

need to be independent. In addition, the Commission notes that as a company listed on the Exchange, ICE Group's board of directors must also satisfy the independence requirements applicable to a listed company's board of directors as contained in the Exchange's Listed Company Manual. Further, the Commission notes that there are requirements in ICE Group's Independence Policy that independent directors may not be or have been within the last year, and may not have an immediate family member who is or within the last year was, a member of the Exchange, NYSE Arca or NYSE MKT.

D. Options Trading Rights

The Commission received one comment letter⁷⁴ on the proposed rule changes regarding certain Option Trading Rights ("OTRs") that were separated from full New York Stock Exchange, Inc.⁷⁵ seats ("Separated OTRs"). All New York Stock Exchange seat ownership (with or without OTRs) was extinguished in the 2006 demutualization of New York Stock Exchange, Inc.⁷⁶ Although the commenter takes no position on the merits of the Combination, the commenter opposes the Combination on the grounds that the Exchange does not fully own all of the assets being transferred. Specifically, the commenter contends that the owners of Separated OTRs retained their Separated OTRs, even after the New York Stock Exchange, Inc. exited the options business in 1997, with the expectation that their ownership of the Separated OTRs would afford them full rights to trade options under the auspices of New York Stock Exchange, Inc. or its successor entity. The commenter asked that the Commission withhold approval of the Combination until the matter of Separated OTRs is resolved.⁷⁷ The NYSE Response to Comments states that the issue of the rights of owners of Separated OTRs is not before the Commission in the context of the proposed rule filing by the Exchange and notes that the Exchange is not

proposing in its filing a change in the trading rights on the Exchange.⁷⁸

The issue of the rights of owners of Separated OTRs is not before the Commission in the context of this rule filing. Pursuant to Section 19(b)(1) of the Act,⁷⁹ an SRO (such as NYSE) is required to file with the Commission any proposed rule or any proposed change in, addition to, or deletion from the rules of such SRO. Further, pursuant to Section 19(b)(2) of the Act,⁸⁰ the Commission shall approve a proposed rule change filed by an SRO if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the SRO.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. *It is therefore ordered*, pursuant to Section 19(b)(2) of the Act⁸¹ that the proposed rule changes (SR-NYSE-2013-42; SR-NYSEMKT-2013-50; SR-NYSEArca-2013-62), are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸²

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2013-20338 Filed 8-20-13; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70206; File No. SR-NYSE-2013-59]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Describe the Billing Practice for Co-Location Services and Expand Co-Location Services To Provide for a 40 Gigabit Liquidity Center Network Connection

August 15, 2013.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³

⁷⁸ See NYSE Response to Comments, *supra* note 6.

⁷⁹ 15 U.S.C. 78s(b)(1).

⁸⁰ 15 U.S.C. 78s(b)(2).

⁸¹ *Id.*

⁸² 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.

notice is hereby given that on August 12, 2013, New York Stock Exchange LLC ("NYSE" or the "Exchange") 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 (i) describe the Exchange's current billing practice for co-location services received by Users that connect to more than one market, and (ii) expand its co-location services to provide for a 40 gigabit ("Gb") Liquidity Center Network ("LCN") connection in the Exchange's data center. The text of the proposed rule change is available on the Exchange's Web site 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

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 (i) describe the Exchange's current billing practice for co-location services received by Users that connect to more than one market, and (ii) expand its co-location services to provide a 40 Gb LCN connection in the Exchange's data center.⁴ The Exchange's affiliates, NYSE

⁴ The Securities and Exchange Commission ("Commission") initially approved the Exchange's co-location services in Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56) (the "Original Co-location Approval"). The Exchange's co-location services allow Users to rent

Continued

⁷⁴ See Rothlein Letter, *supra* note 5.

⁷⁵ New York Stock Exchange, Inc. is the predecessor entity to NYSE. See NYSE Inc.-Archipelago Merger Order, *supra* note 25.

⁷⁶ See NYSE Inc.-Archipelago Merger Order, *supra* note 25.

