

*Paper Comments*

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

All submissions should refer to File No. SR-BATS-2015-118. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also 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 No. SR-BATS-2015-118 and should be submitted on or before January 20, 2016.

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

**Brent J. Fields,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76750; File No. SR-NYSEMKT-2015-85]

### Self-Regulatory Organizations; NYSE MKT LLC; Order Approving Proposed Rule Change to the Co-location Services Offered by the Exchange (the Offering of a Wireless Connection to Allow Users to Receive Market Data Feeds from Third Party Markets) and to Reflect Changes to the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule Related to These Services

December 23, 2015.

#### I. Introduction

On October 23, 2015, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change to amend the co-location services offered by the Exchange to include a means for co-located Users to receive market data feeds from third party markets through a wireless connection. The proposed rule change was published in the **Federal Register** on November 12, 2015.<sup>4</sup> No comment letters were received in response to the Notice. This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

The Exchange proposes to change the co-location services offered by the Exchange to include a means for Users to receive market data feeds from third party markets (the "Third Party Data") through a wireless connection.<sup>5</sup> In addition, the proposed rule change reflects changes to the Exchange's Price

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 76366 (November 5, 2015), 80 FR 70047 (November 12, 2015) ("Notice").

<sup>5</sup> For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. See Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR-NYSEMKT-2015-67). 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).

List and the Fee Schedule related to these co-location services.

The Exchange proposes to offer the wireless connection to provide Users with an alternative means of connectivity for Third Party Data. As the Exchange notes, wireless connections involve beaming signals through the air between antennas that are within sight of one another.<sup>6</sup> Because the signals travel a straight, unimpeded line, and because light waves travel faster through air than through glass (fiber optics), wireless messages have lower latency than messages travelling through fiber optics.<sup>7</sup>

Under the proposed rule change, the Exchange would utilize a network vendor to provide a wireless connection to the Third Party Data through wireless connections from the Exchange access centers in Secaucus and Carteret, New Jersey, to its data center in Mahwah, New Jersey, through a series of towers equipped with wireless equipment.<sup>8</sup> A User that chooses this optional service would be able to receive data feeds from NASDAQ and BATS Exchange, Inc. over a wireless connection. To receive Third Party Data, the User would enter into a contract with the relevant third party market, which would charge the User the applicable market data fees for the Third Party Data. The Exchange would charge the User fees for the wireless connection for the Third Party Data.<sup>9</sup>

A User would be charged a \$5,000 non-recurring initial charge for each wireless connection and a monthly recurring charge ("MRC") that would vary depending upon the feed that the User opts to receive. If a User purchased two wireless connections, it would pay two non-recurring initial charges. The MRC for a wireless connection to each of BATS Pitch BZX Gig shaped data, DirectEdge EDGX Gig shaped data, and NASDAQ BX Totalview-ITCH data will be \$6,000; the MRC for a wireless connection of NASDAQ Totalview-ITCH data will be \$8,500; and the MRC for a wireless connection of NASDAQ Totalview-ITCH and BX Totalview-ITCH data will be \$12,000. The

<sup>6</sup> See Notice, *supra* note 4 at 70048.

<sup>7</sup> See *id.*

<sup>8</sup> The NASDAQ Stock Market LLC ("NASDAQ") offers a similar wireless service. See Securities Exchange Act Release No. 68735 (January 25, 2013), 78 FR 6842 (January 31, 2013) (SR-NASDAQ-2012-119) (approving a proposed rule change to establish a new optional wireless connectivity for co-located clients).

<sup>9</sup> A User would only receive the Third Party Data for which it had entered into a contract. For example, a User that contracted with NASDAQ for the NASDAQ Totalview-ITCH data feed but did not contract to receive any other Third Party Data would receive only the NASDAQ Totalview-ITCH data feed through its wireless connection.

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

Exchange proposes to waive the first month's MRC, to allow Users to test the receipt of the feed(s) for a month before incurring any MRCs.

The wireless connections would include the use of one port for connectivity to the Third Party Data. A User will only require one port to connect to the Third Party Data, irrespective of how many of the five wireless connections it orders. If a User that has more than one wireless connection wishes to use more than one port to connect to the Third Party Data,<sup>10</sup> the Exchange proposes to make such additional ports available for a monthly fee per port of \$3,000.

The Exchange represents that there is limited bandwidth available on the wireless connection for data feeds from third parties. As a result, the Exchange has decided to offer as Third Party Data only the data feeds that are in high demand from Users. Although constrained by bandwidth with respect to the number of feeds it can carry, the Exchange represents that the wireless network offered by the Exchange can be made available to an unlimited number of Users.

