

Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Investing Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Investing Funds Adviser, or trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Funds Sub-Adviser will waive fees otherwise payable to the Investing Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Funds Sub-Adviser, or an affiliated person of the Investing Funds Sub-Adviser, other than any advisory fees paid to the Investing Funds Sub-Adviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Funds Sub-Adviser. In the event that the Investing Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by a Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed

significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), any Investing Fund and the Fund will execute an Investing Fund Participation Agreement stating, without limitation, that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Funds Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the Investing Fund Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the non-interested directors or trustees, will find

that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the NASD.

12. No Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

### **Sunshine Act Meeting**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, December 12, 2013 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; an opinion; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

Dated: December 5, 2013.

**Elizabeth M. Murphy,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70982; File No. SR-NYSEMKT-2013-97]

### 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

December 4, 2013.

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 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 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 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.<sup>4</sup> 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.<sup>5</sup> LCN access is currently available in one, 10 and 40 Gb bandwidth capacities,<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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 connections:

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).

<sup>8</sup> 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.

<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> 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.

<sup>5</sup> 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 (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).

<sup>6</sup> See *id.*

<sup>7</sup> See Securities Exchange Act Release No. 70886 (November 15, 2013) (SR-NYSEMKT-2013-92).