Federal Register / Vol. 78, No. 249 / Friday, December 27, 2013 / Notices



provisions of 5 U.S.C. 552, will be available for Web site 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 Web site 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–2013–104 and should be submitted on or before January 17, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–30940 Filed 12–26–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–71160; File No. SR–ISE–2013–60]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Rent Cabinet Space to Telecommunication Vendors in the Exchange's Backup Datacenter

December 20, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I and II 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 ISE proposes to provide cabinet space in its backup datacenter to telecommunication vendors to replace substantially similar services currently provided by the Exchange's third party datacenter operator in connection with the move of this datacenter to an ISE facility, and to adopt a corresponding disaster recovery network fee. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

ISE is in the process of moving its backup datacenter from the current third-party site in New Jersey (''Telx'') to the Exchange's headquarters in New York, and, in connection with this move, is proposing to allow telecommunication vendors to rent cabinet space in the ISE facility, and to adopt a corresponding disaster recovery network fee.

Currently, market participants, including members and non-members, may rent cabinet space in the backup datacenter run by Telx in order to maintain connectivity to the Exchange in the event that the ISE's primary datacenter is not operational. As the Exchange is moving its hardware to an ISE-run facility, the Exchange proposes to offer this service itself. In particular, the ISE proposes to facilitate connectivity to the backup datacenter by providing telecommunication vendors with cabinet space,[3] in either half cabinet or full cabinet options, along with power and cooling in a secure, controlled environment.[4] The proposed services are substantially the same as services currently provided through Telx to market participants that wish to connect to the ISE's backup datacenter. The Exchange believes that it is important that it continue to provide these services so that market participants may connect to the backup datacenter in the event that the ISE's primary datacenter is not operational.

Like the ISE's third party datacenter operator, the Exchange intends to charge a fee to telecommunication vendors that wish to rent cabinet space in the ISE's backup datacenter when it is moved to the new facility. Operating the backup datacenter takes a significant amount of ISE resources, and the proposed ''disaster recovery network fee'' will allow the Exchange to recoup associated expenses. As explained above, the proposed fee will entitle vendors to obtain cabinet space in the datacenter, along with power and cooling. The fees assessed will reflect the amount of cabinet space used by each vendor, and will be $2,300 per month for a half-cabinet and $2,800 per month for a full cabinet. The Exchange will not charge any installation or other fees to telecommunication vendors for connecting to the backup datacenter.

As proposed, firms that currently connect to the backup datacenter at Telx will be able to continue to do so through telecommunication vendors who have entered into a contractual agreement with the Exchange to provide these services, and who will be responsible for redistributing connectivity to market participants that desire access. This would include members that currently connect to Telx in order to maintain connectivity in the event that the Exchange must operate using its backup datacenter.[5] It would also include non-members (e.g., extranet providers) that currently connect to Telx in order to redistribute that connectivity to others.[6] For operational reasons, market participants will not be permitted to connect directly to the backup datacenter at the ISE facility, and must go through a telecommunication vendor. The Exchange believes that this provides a more efficient means of managing connectivity to the backup datacenter as the ISE would not need to set up and maintain many separate connections from market participants.

The Exchange expects that initially four telecommunication vendors will provide connectivity to the backup

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Cabinet space will be provided in industry standard 19″ open air racks, which will be secured in a caged meet-me-room that is controlled by 24×7 access based on a registration process for access.

[4] This service is being provided as a means of establishing connectivity to the backup datacenter. Renting cabinet space does not entitle telecommunications vendors to receive or redistribute market data.

[5] Members are not required to establish connectivity to the Exchange's backup datacenter, which is purely voluntary.

[6] An ''extranet provider'' is a technology provider that connects with ISE systems and in turn provides such connectivity to market participants that do not connect directly with the Exchange.

datacenter to market participants. Each of these vendors currently rents cabinet space in the Telx datacenter, and will continue to provide market participants with access to the backup datacenter when it is moved to the ISE facility. The ISE is not affiliated with any of these telecommunication vendors, and has no financial interest in, and will not be involved in billing or collecting, fees that the vendors may charge their customers to connect to the backup datacenter.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the ''Act''),[7] in general, and with Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(4) of the Act,[9] in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is necessary in the public interest that it facilitate connectivity to the backup datacenter in order to minimize any potential disruption and market impact that may otherwise occur if the ISE's primary datacenter is not operational. The proposed services will replace services currently provided by Telx in connection with the move of the Exchange's backup datacenter to an ISE-operated facility. The Exchange believes that it is important to continue to provide the proposed services, which will provide a robust, efficient, and, as discussed below, cost effective means of facilitating access to the ISE's backup datacenter.

