

best execution derives from common law agency principles and fiduciary obligations, and is incorporated in SRO rules and, through judicial and Commission decisions, the antifraud provisions of the federal securities laws.<sup>36</sup> The duty of best execution requires broker-dealers to execute customers' trades at the most favorable terms reasonably available under the circumstances, *i.e.*, at the best reasonably available price.<sup>37</sup> The duty of best execution requires broker-dealers to periodically assess the quality of competing markets to assure that order flow is directed to the markets providing the most beneficial terms for their customer orders.<sup>38</sup> Broker-dealers

(1948), *aff'd sub nom. Hughes v. SEC*, 174 F.2d 969 (D.C. Cir. 1949)). See also Order Execution Obligations, Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996) ("Order Handling Rules Release"); 51808 (June 9, 2005), 70 FR 37496, 37537–8 (June 29, 2005).

<sup>36</sup> Order Handling Rules Release, 61 FR at 48322. See also *Newton*, 135 F.3d at 270. Failure to satisfy the duty of best execution can constitute fraud because a broker-dealer, in agreeing to execute a customer's order, makes an implied representation that it will execute it in a manner that maximizes the customer's economic gain in the transaction. See *Newton*, 135 F.3d at 273 ("[T]he basis for the duty of best execution is the mutual understanding that the client is engaging in the trade—and retaining the services of the broker as his agent—solely for the purpose of maximizing his own economic benefit, and that the broker receives her compensation because she assists the client in reaching that goal."); *Marc N. Geman*, Securities Exchange Act Release No. 43963 (Feb. 14, 2001) (citing *Newton*, but concluding that respondent fulfilled his duty of best execution). See also *Payment for Order Flow*, Securities Exchange Act Release No. 34902 (Oct. 27, 1994), 59 FR 55006, 55009 (Nov. 2, 1994) ("Payment for Order Flow Final Rules"). If the broker-dealer intends not to act in a manner that maximizes the customer's benefit when he accepts the order and does not disclose this to the customer, the broker-dealer's implied representation is false. See *Newton*, 135 F.3d at 273–274.

<sup>37</sup> *Newton*, 135 F.3d at 270. *Newton* also noted certain factors relevant to best execution—order size, trading characteristics of the security, speed of execution, clearing costs, and the cost and difficulty of executing an order in a particular market. *Id.* at 270 n. 2 (citing *Payment for Order Flow*, Securities Exchange Act Release No. 33026 (Oct. 6, 1993), 58 FR 52934, 52937–38 (Oct. 13, 1993) (Proposed Rules)). See *In re E.F. Hutton & Co.* ("Manning"), Securities Exchange Act Release No. 25887 (July 6, 1988). See also *Payment for Order Flow Final Rules*, 59 FR at 55008–55009.

<sup>38</sup> Order Handling Rules Release, 61 FR at 48322–48333 ("In conducting the requisite evaluation of its internal order handling procedures, a broker-dealer must regularly and rigorously examine execution quality likely to be obtained from different markets or market makers trading a security."). See also *Newton*, 135 F.3d at 271; Market 2000: An Examination of Current Equity Market Developments V–4 (SEC Division of Market Regulation January 1994) ("Without specific instructions from a customer, however, a broker-dealer should periodically assess the quality of competing markets to ensure that its order flow is directed to markets providing the most advantageous terms for the customer's order.");

must examine their procedures for seeking to obtain best execution in light of market and technology changes and modify those practices if necessary to enable their customers to obtain the best reasonably available prices.<sup>39</sup> In doing so, broker-dealers must take into account price improvement opportunities, and whether different markets may be more suitable for different types of orders or particular securities.<sup>40</sup>

For these reasons, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act.<sup>41</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>42</sup> that the proposed rule change (SR–BX–2014–049) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>43</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015–01648 Filed 1–28–15; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74127; File No. SR–NYSEMKT–2015–06]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing the NYSE MKT Integrated Feed Data Feed

January 23, 2015.

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> notice is hereby given that on January

Payment for Order Flow Final Rules, 59 FR at 55009.