⁷⁷ The Commission notes that the commenter continued to argue, in part, in its rebuttal to the NYSE Response to Comments that the Commission should withhold approval of the Combination until the matter of Separated OTRs are resolved. See Rothlein Rebuttal Letter, *supra* note 6.

MKT LLC (“NYSE MKT”) and NYSE Arca, Inc. (“NYSE Arca,” and together with NYSE MKT, “Affiliates”), have filed substantially the same proposed rule change.⁵ The Exchange will propose applicable fees for the proposed 40 Gb LCN connection via a separate proposed rule change.

Current Billing Practice

The Exchange and its Affiliates (collectively, the “Exchanges”) utilize a single data center in Mahwah, New Jersey (the “data center”) to provide co-location services to their respective Users.⁶ The Exchanges offer identical co-location services in the data center and charge identical fees for such

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 59310. For purposes of the Exchange’s co-location services, the term “User” includes (i) member organizations, as that term is defined in NYSE Rule 2(b); (ii) Sponsored Participants, as that term is defined in NYSE Rule 123B.30(a)(ii)(B); and (iii) non-member organization broker-dealers and vendors that request to receive co-location services directly from the Exchange. *See, e.g.*, Securities Exchange Act Release No. 65973 (December 15, 2011), 76 FR 79232 (December 21, 2011) (SR–NYSE–2011–53).

⁵ *See* SR–NYSEMKT–2013–67 and SR–NYSEArca–2013–80 (August 1, 2013). The Commission initially approved NYSE MKT’s co-location services in Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80). For purposes of NYSE MKT 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(7); 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). The Commission initially approved NYSE Arca’s co-location services in Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100). For purposes of NYSE Arca co-location services, the term “User” includes (i) ETP Holders and Sponsored Participants that are authorized to obtain access to the NYSE Arca Marketplace pursuant to NYSE Arca Equities Rule 7.29 (see NYSE Arca Equities Rule 1.1(yy)); (ii) OTP Holders, OTP Firms and Sponsored Participants that are authorized to obtain access to the NYSE Arca System pursuant to NYSE Arca Options Rule 6.2A (see NYSE Arca Options Rule 6.1A(a)(19)); and (iii) non-ETP Holder, non-OTP Holder and non-OTP Firm broker-dealers and vendors that request to receive co-location services directly from the Exchange. *See, e.g.*, Securities Exchange Act Release Nos. 65970 (December 15, 2011), 76 FR 79242 (December 21, 2011) (SR–NYSEArca–2011–74) and 65971 (December 15, 2011), 76 FR 79267 (December 21, 2011) (SR–NYSEArca–2011–75).

⁶ For purposes of this proposal, the term “Users” hereinafter refers collectively to the Exchanges’ Users.

services. A User only incurs a single charge for a particular co-location service and is not charged multiple times if it obtains such service as, for example, a member of more than one Exchange. In other words, if a User receives a co-location service in the data center, and, pursuant to separate non-co-location fees, connects to all three Exchanges, the User is not charged for such co-location service three separate times.⁷ Similarly, some Users are content service provider Users (“CSP Users”) that do not connect to any Exchange; rather, they provide services to other Users co-located at the data center. CSP Users are nonetheless subject to the relevant fees for the co-location services they use.⁸ Users have been billed for co-location services in this manner beginning with the availability of co-location services in the data center in 2010.

As discussed below, there are a number of reasons for billing co-location in this manner. Co-location services do not directly result in access to any of the Exchanges; other, non-co-location fees apply to access. In addition, the level of co-location services requested by a User does not, in and of itself, depend on whether the User connects only to the Exchange, or to the Exchange and one or both of its Affiliates; and, in fact, as noted above, not all Users connect to an Exchange.