The wireless connection would provide Users with an alternative means of connectivity for Third Party Data. Currently, Users can receive Third Party Data through other methods, including, for example, from another User, through a telecommunications provider, or over the internet protocol ("IP") network.<sup>11</sup> In addition, Users can receive Third Party Data from wireless networks offered by third party vendors. The Exchange represents that there are currently at least four third party vendors that offer Users wireless network connections using wireless equipment installed on towers and buildings near the data center. The Exchange states that its proposed wireless connection would traverse wireless connections through a series of towers equipped with wireless equipment, including a pole on the grounds of the data center.<sup>12</sup> The Exchange states that access to such pole or the roof is not required for third parties to establish wireless networks that can compete with Exchange's

proposed service and, in particular, represents that based on the information available to it, the proposed wireless connection would provide data at the same or similar speed, and at the same or similar cost, as existing wireless networks, thereby enhancing competition.<sup>13</sup>

The wireless connection to the Third Party Data is expected to be available no later than March 1, 2016. The Exchange will announce the date that the wireless connection to the Third Party Data will be available through a customer notice.

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>14</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>15</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,<sup>16</sup> which requires, among other things, that the rules of a national securities exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,<sup>17</sup> which requires that the rules of the exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the Exchange's proposal to provide this additional connectivity option is consistent with the requirement of Section 6(b)(5) of the Act. The Commission believes that the proposal is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the Exchange makes wireless connectivity

available to all Users on an equal basis. All Users that voluntarily select this service option will be charged the same amount for the same services, and there would be no differentiation among Users with regard to the fees charged for the service. Further, the Exchange represents that Users of the new wireless connection would not receive Third Party Data that is not available to all Users. In addition, the Exchange represents that Users that do not opt to utilize the Exchange's wireless connections would still be able to obtain Third Party Data through other methods, such as from wireless networks offered by third party vendors, other Users, through telecommunications providers, or over the IP network.

The Commission also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act.<sup>18</sup> All Users that voluntarily select this service option will be charged the same amount for the same services, and there would be no differentiation among Users with regard to the fees charged for the service. The Commission notes the Exchange's representation that the fees associated with providing the wireless connections are reasonable because the Exchange will incur certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and monitoring, support and maintenance of such services. The Exchange states that the costs associated with the wireless connections are incrementally higher than fiber optics-based solutions due to the expense of the wireless equipment, cost of installation and testing and ongoing maintenance of the network, and that the fees also reflect the benefit received by Users in terms of lower latency over the fiber optics option. In addition, the Exchange believes that the proposed waiver of the first month's MRC is reasonable as it would allow Users to test the receipt of the feed(s) for a month before incurring any monthly recurring fees and may act as an incentive to Users to utilize the new service.

The Commission also finds that consistent with Section 6(b)(8) of the Act the proposed rule change does not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange states that Users currently can receive Third Party Data from competing wireless networks offered by third party vendors, including at least four third party vendors that offer Users wireless network connections using

<sup>10</sup> For example, a User with two wireless connections for Third Party Data may opt to purchase an additional port in order to route the options and equity data it receives to different cabinets.

<sup>11</sup> The IP network is a local area network available in the data center. See Securities Exchange Act Release No. 74220 (February 6, 2015), 80 FR 7894 (February 12, 2015) (SR-NYSEMKT-2015-08) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections).

<sup>12</sup> See Notice, *supra* note 4 at 70050.

<sup>13</sup> See Notice, *supra* note 4 at 70049-50.

<sup>14</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 15 U.S.C. 78f(b)(8).

<sup>18</sup> 15 U.S.C. 78f(b)(4).

wireless equipment installed on towers and buildings near the data center. The Exchange represents, based on the information available to it, that the proposed wireless connection would provide data at the same or similar speed, and at the same or similar cost, as existing wireless networks, thereby enhancing competition.<sup>19</sup> The Exchange also notes that the proposed wireless connection would compete not just with other wireless connections, but also with fiber optic networks, which may be more attractive to some Users as they are more reliable and less susceptible to weather conditions. For these reasons, the Commission does not believe that the proposed rule change imposes a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (SR-NYSEMKT-2015-85) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76767; File No. SR-FINRA-2015-056]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt FINRA Rule 2030 and FINRA Rule 4580 To Establish “Pay-To-Play” and Related Rules

December 24, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act,” “Exchange Act” or “SEA”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 16, 2015, Financial Industry Regulatory Authority, Inc. filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The

<sup>19</sup> See *supra* notes 12 and 13 and accompanying text.

