

Exchange believes that the proposal will promote competition by enabling the Exchange to offer a market data product similar to that currently offered by the NYSE and Nasdaq.¹⁷ Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹

enables recipients to receive aggregated two-sided quotations from the Bats Exchanges for up to five (5) price levels ("Bats One Premium Feed"). See Exchange Rule 13.8(b). See also Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR-EDGX-2014-25; SR-EDGA-2014-25; SR-BATS-2014-055; SR-BYX-2014-030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) ("Bats One Approval Order"). The Exchange uses the following data feeds to create the Bats One Feed, each of which are available to vendors: EDGX Depth, EDGA Depth, BYX PITCH Feed, and the BZX PITCH Feed. The Exchange notes that a vendor could utilize the proposed EDGX Summary Depth Feed, as well as the summarized depth feeds to be proposed by BYX, BZX, and EDGA to create a competing product to the Bats One Feed. *Supra* note 8. The Exchange represents that a competing vendor could obtain these data feeds from each Bats Exchange on the same latency basis as the system that performs the aggregation and consolidation of the Bats One Feed. See Bats One Approval Order. While the proposed EDGX Summary Depth Feed does not contain the symbol summary or consolidated volume data included in the Bats One Feed, a vendor could include this information in a competing product as this information is easily derivable from the proposed feeds or can be obtained from the securities information processors on the same terms as the Exchange.

¹⁷ See *supra* note 14.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

At any time within 60 days of the filing of the 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 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 No. SR-BatsEDGX-2016-45 on the subject line.

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-BatsEDGX-2016-45. 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 No. SR-BatsEDGX-2016-45, and should be submitted on or before September 16, 2016.

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

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78622; File No. SR-MSRB-2016-11]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay the Due Date for Certain Submissions Under Rule G-45 and Provide Guidance on the Application of Rules G-42 and G-44 to Municipal Advisors to Sponsors or Trustees of Municipal Fund Securities

August 22, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 12, 2016 the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the Securities and Exchange Commission (the "Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. 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 MSRB filed with the Commission a proposed rule change to delay by two years, until August 29, 2018, the date on which submissions must be made pursuant to Rule G-45, on reporting of information on municipal fund securities, by underwriters of programs established to implement the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the "ABLE Act")

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

and an “ABLE program”).³ The submissions on Form G–45 from such underwriters currently are due August 29, 2016. However, the current due dates under Rule G–45 for submissions from underwriters of other types of municipal fund securities, namely tax-advantaged college savings plans established under section 529 of the Internal Revenue Code of 1986, as amended (the “Code”) (a “529 college savings plan”),⁴ would remain unchanged.

In addition, the proposed rule change would provide guidance under (i) Rule G–42, on duties of non-solicitor municipal advisors, that such rule applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLE programs and (ii) Rule G–44, on supervisory and compliance obligations of municipal advisors, that such rule equally applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLE programs, and other municipal fund securities (the amendment to Rule G–45 and guidance under Rules G–42 and G–44, collectively the “proposed rule change”). The MSRB proposes an immediate effectiveness for the proposed rule change.

The text of the proposed rule change is available on the MSRB’s Web site at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2016-Filings.aspx, at the MSRB’s principal office, 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 MSRB 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 MSRB 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

The MSRB proposes to delay by two years, until August 29, 2018, the date the submissions are due under Rule G–45 on Form G–45 from underwriters to ABLE programs. In addition, the MSRB proposes to provide guidance under (i) Rule G–42, that such rule applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLE programs and (ii) Rule G–44, that such rule equally applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLE programs, and other municipal fund securities.

The ABLE Act added section 529A to the Code to permit a state, or an agency or instrumentality thereof, to establish and maintain a new type of tax-advantaged savings program to help support individuals with disabilities in maintaining health, independence, and quality of life. Section 529A was modeled on section 529 of the Code.⁵ Section 529 of the Code, in part, established 529 college savings plans to encourage saving for future higher education costs.⁶ The SEC has determined that interests offered by such 529 college savings plans are municipal securities under section 3(a)(29) of the Act.⁷

Given the similarities between the structure of ABLE accounts and 529 college savings plan accounts and the manner in which interests in those accounts will be distributed, the MSRB requested interpretive guidance from the SEC staff. Specifically, the MSRB requested guidance on:

(i) Whether interests in an ABLE account offered through an ABLE program are “municipal securities,” as

⁵ Report to accompany H.R. 647, Committee on Ways and Means, H.R. Rept. No. 113–614, part 1 at 7 (2014).

