Exchange in connection with hosting services. Additionally, the Exchange believes that this proposal would not impose any significant burden on competition because NASDAQ takes the same approach to the same type of services in its Multi-Firm Cabinets Fee.²⁰ Moreover, in addition to the services being completely voluntary, they are available to all Users on an equal basis (i.e., the same range of products and services are available to all Users). In this regard, any market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange could have access to co-location services.

For the foregoing reasons, the Exchange believes that this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule changes 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.

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

The proposed rule change to assess the Hosting Fee per cabinet is based on the

²⁰

See supra note 8.

Nasdaq Multi-Firm Cabinets Fee.²¹ All other proposed changes are not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

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

Exhibit 5 – Text of the Proposed Rule Change

²¹

See supra note 8.

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSEMKT-2015-67)

[Date]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding Definitions Applicable to Certain Co-location Services and Modifying the Fee for Users that Host Their Customers at the Exchange's Data Center

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 September 18, 2015, 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 add definitions applicable to certain co-location services to the NYSE MKT Equities Price List ("Price List") and the NYSE Amex Options Fee Schedule ("Fee Schedule") and modify the fee for users that host their customers at the Exchange's Data Center. 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.

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

The Exchange operates a data center in Mahwah, New Jersey, from which it provides co-location services to Users.⁴ The Exchange’s co-location services allow Users to rent space in the data center so they may locate their electronic servers in close physical proximity to the Exchange’s trading and execution system.⁵ The Exchange proposes to amend the Price List and the Fee Schedule as they apply to co-location services to add the definitions of User, Hosting User and Hosted Customer. The Exchange also proposes to modify the fee for users that host their customers at the Exchange’s Data Center, effective January 1, 2016.⁶

⁴ The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (“Commission”) in 2010. See Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR-NYSEAmex-2010-80).

⁵ See id. at 59299.

⁶ As specified in the Price List and the Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange’s

Definitions of User, Hosting User and Hosted Customer

In 2011, the Exchange changed the definition of the term “User,” for the purposes of co-location services, to include any market participant that requests to receive co-location services directly from the Exchange.⁷ As described in the 2011 Releases, Users could include member organizations, as that term is defined in the definitions section of the General and Floor Rules of the NYSE MKT Equities Rules (“Members”), and ATP Holders, as that term is defined in NYSE Amex Options Rule 900.2NY(5)(“ATP Holders”)(Members and ATP Holders together referred to herein as “Member Organizations”); Sponsored Participants, as that term is defined in NYSE MKT Rule 123B.30(a)(ii)(B) – Equities and NYSE Amex Options Rule 900.2NY(77)(“Sponsored Participants”); and non-Member Organization broker-dealers and vendors that request to receive co-location services directly from the Exchange. At the time, the Exchange contemplated that such definition would encompass Users that would provide, for example, hosting, service bureau, technical support, risk management, order routing and market data delivery services to their customers while such Users are co-located in the Exchange’s data center.

The Exchange proposes to add the current definition of User to the Price List and the Fee Schedule, without changes from the 2011 Releases, as follows:

A “User” means any market participant that requests to receive co-location

affiliates New York Stock Exchange LLC and NYSE Arca, Inc. See Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR-NYSEMKT-2013-67).

⁷ See Securities Exchange Act Release Nos. 65974 (December 15, 2011), 76 FR 79249 (December 21, 2011) (SR-NYSEAmex-2011-81) and 65975 (December 15, 2011), 76 FR 79233 (December 21, 2011) (SR-NYSEAmex-2011-82) (the “2011 Releases”).

services directly from the Exchange.

The proposed definition would, consistent with the 2011 Releases, encompass Member Organizations, Sponsored Participants and non-member broker-dealers, as well as vendors that provide hosting, service bureau and technical support, risk management services, order routing services and market data delivery services to their customers while such Users are co-located in the Exchange's data center. Any entity that could be a User based on the term as described in the 2011 Releases would be considered a User under the proposed definition.

The Exchange also proposes to make a non-substantive change to the description in the Price List and the Fee Schedule of the Exchange's billing practice for co-location services received by Users that connect to the Exchange and one or more of its affiliates, by replacing the term, "user," with the defined term, "User."

In the 2011 Releases, the Exchange also amended the Price List and the Fee Schedule to establish a fee applicable to Users that provide hosting services to their customers at the Exchange's data center. As described in the 2011 Releases, "hosting" is a service offered by a User to another entity in the User's space within the data center and can include, for example, a User supporting such other entity's technology, whether hardware or software, through the User's co-location space. The 2011 Releases used the term "Hosted User" to describe a customer to which a User provides hosting services.

The Exchange now proposes to include definitions relating to hosting services in the Price List and the Fee Schedule, as follows:

A "Hosting User" means a User that hosts a Hosted Customer in the User's co-location space.

A “Hosted Customer” means a customer of a Hosting User that is hosted in a Hosting User’s co-location space.