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> 17 CFR 200.30-3(a)(12).

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

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

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

FINRA is proposing to adopt FINRA Rules 2030 (Engaging in Distribution and Solicitation Activities with Government Entities)<sup>3</sup> and 4580 (Books and Records Requirements for Government Distribution and Solicitation Activities) to establish “pay-to-play”<sup>4</sup> and related rules that would regulate the activities of member firms that engage in distribution or solicitation activities for compensation with government entities on behalf of investment advisers.

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

###### Background & Discussion

In July 2010, the SEC adopted Rule 206(4)-5 under the Investment Advisers Act of 1940 (“Advisers Act”) addressing pay-to-play practices by investment advisers (the “SEC Pay-to-Play Rule”).<sup>5</sup>

<sup>3</sup> FINRA published the proposed rule change as FINRA Rule 2390 in *Regulatory Notice* 14-50 (Nov. 2014) (“*Regulatory Notice* 14-50”). FINRA has determined that the proposed rule change is more appropriately categorized under the FINRA Rule 2000 Series relating to “Duties and Conflicts.”

<sup>4</sup> “Pay-to-play” practices typically involve a person making cash or in-kind political contributions (or soliciting or coordinating others to make such contributions) to help finance the election campaigns of state or local officials or bond ballot initiatives as a quid pro quo for the receipt of government contracts.

<sup>5</sup> See Advisers Act Release No. 3043 (July 1, 2010), 75 FR 41018 (July 14, 2010) (Political Contributions by Certain Investment Advisers) (“SEC Pay-to-Play Rule Adopting Release”). See

The SEC Pay-to-Play Rule prohibits an investment adviser from providing advisory services for compensation to a government entity for two years after the adviser or its covered associates make a contribution to an official of the government entity, unless an exception or exemption applies. In addition, it prohibits an investment adviser from soliciting from others, or coordinating, contributions to government entity officials or payments to political parties where the adviser is providing or seeking to provide investment advisory services to a government entity.

The SEC Pay-to-Play Rule also prohibits an investment adviser and its covered associates from providing or agreeing to provide, directly or indirectly, payment to any person to solicit a government entity for investment advisory services on behalf of the investment adviser unless the person is a “regulated person.” A “regulated person” includes a member firm, provided that: (a) FINRA rules prohibit member firms from engaging in distribution or solicitation activities if political contributions have been made; and (b) the SEC finds, by order, that such rules impose substantially equivalent or more stringent restrictions on member firms than the SEC Pay-to-Play Rule imposes on investment advisers and that such rules are consistent with the objectives of the SEC Pay-to-Play Rule.<sup>6</sup> The SEC stated that this SEC ban on third-party solicitations would be effective nine months after the compliance date of a final rule adopted by the SEC by which municipal advisors must register under the Exchange Act.<sup>7</sup> The SEC adopted such a final rule on September 20, 2013, with a compliance date of July 1, 2014.<sup>8</sup>

also Advisers Act Release No. 3221 (June 22, 2011), 76 FR 42950 (July 19, 2011) (Rules Implementing Amendments to the Investment Advisers Act of 1940); Advisers Act Release No. 3418 (June 8, 2012), 77 FR 35263 (June 13, 2012) (Political Contributions by Certain Investment Advisers; Ban on Third Party Solicitation; Extension of Compliance Date).

<sup>6</sup> See SEC Pay-to-Play Rule 206(4)-5(f)(9). A “regulated person” also includes SEC registered investment advisers and SEC-registered municipal advisors, subject to specified conditions.

<sup>7</sup> See Advisers Act Release No. 3418 (June 8, 2012), 77 FR 35263 (June 13, 2012).

<sup>8</sup> See Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67468 (Nov. 12, 2013) (Registration of Municipal Advisors). On June 25, 2015, the SEC issued notice of the compliance date for its third party solicitation ban as July 31, 2015. See Advisers Act Release No. 4129 (June 25, 2015), 80 FR 37538 (July 1, 2015). In addition, staff of the Division of Investment Management added Question I.4 to its Staff Responses to Questions About the Pay to Play Rule stating, among other things, that until the later of (i) the effective date of a FINRA pay-to-play rule or (ii) the effective date of an MSRB pay-to-play rule, the Division of Investment Management would not recommend enforcement action to the