First, the fees for co-location services are not fees for direct access to an Exchange; co-location services do not provide such direct access to an Exchange. Rather, all orders sent to the Exchanges enter their respective trading and execution systems through the same order gateway—the Common Customer Gateway (“CCG”)—regardless of whether the sender is co-located in the data center or not. The particular trading and execution systems of the Exchanges to which an order is

⁷ The three Exchanges operate five markets. The NYSE operates an equities market. NYSE Arca operates an options market, and, through its wholly owned subsidiary NYSE Arca Equities Inc., an equities market. NYSE MKT operates an equities market, and through NYSE Amex Options LLC, an options market. A User can only access a market through co-location services if such User is authorized to obtain such access as a member, OTP Holder, ETP Holder or Sponsored Participant. *See supra* note 5.

⁸ CSP Users, may, for example, provide order routing/brokerage services and/or market data delivery services to subscriber Users. CSP Users are subject to the same fees as other Users. However, rather than use a standard LCN connection, CSP Users send data to, and communicate with, subscribing users via a dedicated LCN connection (an “LCN CSP” connection). Accordingly, only CSP Users are subject to the fees for LCN CSP connections. *See* Securities Exchange Act Release No. 67666 (August 15, 2012), 77 FR 50742 (August 22, 2012) (SR–NYSE–2012–18).

eventually sent are determined by order/quote entry ports (“ports”). Fees for ports are charged separately based on the particular Exchanges to which the ports are configured to access/connect.⁹ Accordingly, a User that accesses an Exchange pays for that access in the form of a port fee, as does any member that is not a co-location User. In this regard, and as noted in the Original Co-location Approval as well as subsequent rule filings relating to changes in co-location services and pricing, Users that receive co-location services from the Exchange do not receive any means of access to any of the Exchange’s trading and execution systems that is separate from, or superior to, that of other Users.¹⁰

Second, the level of co-location services a User purchases does not, in and of itself, depend on whether the User connects only to the Exchange or to the Exchange and one or both of its Affiliates. Similarly, the cost incurred by the Exchanges to provide co-location services does not vary based on whether the User connects to one or to several of the Exchanges’ markets. The fees charged for co-location services generally fall in three groups: (1) Equipment and hardware, (2) labor-based services, and (3) administrative matters. Many of the fees vary depending on the amount of such services used, so that as the level of equipment and hardware or services used increases, so does the cost.¹¹ Therefore, a User that connects only to the Exchange and that receives co-location services in the data center would be charged the same amount as a User that receives the same level of co-location services but connects to the Exchange and one or both of its Affiliates or a User that does not connect to any Exchange.

⁹ For a more detailed description of the method of billing for ports, *see* Securities Exchange Act Release No. 68229 (November 14, 2012), 77 FR 69688 (November 20, 2012) (SR–NYSE–2012–60).

¹⁰ *See, e.g.*, Original Co-location Approval at 59311. *See also* Securities Exchange Act Release Nos. 65973 (December 15, 2011), 76 FR 79232 (December 21, 2011) (SR–NYSE–2011–53) and 67666 (August 15, 2012), 77 FR 50742 (August 22, 2012) (SR–NYSE–2012–18). 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 Exchanges.

¹¹ The Exchange notes that it also charges a fee to a User that provides “hosting” to its own customers (“Hosted Users”). *See* SR–NYSE–2011–53, *supra* note 3. Hosting includes, for example, a User supporting its Hosted User’s technology, whether hardware or software, through the User’s co-location space. As with the fees described above, a User is charged additional fees as the level of co-location services increases.

For example, with respect to equipment and hardware, a User may purchase cross connects, which are fiber cross connects between its cabinets or between its cabinets and those of another User. The number of cross-connects a User purchases directly depends on how it configures its cabinets and whether it is a CSP User, not the number of Exchanges to which it connects. Similarly, a User may purchase a physical cage to house its servers and other equipment in the data center. Fees for cages are based on the size of the cage. The more cabinets a User has, the greater the size of the cage it is likely to request and therefore the greater the cost. The number of the Exchanges to which the User connects is not determinative of the number of cabinets and size of the cage that the User purchases.

