

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70982; File No. SR-NYSEMKT-2013-97)

December 4, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule in Order to Provide for Fees For a Lower-Latency 10 Gigabit Liquidity Center Network Connection in 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 November 20, 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, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the NYSE MKT Equities Price List ("Price List") and the NYSE Amex Options Fee Schedule ("Fee Schedule") in order to provide for fees for a lower-latency 10 gigabit ("Gb") Liquidity Center Network ("LCN") connection in the Exchange's data center. The Exchange proposes to implement the fee change effective December 3, 2013. The text of the proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List and the Fee Schedule in order to provide for fees for a new lower-latency 10 Gb LCN connection, referred to as the "LCN 10 Gb LX," in the Exchange's data center, and remove obsolete text.⁴ The Exchange proposes to implement the fee change effective December 3, 2013.

Users are currently able to purchase access to the Exchange's LCN, a local area network that is available in the data center and that provides Users with access to the Exchange's trading and execution systems and to the Exchange's proprietary market data products.⁵ LCN access is

⁴ The Securities and Exchange Commission ("Commission") initially approved the Exchange's co-location services in Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR-NYSEAmex-2010-80) (the "Original Co-location Approval"). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users. 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. See id. at 59299.

⁵ For purposes of the Exchange's co-location services, the term "User" includes (i) member organizations, as that term is defined in the definitions section of the General and Floor Rules of the NYSE MKT Equities Rules, and ATP Holders, as that term is defined in NYSE Amex Options Rule 900.2NY(5); (ii) Sponsored Participants, as that term is defined in Rule 123B.30(a)(ii)(B) – Equities and NYSE Amex Options Rule 900.2NY(77); and (iii) non-member organization and non-ATP Holder broker-dealers and vendors that request to receive co-location services directly from the Exchange. See, e.g., Securities Exchange Act Release Nos. 65974 (December 15, 2011), 76 FR 79249

currently available in one, 10 and 40 Gb bandwidth capacities,⁶ for which Users incur an initial and monthly fee per connection. The Exchange also recently submitted a proposal to expand its co-location services to include lower-latency LCN 10 Gb LX connections.⁷ By utilizing ultra low-latency switches, the LCN 10 Gb LX connection would provide faster processing of messages sent to it in comparison to the existing, standard 10 Gb LCN connection.⁸ The Exchange proposed to expand its co-location services to include LCN 10 Gb LX connections in order to make an additional service available to its co-location Users and thereby satisfy demand for more efficient, lower latency connections. The LCN 10 Gb LX is expected to have latency levels similar to those of the existing 40 Gb LCN connection. Both the proposed LCN 10 Gb LX connection and the 40 Gb LCN connection represent the lowest latency currently available to Users.

The Exchange hereby proposes to establish the following fees for LCN 10 Gb LX

(December 21, 2011) (SR-NYSEAmex-2011-81) and 65975 (December 15, 2011), 76 FR 79233 (December 21, 2011) (SR-NYSEAmex-2011-82). 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 id.

⁷ See Securities Exchange Act Release No. 70886 (November 15, 2013) (SR-NYSEMKT-2013-92). The Exchange did not propose making low-latency LCN connections available for 10 Gb CSP connections because, at least initially, User demand was not anticipated to exist. Also, the Exchange noted that, for a 10 Gb LX "Bundle," SFTI and optic connections would be at standard 10 Gb latencies and only the LCN connections would be lower latency. The Exchange proposes to include language in the Price List and the Fee Schedule to reflect this fact. The Exchange's affiliates have filed substantially the same proposed rule change to expand their co-location services to include LCN 10 Gb LX connections. See Securities Exchange Act Release Nos. 70888 (November 15, 2013) (SR-NYSE-2013-73) and 70887 (November 15, 2013) (SR-NYSEArca-2013-123).