⁶ Section 529 also established prepaid tuition plans. 26 U.S.C. 529(b)(1)(A)(i). Under a prepaid tuition plan, an investor may purchase tuition credits or certificates on behalf of a designated beneficiary, which entitle the beneficiary to the waiver or payment of qualified higher education expenses. Prepaid tuition plans generally have residency requirements. Such credits or certificates generally are not viewed as being municipal securities, and dealers generally do not participate in the marketing of prepaid tuition plans.

⁷ Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67468, 67472–73 (Nov. 12, 2013). See Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to Diane G. Klinke, General Counsel, MSRB (Feb. 26, 1999) (determining that at least some interests in higher education trusts are municipal securities under the Act).

defined in Section 3(a)(29) of the Exchange Act, and

(ii) whether a dealer participating in the sale of those interests would be participating in a “primary offering” and thus be subject to the requirements of Rule 15c2–12 under the Exchange Act.

In response to the first request, the SEC staff stated that:⁸

at least some interests in ABLE accounts . . . may be “municipal securities” as defined in Section 3(a)(29) of the Exchange Act, depending on the facts and circumstances, including without limitation, the extent to which an ABLE account through an ABLE Program is a direct obligation of, or obligation guaranteed as to principal or interest by, a State or any agency or instrumentality thereof.

With respect to the second request, the SEC staff stated:⁹

[W]e note that Rule 15c2–12(f)(7) under the Exchange Act defines a “primary offering” as including an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities. Based upon your letter and communications with MSRB staff, it is our understanding that interests in ABLE Programs generally are offered only by direct purchase from the issuer. Accordingly, we would view those interests as having been sold in a “primary offering” as that term is defined in Rule 15c2–12. If a dealer is acting as an “underwriter” (as defined in Rule 15c2–12(f)(8)) in connection with that primary offering, the dealer may be subject to the requirements of Rule 15c2–12.

In April 2016, after the Board had received the SEC staff guidance, the Board provided interpretative guidance under MSRB Rule D–12, on the definition of “municipal fund security.”¹⁰

The April guidance provided that interests in ABLE accounts may be municipal fund securities, and that to the extent that dealers effect transactions in municipal fund securities, such dealers may be subject to all Board rules, unless those dealers are specifically exempted from any of those rules. The April guidance also anticipated that the Board would publish guidance to address particular issues, including Rule G–45, applicable to the sale of interests in ABLE programs by dealers.¹¹ The proposed rule change is the first of such guidance

⁸ Letter dated March 31, 2016 from Jessica S. Kane, Director, Office of Municipal Securities, SEC, to Robert A. Fippinger, Esq., Chief Legal Officer, MSRB, in response to letter dated December 31, 2015 from Robert A. Fippinger to Jessica S. Kane available at <https://www.sec.gov/info/municipal/msrb-letter-033116-interests-in-able-accounts.pdf> [footnote omitted].

⁹ *Id.*

¹⁰ MSRB Regulatory Notice 2016–14 (Apr. 12, 2016) (the “April guidance”).

¹¹ *Id.*

³ The ABLE Act was enacted on December 19, 2014 as part of The Tax Increase Prevention Act of 2014 (Pub. L. 113–295).

⁴ 26 U.S.C. 529(b)(1)(A)(ii).

to address particular issues related to the sale of interests in ABLÉ programs by dealers and related to municipal advisory activities provided by municipal advisors to sponsors or trustees of ABLÉ programs.

Specifically, as ABLÉ programs become operational, the proposed rule change would delay, by two years from August 29, 2016 until August 29, 2018, the date that submissions are due under Rule G-45 from underwriters to ABLÉ programs. The MSRB believes that the delay would help ensure that the MSRB receives reliable, complete and accurate filings on Form G-45 from such underwriters. The MSRB also believes that the delay would help ensure that the MSRB receives more meaningful data about a larger set of ABLÉ programs on Form G-45. However, the current deadlines under Rule G-45 for submissions from underwriters of 529 college savings plans would remain unchanged.