Furthermore, the Exchange believes that the proposed disaster recovery network fee, which will replace fees currently charged by Telx, is fair and equitable as it compares favorably with the fees charged by other options exchanges that rent cabinet space in their datacenters. For example, NASDAQ OMX PHLX, LLC (''PHLX'') charges members that rent space in its datacenter a fee of $3,000 per month for a half cabinet and between $4,000 per month to $13,000 per month for a full cabinet depending on the options that members of that exchange specify.[10] Moreover, telecommunication vendors are expected to recoup the cost of the proposed fee, plus a premium, by redistributing connectivity to market participants. Similarly, the Exchange expects that telecommunication vendors will spread the cost of this service among their clients, resulting in a lower overall fee to market participants that establish connectivity through such vendors. Since all market participants must connect through a telecommunications vendor rather than establishing a direct connection to the backup datacenter, the Exchange believes that its proposed fee will ultimately be spread among many parties, resulting in a significantly lower cost of connecting to the disaster recovery network. The Exchange also believes the proposed disaster recovery network fee is equitably allocated in that all telecommunication vendors will be charged the same amount to maintain a connection. Moreover, the Exchange believes the proposed fee is not unfairly discriminatory in that there is no differentiation among vendors with regard to the fees charged for connectivity to the Exchange's backup datacenter.

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

In accordance with Section 6(b)(8) of the Act,[11] the Exchange believes that the proposed rule change will not impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will enhance intermarket competition by enabling the Exchange to continue to provide an important competitive service to market participants. The Exchange believes that it is important that market participants are able to connect to the backup datacenter in the event that the ISE's primary datacenter is not operational, and is proposing to offer services that would allow market participants to establish such connectivity. Facilitating this connectivity will not have any impact on intramarket competition as the services are substantially the same as services currently provided by the Exchange's third party datacenter operator for a fee that will now be replaced by an ISE fee. The Exchange notes that while, for operational reasons, it is only renting cabinet space to telecommunications vendors, this will have no impact on competition because these vendors are tasked with redistributing this connectivity to market participants as they currently do today. The Exchange believes that selecting multiple telecommunications vendors to provide connectivity to the backup datacenter will allow market participants to also benefit from competition between such vendors. The Exchange will not discriminate in contracting with telecommunication vendors to connect to the backup datacenter, and all contracted vendors will be charged the same fees and granted the same level of access to the backup datacenter at the ISE facility.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms does 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* PHLX Pricing Schedule, Co-Location Services, Cabinets; Securities Exchange Act Release No. 62395 (June 28, 2010), 75 FR 38584 (July 2, 2010) (PHLX–2010–18) (order approving initial cabinet fees). In addition to the monthly fee PHLX also charges an installation fee that ranges from $3,500 to $7,000 depending on the type of cabinet.

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing noting that it is in the public interest that the Exchange facilitate connectivity to the backup datacenter in order to minimize any potential disruption and market impact that may otherwise occur if the Exchange's primary datacenter is not operational. The Exchange further represents that the waiver is necessary to permit the Exchange to continue to facilitate access to its backup datacenter when it is moved over to an ISE-operated facility. The Exchange stated that it is vital that market participants be able to access the ISE through the Exchange's backup datacenter should the need arise. Moreover, the Exchange believes that its proposal, which will allow market participants to access the backup datacenter through one of multiple telecommunication vendors, provides a robust, efficient, and cost effective means of facilitating this access. For the above reasons, the Commission believes that waiving the 30 day operative delay is consistent with the protection of investors and the public interest in that the Exchange may immediately provide connectivity to the backup datacenter to minimize any disruption to the market in case ISE's primary datacenter is not operational. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[17] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

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

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2013–60 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–ISE–2013–60. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2013–60 and should be submitted on or before January 17, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–30963 Filed 12–26–13; 8:45 am]

**BILLING CODE 8011–01–P**

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78s(b)(2)(B).

[18] 17 CFR 200.30–3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34–71165; File No. SR–NYSEMKT–2013–102]**

## Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Offer Risk Management Tools Designed To Allow Member Organizations To Monitor and Address Exposure to Risk

December 20, 2013.

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 December 12, 2013, 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 and II 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 offer risk management tools designed to allow equity member organizations to monitor and address exposure to risk. The text of the proposed rule change is available on the Exchange's Web site 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 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.