⁸ A switch is a type of network hardware that acts as the "gatekeeper" for a User's messaging (e.g., orders and quotes) sent to the Exchange's trading and execution system from the data center. See SR-NYSEMKT-2013-92, supra note 7.

connections:

Type of Service	Description	Amount of Charge
LCN Access	10 Gb LX Circuit	\$15,000 per connection initial charge plus \$20,000 monthly per connection
Bundled Network Access, Option 1 (2 LCN connections, 2 SFTI connections, and 2 optic connections to outside access center)	10 Gb LX Bundle (LCN connections at 10 Gb LX; SFTI and optic connections at standard 10 Gb)	\$60,000 initial charge plus \$64,500 monthly charge
Bundled Network Access, Option 2 (2 LCN connections, 2 SFTI connections, 1 optic connection to outside access center, and 1 optic connection in data center)	10 Gb LX Bundle (LCN connections at 10 Gb LX; SFTI and optic connections at standard 10 Gb)	\$60,000 initial charge plus \$71,000 monthly charge
Bundled Network Access, Option 3 (2 LCN connections, 2 SFTI connections, and 2 optic connections in data center)	10 Gb LX Bundle (LCN connections at 10 Gb LX; SFTI and optic connections at standard 10 Gb)	\$60,000 initial charge plus \$77,500 monthly charge

As with the pricing for existing LCN connections, Users of the LCN 10 Gb LX connections would be subject to an initial charge plus a monthly recurring charge per connection. However, in order to incentivize Users to upgrade to the proposed LCN 10 Gb LX connections, the Exchange proposes that a User that submits a written order for an LCN 10 Gb LX Circuit or 10 Gb LX Bundle between December 3, 2013 and January 31, 2014 would not be subject to the portion of the initial charge related to the LCN 10 Gb LX connections.⁹

⁹ For a Bundle, this would mean that a User would not be subject to the \$30,000 LCN 10 Gb LX portion of the initial charge. The Exchange notes that each 10 Gb LX Bundle would include two LCN 10 Gb LX connections. The initial charge proposed for a non-Bundled LCN 10 Gb LX Circuit is \$15,000. Therefore, the LCN 10 Gb LX portion of the initial Bundle charge would be \$30,000. A User would remain subject to the

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, an ATP Holder, a Sponsored Participant or an agent thereof (e.g., a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;¹⁰ and (iii) 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

Finally, the Exchange proposes to revise the Price List and the Fee Schedule to remove obsolete text. More specifically, a User that submitted a written order for a 40 Gb LCN circuit between September 3, 2013 and September 30, 2013 was not subject to the portion of the initial charge related to the LCN connection.¹² The Exchange proposes to delete text that refers to such period, as it has since expired.

remaining \$30,000 non-LCN 10 Gb LX portion of the initial Bundle charge, i.e. for SFTI and optic connections.

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 other Users. 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 all Users, 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 5 at 50471. The Exchange's affiliates have also submitted the same proposed rule change to provide for fees for LCN 10 Gb LX connections. See SR-NYSE-2013-77 and SR-NYSEArca-2013-131.

¹² See Securities Exchange Act Release No. 70285 (August 29, 2013), 78 FR 54697 (September 5, 2013) (SR-NYSEMKT-2013-71).

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,¹³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁴ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change is reasonable because the Exchange proposes to offer the additional services described herein (i.e., the LCN 10 Gb LX connection) as a convenience to Users, but in doing so 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 ongoing monitoring, support and maintenance of such services.

The Exchange further believes that the proposed change is reasonable because the proposed fees relate to the level of services provided by the Exchange and, in turn, received by the User. The fees proposed for LCN 10 Gb LX connections would be the same as the fees for 40 Gb LCN connections. The Exchange notes that it will incur the same costs related to a User with an LCN 10 Gb LX connection as it does related to a 40 Gb LCN connection, largely due to the cost of the ultra-low latency switches. Accordingly, the Exchange believes that it is reasonable to assess the same fees for both services. The LCN 10 Gb LX connection and the 40 Gb LCN connection represent the lowest latency currently available to Users. The 40 Gb LCN

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

provides the greatest bandwidth available on the Exchange, which is important for Users that have high order flow and ingest large amounts of market data and demand the greatest bandwidth possible to handle such message flow. Some Users, however, have systems that are not compatible with a 40 Gb LCN connection, or do not have bandwidth demands that would require a 40 Gb LCN connection, but still put a premium on reducing latency. The LCN 10 Gb LX is designed to meet this demand. The Exchange believes that this supports a finding that the proposed pricing is reasonable.