Further, the proposed rule change would provide guidance in supplementary material under (i) Rule G-42, that such rule applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLÉ programs and (ii) Rule G-44, that such rule equally applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLÉ programs, and other municipal fund securities. The proposed guidance would provide clarity about the applicability of such rules to municipal advisors that engage in municipal advisory activities for sponsors or trustees of municipal fund securities. The MSRB is proposing this guidance in response to requests from industry groups in other Board rulemaking proposals.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Act,¹² which provides that the MSRB's rules shall:

Be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

As ABLÉ programs become operational, the proposed rule change would provide underwriters to ABLÉ programs with additional time to submit reliable, accurate and complete data to the MSRB under Rule G-45. The proposed rule change also would provide the MSRB with more meaningful data about a larger set of ABLÉ programs under Rule G-45. Further, the proposed rule change would provide guidance about the applicability of (i) Rule G-42 to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLÉ programs and (ii) Rule G-44 to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLÉ programs, and other municipal fund securities. The proposed guidance would provide clarity about the applicability of such rules to municipal advisors that engage in municipal advisory activities for sponsors or trustees of municipal fund securities.

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

Section 15B(b)(2)(C) of the Act¹³ requires that MSRB rules be designed not to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the Act. The proposed rule change would extend the date that submissions on Form G-45 are due from underwriters to ABLÉ programs by two years from August 29, 2016 until August 29, 2018. The proposed rule change also would provide guidance about the applicability of (i) Rule G-42 to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLÉ programs and (ii) Rule G-44 to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLÉ programs, and other municipal fund securities.

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

Written comments were neither solicited nor received on the proposed rule change.

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

Pursuant to section 19(b)(3)(A)¹⁴ of the Act and Rule 19b-4(f)(6)¹⁵ thereunder, the MSRB has designated the proposed rule change as one that affects a change that does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative until 30 days after the date of filing.¹⁶ However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if consistent with the protection of investors and the public interest.¹⁷

The MSRB has requested that the Commission waive the 30-day operative delay specified in Rule 19b-4(f)(6)(iii).¹⁸ The deadline for underwriters to ABLÉ programs to submit data under Rule G-45 for the period ending June 30, 2016 is August 29, 2016. According to the MSRB, the waiver of the 30-day operative delay will provide certainty with respect to the due date for underwriters to make submissions on Form G-45 in connection with ABLÉ programs. In order to delay such submissions, the MSRB states that it is important that the proposed rule change become effective immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will provide certainty as to the due date for submissions on Form G-45 and avoid confusion in the market. Accordingly, the Commission hereby waives the 30-day operative delay specified in Rule 19b-4(f)(6)(iii) and designates the proposed rule change to be operative upon filing.¹⁹

At any time within 60 days of the filing of the proposed rule change, the

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ *Id.*

¹⁷ In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change, along with a brief description and text of such proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The MSRB fulfilled this obligation.

¹⁸ See SR-MSRB-2016-11 (filed with the Commission on August 12, 2016).

¹⁹ For the purpose of waiving the 30-day operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78o-4(b)(2)(C).

¹³ *Id.*

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.

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-MSRB-2016-11 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-MSRB-2016-11. 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 MSRB. 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-MSRB-

2016-11 and should be submitted on or before September 16, 2016.

For the Commission, pursuant to delegated authority.²⁰

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-20452 Filed 8-25-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78629; File No. SR-NYSEMKT-2016-63]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Change Amending the Co-Location Services Offered by the Exchange To Add Certain Access and Connectivity Fees

August 22, 2016.

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 August 16, 2016, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the co-location services offered by the Exchange as follows: (1) To provide additional information regarding the access to trading and execution services and connectivity to data provided to Users with local area networks available in the data center; and (2) to establish fees relating to User's access to trading and execution services; connectivity to data feeds and to testing and certification feeds; access to clearing; and other services. In addition, this proposed rule change reflects changes to the NYSE MKT Equities Price List ("Price List") and the NYSE Amex Options Fee Schedule ("Fee Schedule") related to these co-location services. The proposed change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange,

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 co-location⁴ services offered by the Exchange as follows: (1) To provide additional information regarding the access to trading and execution services and connectivity to data provided to Users⁵ with local area networks available in the data center; and (2) to establish fees relating to Users' access to trading and execution services; connectivity to data feeds and to testing and certification feeds; access to clearing; and other services.

More specifically, the Exchange proposes to revise the Price List and Fee Schedule to include:

- a more detailed description of the access to the trading and execution systems of the Exchange and its Affiliate SROs (the "Exchange Systems") and connectivity to certain market data

⁴ The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2010. See Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR-NYSEAmex-2010-80) (the "Original Co-location Filing"). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users.

⁵ 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 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 ("NYSE LLC") and NYSE Arca, Inc. ("NYSE Arca") and, together with NYSE LLC, the "Affiliate SROs"). See Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR-NYSEMKT-2013-67).