The proposed definition of “Hosting User” incorporates the description of a User that hosts customers in its co-location space as set forth in the 2011 Releases. For the avoidance of doubt, a Hosting User must be a User pursuant to the proposed definition of User. Any User that could be a Hosting User based on the description of a User that hosts customers in the 2011 Releases would be considered a Hosting User under the proposed definition.

The proposed definition of “Hosted Customer” would be a customer of a Hosting User that is hosted in a Hosting User’s co-location space, and would be consistent with the description of the term “Hosted User” used in the 2011 Releases.⁸ The Exchange proposes to change the name of the term from “Hosted User” to “Hosted Customer” to make it clear that the entities that are hosted are customers of the Hosting Users that do not, in contrast to Users, have a direct contractual relationship with the Exchange vis-à-vis co-location services. For consistency with this proposed change, the Exchange also proposes to change the term “Hosted User” as used in the “Hosting Fee” set forth in the Price List and the Fee Schedule, to “Hosted Customer.” Since, as noted above, only Users can be Hosting Users, a Hosted Customer may not provide hosting services to any other entities in the space in which it is hosted. Other than the change to the name of the definition, no other changes to the definition are intended and all current customers of a Hosting User would be “Hosted Customers” under the proposed definition.

⁸ A “customer of a Hosting User,” as used in the definition of a “Hosted Customer” would be any person that has a contractual relationship with a Hosting User to use that Hosting User’s co-location space. There is no limitation on the types of persons who could be Hosted Customers.

Hosting Fee

In the 2011 Releases, the Exchange amended its Price List and the Fee Schedule to establish a fee charged to Users of \$500.00 per month with respect to each Hosted Customer (defined as “Hosted User” in the 2011 Releases) that a User hosts in the Exchange’s data center (the “Hosting Fee”).

Effective January 1, 2016, the Exchange proposes to modify the Hosting Fee to provide that the Hosting Fee would be assessed to a Hosting User on a per Hosted Customer basis and for each cabinet in which the Hosting User hosts the Hosted Customer. This approach to hosting fees is comparable to the structure used by the NASDAQ Stock Market, Inc. (“NASDAQ”) in its Multi-Firm Cabinets Fee, and would similarly mean that a Hosting User would be assessed the Hosting Fee for each Hosted Customer that occupies space in a cabinet.⁹ Thus, for example, if a Hosting User hosts a Hosted Customer in two of the Hosting User’s cabinets, the Hosting User would be charged two Hosting Fees, one for each cabinet in which the Hosted Customer is hosted. The Exchange also proposes to increase the monthly Hosting Fee from \$500 per Hosted Customer to \$1,000 per Hosted Customer for each cabinet in which the Hosted Customer is hosted, effective January 1, 2016.

As is the case currently, Users may independently set fees for their Hosted Customers and the Exchange would not receive a share of any such fees.

General

As is the case with all Exchange co-location arrangements (i) neither a User nor any of the User’s customers would be permitted to submit orders directly to the Exchange

⁹ See Nasdaq Rule 7034(a) and Securities Exchange Act Release No. 71200 (Dec. 30, 2013), 79 FR 677 (Jan. 6, 2014)(SR-NASDAQ-2013-57).

unless such User or customer is a Member Organization, a Sponsored Participant or an agent thereof (e.g., a service bureau providing order entry services) and (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis.¹⁰ In addition, a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its affiliates.¹¹

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(5) of the Act,¹³ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and

¹⁰ As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of others with access to the Exchange's trading and execution systems. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to users that have access to the Exchange's trading and execution systems, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

¹¹ See SR-NYSEMKT-2013-67, supra note 6 at 50471. The Exchange's affiliates have also submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2015-40 and SR-NYSEArca-2015-82.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal is not designed to permit unfair discrimination between customers, issuers, broker, or dealers. First, the proposed addition of the definitions for User, Hosting User and Hosted Customer to the Price List and the Fee Schedule, would, by their addition to the Price List and the Fee Schedule, make the application of such definitions more accessible and transparent. There is no change to the definition of User. There is no change to the definition of “Hosted User” as described in the 2011 Releases other than to change the name to “Hosted Customer” to add clarity to the use and the application of the definition. The proposed new term, “Hosting User” reflects the description of a User that hosts customers in its co-location space as set forth in the 2011 Releases. Finally, an entity that could be a User, a User that hosts customers and a Hosted User based on the 2011 Releases, would be considered a User, Hosting User or Hosted Customer, respectively, under the proposed definitions. The proposed definitions would be applied uniformly for comparable services provided by the Exchange.

The Exchange believes that the proposal would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because by including definitions in the

Price List and the Fee Schedule, the proposed change would provide Users with clarity as to the availability and application of co-location hosting services and fees.