The Exchange also believes that not charging the initial charge to a User that submits a written order for an LCN 10 Gb LX Circuit or LCN 10 Gb LX Bundle between December 3, 2013 and January 31, 2014 is reasonable because the Exchange believes it will incentivize Users to upgrade to low-latency connections during the first two months that they are available, which will assist Users in meeting the growing needs of their business operations. The Exchange notes that when introducing the 40 Gb LCN connection it also did not charge the initial charge for a limited period.¹⁵

As with fees for existing co-location services, the fees proposed herein would be charged only to those Users that voluntarily select the related services, which would be available to all Users. Accordingly, the Exchange believes that the proposed change is equitable and not unfairly discriminatory. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory and are equitably allocated because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (i.e., the same products and services are available to all Users). Additionally, the Exchange believes that the proposed fees are not unfairly discriminatory because, depending on preference or hardware

¹⁵ See supra note 12.

configurations, a User whose system is not compatible with a 40 Gb LCN connection, or does not have bandwidth demands that would require a 40 Gb LCN connection, but that puts a premium on reducing latency would be able to choose between the LCN 10 Gb LX connection or the existing 40 Gb LCN connection to achieve comparable overall latency levels and would be charged the same fees regardless of connection type chosen.

The Exchange also believes that it is equitable and not unfairly discriminatory to not charge the initial charge to a User that submits a written order for an LCN 10 Gb LX Circuit or 10 Gb LCN Bundle between December 3, 2013 and January 31, 2014 because not charging such fee will incentivize Users to upgrade to low-latency connections during the first two months that they are available, which will assist Users in meeting the growing needs of their business operations. In this regard, all Users would have the option to submit a written order for an LCN 10 Gb LX Circuit or LCN 10 Gb LX Bundle and, if done so between December 3, 2013 and January 31, 2014, any such User would not be charged the initial charge related thereto.

The Exchange also believes that the removal of the text stating that a User that submitted a written order for a 40 Gb LCN circuit between September 3, 2013 and September 30, 2013 was not subject to the portion of the initial charge related to the LCN connection is reasonable, equitable and not unfairly discriminatory because it would result in the removal of obsolete text from the Price List and the Fee Schedule and add greater clarity regarding the applicable fees.

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 also believes that the proposed LCN 10 Gb LX connection fees will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because LCN 10 Gb LX connections will satisfy User demand for more efficient, lower-latency connections, but Users that do not require the lower latency could continue to request an existing LCN connection and pay the corresponding fees. Additionally, the Exchange believes that the proposed change will enhance competition between competing marketplaces by enabling the Exchange to provide a low-latency connectivity option to Users that is similar to a service available on other markets. For example, The NASDAQ Stock Market LLC ("NASDAQ") also makes a low-latency 10 Gb fiber connection option available to users of its co-location facilities.¹⁷

¹⁶ 15 U.S.C. 78f(b)(8).

¹⁷ See NASDAQ Rule 7034. NASDAQ refers to this connectivity option as the "10 Gb Ultra" connection. See also Securities Exchange Act Release No. 70129 (August 7, 2013), 78 FR 49308 (August 13, 2013) (SR-NASDAQ-2013-099).

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

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

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁸ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁹ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁰ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(2).

²⁰ 15 U.S.C. 78s(b)(2)(B).

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-2013-97 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEMKT-2013-97. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference 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-NYSEMKT-2013-97 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.²¹

Kevin M. O'Neill
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).