<sup>39</sup> Order Handling Rules, 61 FR at 48323.

<sup>40</sup> Order Handling Rules, 61 FR at 48323. For example, in connection with orders that are to be executed at a market opening price, "[b]roker-dealers are subject to a best execution duty in executing customer orders at the opening, and should take into account the alternative methods in determining how to obtain best execution for their customer orders." Disclosure of Order Execution and Routing Practices, Securities Exchange Act Release No. 43590 (Nov. 17, 2000), 65 FR 75414, 75422 (Dec. 1, 2000) (adopting new Exchange Act Rules 11Ac1–5 and 11Ac1–6 and noting that alternative methods offered by some Nasdaq market centers for pre-open orders included the mid-point of the spread or at the bid or offer).

<sup>41</sup> 15 U.S.C. 78f(b)(5).

<sup>42</sup> 15 U.S.C. 78s(b)(2).

<sup>43</sup> 17 CFR 200.30–3(a)(12).

<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.

21, 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 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 establish the NYSE MKT Integrated Feed ("NYSE MKT Integrated Feed") data feed. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

###### 1. Purpose

The Exchange proposes to establish the NYSE MKT Integrated Feed. The NYSE MKT Integrated Feed would provide real-time market data in a unified view of events, in sequence, as they appear on the NYSE MKT matching engines. The NYSE MKT Integrated Feed would include depth of book order data, last sale data, and opening and closing imbalance data. The NYSE MKT Integrated Feed would also include security status updates (*e.g.*, trade corrections and trading halts) and stock summary messages. The stock summary message updates every minute and includes NYSE MKT's opening price, high price, low price, closing price, and cumulative volume for the security. The NYSE MKT Integrated Feed would include information currently available from three existing NYSE MKT real-time market data feeds:

NYSE MKT OpenBook,<sup>4</sup> which provides a compilation of all limit orders resident in the NYSE MKT limit order book; NYSE MKT Trades,<sup>5</sup> which provides NYSE MKT last sale information on a real-time basis; and NYSE MKT Order Imbalances,<sup>6</sup> which publishes order imbalance information prior to the opening and closing of trading.<sup>7</sup>

The Exchange proposes to offer the NYSE MKT Integrated Feed through the Exchange's Liquidity Center Network ("LCN"), a local area network in the Exchange's Mahwah, New Jersey data center that is available to users of the Exchange's co-location services. The Exchange also would offer the NYSE MKT Integrated Feed through the Exchange's Secure Financial Transaction Infrastructure ("SFTI") network, through which all other users and member organizations access the Exchange's trading and execution systems and other proprietary market data products.

Offering an integrated product addresses requests received from vendors and subscribers that would like to receive the data described above in an integrated fashion. An integrated data feed would provide greater efficiencies and reduce errors for vendors and subscribers that currently choose to integrate the data after receiving it from the Exchange. The Exchange believes that providing vendors and subscribers with the option of a market data product that both integrates existing products and includes additional market data would allow vendors and subscribers to choose the best solution for their specific businesses.

The Exchange will file a separate rule filing to establish the fees for the NYSE MKT Integrated Feed and will announce the date that the NYSE MKT Integrated Feed will be available through an NYSE Market Data Notice.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>8</sup> of the Act, in general, and furthers the objectives of Section

6(b)(5)<sup>9</sup> of the Act, in particular, in that 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 facilitating transactions in securities, 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 it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the NYSE MKT Integrated Feed to those interested in receiving it.

The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving market data as requested by market data vendors and purchasers. The proposed rule change would benefit investors by facilitating their prompt access to the real-time information contained in the NYSE MKT Integrated Feed.

In adopting Regulation NMS, the Commission granted self-regulatory organizations ("SROs") and broker dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the NYSE MKT Integrated Feed is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS would itself further the Act's goals of facilitating efficiency and competition:

Efficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.<sup>10</sup>

The Exchange further notes that the existence of alternatives to the

Exchange's product, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, as well as the continued availability of the Exchange's separate data feeds, ensures that the Exchange is not unreasonably discriminatory because vendors and subscribers can elect these alternatives as their individual business cases warrant.