The proposed change to the Hosting Fee would be applied uniformly for comparable services provided by the Exchange to comparable Hosting Users and their customers and would not unfairly discriminate between similarly situated Hosting Users. The Exchange notes that assessing a fee per Hosted Customer per cabinet is comparable to the approach that NASDAQ takes to the same type of services in its Multi-Firm Cabinets Fee.¹⁴ The Exchange also notes that the Hosting Fee has not been changed since it was established in 2011. The Exchange believes the proposed Hosting Fee is reasonable in that the fee is designed to reflect the expenses and resources expended by the Exchange in connection with hosting services. In addition, while Hosting Users may independently set fees for their Hosted Customers, and the Exchange would not receive a share of any such fees, the Hosting Fee on a per Hosted Customer per cabinet basis continues to be lower than the fees a Hosted Customer would pay for co-location space purchased directly from the Exchange.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁵ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its Member Organizations, 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 change is consistent with the Act because the Exchange offers the co-location services described

¹⁴ See supra note 9.

¹⁵ 15 U.S.C. 78f(b)(4).

herein as a convenience to Users, but in so doing incurs certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and ongoing monitoring, support and maintenance of such services.

For the reasons above, the proposed change would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

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

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

In accordance with Section 6(b)(8) of the Act,¹⁶ 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 because any market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange could have access to the co-location services provided in the data center. This is also true because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (i.e., the same range of products and services are available to all Users).

The Exchange believes that incorporating the definitions of User, Hosting User

¹⁶ 15 U.S.C. 78f(b)(8).

and Hosted Customer into the Price List and the Fee Schedule, the change to the Hosting Fee and the change to the application of the Hosting Fee will not impose any burden on competition that is not necessary or appropriate in further of the purposes of the Act because the definitions have been previously filed with the Commission¹⁷ and their inclusion in the Price List and the Fee Schedule will provide further clarity in the application of the fees. The Exchange believes that the changes to the Hosting Fee will not impose any burden on competition that is not necessary or appropriate in further of the purposes of the Act because they are designed to reflect the expenses and resources expended by the Exchange in connection with hosting services and because NASDAQ takes the same approach to the same type of services in its Multi-Firm Cabinets Fee.¹⁸

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if, for example, they deem fee levels at a particular venue to be excessive or if they determine that another venue's products and services are more competitive than on the Exchange. In such an environment, the Exchange must continually review, and consider adjusting, the services it offers as well as any corresponding 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.

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.

¹⁷ See 2011 Releases, supra note 7.

¹⁸ See supra note 9

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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 15 U.S.C. 78s(b)(3)(A)(iii).

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

19(b)(2)(B)²³ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2015-67 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-2015-67. 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

²³ 15 U.S.C. 78s(b)(2)(B).

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-2015-67 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Robert W. Errett
Deputy Secretary

²⁴ 17 CFR 200.30-3(a)(12).

Additions underscored
 Deletions [bracketed]

**NYSE MKT Equities
 Price List**

2015

Last Updated: [April 27]●, 2015

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Co-Location Fees**

The following definitions are for purposes of Co-Location Fees only:

A “Hosted Customer” means a customer of a Hosting User that is hosted in a Hosting User’s co-location space.

A “Hosting User” means a User of co-location services that hosts a Hosted Customer in the User’s co-location space.

A “User” means any market participant that requests to receive co-location services directly from the Exchange.

** A [u]User that incurs co-location fees for a particular co-location service pursuant to this Price List shall not be subject to co-location fees for the same co-location service charged pursuant to the NYSE Amex Options Fee Schedule or by the Exchange’s affiliates New York Stock Exchange LLC and NYSE Arca, Inc.

* * * * *

Type of Service	Description	Amount of Charge
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* * * * *

Hosting Fee		<u>Effective through December 31, 2015:</u> \$500 monthly charge per Hosted <u>Customer</u> [User]
		<u>Effective from January 1, 2016:</u> \$1,000 monthly charge per cabinet per Hosted <u>Customer</u> for each cabinet in which such Hosted <u>Customer</u> is hosted

* * * * *

NYSE AMEX OPTIONS FEE SCHEDULE*

* NYSE Amex Options is the options trading facility of NYSE MKT LLC

Effective as of [August 6], 2015

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Section V. Technology & System Access Fees

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B. Co-Location Fees.

A [u]User that incurs co-location fees for a particular co-location service pursuant to this Fee Schedule will not be subject to co-location fees for the same co-location service charged pursuant to the NYSE MKT Equities Price List or by the Exchange’s affiliates New York Stock Exchange LLC and NYSE Arca, Inc.

The following definitions are for purposes of Co-Location Fees only:

A “Hosted Customer” means a customer of a Hosting User that is hosted in a Hosting User’s co-location space.

A “Hosting User” means a User of co-location services that hosts a Hosted Customer in the User’s co-location space.

A “User” means any market participant that requests to receive co-location services directly from the Exchange.

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Type of Service	Description	Amount of Charge
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* * * * *

Hosting Fee		<u>Effective through December 31, 2015:</u> \$500 monthly charge per Hosted Customer[User]
		<u>Effective from January 1, 2016:</u> \$1,000 monthly charge per cabinet per Hosted Customer for each cabinet in which such Hosted Customer is hosted

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