The NYSE MKT Integrated Feed will help to protect a free and open market by providing additional data to the marketplace and by giving investors greater choices. In addition, the proposal would not permit unfair discrimination because the product will be available to all of the Exchange's customers and broker-dealers through both the LCN and SFTI.

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

In accordance with Section 6(b)(8) of the Act,<sup>11</sup> the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Because other exchanges already offer similar products, the Exchange's proposed NYSE MKT Integrated Feed will enhance competition. The NYSE MKT Integrated Feed will foster competition by providing an alternative to similar products offered by other exchanges, including the NYSE Arca Integrated Feed,<sup>12</sup> offered by the Exchange's affiliate, NYSE Arca, Inc. ("NYSE Arca"), Nasdaq TotalView-ITCH,<sup>13</sup> offered by The Nasdaq Stock Market, Inc., and BATS Multicast Pitch,<sup>14</sup> offered by BATS Global Markets. This proposed new data feed provides investors with new options for receiving market data, which was a primary goal of the market data amendments adopted by Regulation NMS.<sup>15</sup>

<sup>11</sup> 15 U.S.C. 78f(b)(8).

<sup>12</sup> See NYSE Arca Integrated Feed, <http://www.nyxdata.com/page/1084> (last visited January 5, 2015) (data feed that provides a unified view of events, in sequence as they appear on the NYSE Arca matching engine, including depth of book, trades, order imbalance data, and security status messages).

<sup>13</sup> See Nasdaq TotalView-ITCH, <http://www.nasdaqtrader.com/Trader.aspx?id=Totalview2> (last visited January 5, 2015) (displays the full order book depth for Nasdaq market participants and also disseminates the Net Order Imbalance Indicator (NOII) for the Nasdaq Opening and Closing Crosses and Nasdaq IPO/Halt Cross).

<sup>14</sup> See BATS Multicast PITCH, [http://www.batstrading.com/market\\_data/products/](http://www.batstrading.com/market_data/products/) (last visited January 5, 2015) (real-time depth of book quotations and execution information).

<sup>15</sup> See Regulation NMS Adopting Release, *supra*, at 37503.

<sup>4</sup> See Securities Exchange Act Release No. 60123 (June 17, 2009), 74 FR 30192 (June 24, 2009) (SR-NYSEAmex-2009-28).

<sup>5</sup> See Securities Exchange Act Release No. 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (NYSEAmex-2010-35).

<sup>6</sup> See Securities Exchange Act Release Nos. 59743 (April 9, 2009), 74 FR 17699 (April 16, 2009) (SR-NYSEAmex-2009-11); 60151 (June 19, 2009), 74 FR 30653 (June 26, 2009) (SR-NYSEAmex-29).

<sup>7</sup> Neither this filing nor the later filing establishing fees for the NYSE MKT Integrated Feed will have any effect on the filings for NYSE MKT Openbook, NYSE MKT Trades, or NYSE MKT Order Imbalances.

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) ("Regulation NMS Adopting Release").

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup> 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, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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,<sup>18</sup> 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.

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

**IV. Solicitation of Comments**

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

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2015-06 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-2015-06. 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 Section, 100 F Street NE., Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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](http://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-2015-06 and should be submitted on or before February 19, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Brent J. Fields,**  
Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-74125; File No. SR-PHLX-2015-05]

**Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to MNX and NDX**

January 23, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 21, 2015, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Section II<sup>3</sup> of the Pricing Schedule entitled "Multiply Listed Options Fees" to assess an increased Options Surcharge in MNX<sup>4</sup> and NDX.<sup>5</sup>

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on February 2, 2015.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.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 Exchange 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

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

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

<sup>3</sup> Section II of the Pricing Schedule includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

<sup>4</sup> MNX represents options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX").

<sup>5</sup> NDX represents options on the Nasdaq 100 Index traded under the symbol NDX ("NDX").

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> The Exchange has satisfied this requirement.

<sup>19</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>20</sup> 17 CFR 200.30-3(a)(12).