With respect to labor-related services, for example, the Exchanges charge an "Initial Install Services" fee of \$800 per cabinet, for initial racking of equipment in a User's cabinet and the provision of up to 10 cables. A "Rack and Stack Installation" charge of \$200 per server applies for handling, unpacking, tagging, and installation of the server in the User's cabinet. Additionally, a "Hot Hands Service" is available and allows Users to use on-site data center personnel to maintain User equipment, with hourly charges depending on whether the service is during normal business hours and whether the service is expedited. None of these charges vary based on the number of the Exchanges' markets to which a User connects, but rather based on the services sought.

With respect to administrative matters, for example, the Exchange charges \$50 per badge request for provision of a permanent data center site access badge for a User representative. The Exchange also charges \$75 per hour for visitor security escorting, which is required during User visits to the data center. These, like other co-location fees, are not charged differently based on how many of the Exchanges' markets to which a User connects.¹²

Finally, the Exchange notes that not all Users of co-location services actually connect to the Exchanges. If billing for co-location services was based on the Exchanges to which a User connected, CSP Users would not be charged at all. Therefore, billing once per co-location service is also consistent with the fact that some CSP Users do not connect to any of the Exchanges.

The Exchange will amend its Price List to describe the Exchange's current

billing practice for co-location services received by Users that connect to more than one of the Exchanges.

40 Gb LCN Connection

The LCN is 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 via the CCG and to the Exchanges' proprietary market data products. LCN access is currently available in one and 10 Gb capacities. LCN access with higher capacity is designed to achieve lower latency in the transmission of data between Users and the Exchange. The Exchange proposes to make a 40 Gb LCN connection available in the Exchange's data center.¹³ This Exchange is proposing this change in order to make an additional service available to its co-location Users and thereby satisfy demand for more efficient, lower-latency connections.

As is the case with all Exchange co-location arrangements, 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, a Sponsored Participant or an agent thereof (e.g., a service bureau providing order entry services). Additionally, as is the case with existing co-location services, use of the co-location services proposed herein would be completely voluntary and would be available to all Users on a non-discriminatory basis.¹⁴

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.

¹³ At this time, the Exchange is not proposing to make LCN CSP connections available at a 40 Gb bandwidth because, at least initially, CSP User demand is not anticipated to exist. Also, the Exchange notes that, for a 40 Gb "Bundle," SFTI and optic connections would be at 10 Gb and only the LCN connections would be at 40 Gb, because 40 Gb bandwidths are not currently offered for SFTI and optic connections. The Exchange will include language in the Price List in the related fee change to reflect this fact.

¹⁴ 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 CCG, 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.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Sections 6(b)(5) of the Act,¹⁶ in particular, because 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that its billing practice promotes just and equitable principles of trade and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the level of co-location services requested by a User generally does not, in and of itself, depend on whether the User connects only to the Exchange, or to the Exchange and its Affiliates. For example, to charge one User twice for a cage because that User connects to two Exchanges, when another User that buys the same size cage only pays once, would not promote just and equitable principles of trade. Similarly, the cost incurred by the Exchanges to provide co-location services does not vary based on whether the User connects to one or several of the Exchanges' markets. CSP Users do not connect to any of the Exchanges, which would make billing based on connection to the Exchanges impractical. The Exchange also believes that its billing practice is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because charging a User for co-location services based on how many of the Exchanges' markets to which a User connects could result in the Exchanges receiving the proceeds from multiple fees despite only providing a service once.

The Exchange also believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because co-location services do not directly result in access to the Exchanges' markets, and, therefore, co-

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹² See *supra* note 4.

location fees are not charges that depend on how many of the Exchanges' markets a User connects to. In fact, certain Users do not connect to any of the Exchanges. Instead, all orders sent to the Exchanges enter their respective trading and execution systems through CCG, regardless of whether the sender is co-located in the data center or not. Additionally, the particular trading and execution systems of the Exchanges to which an order is eventually sent are determined by ports, for which fees are charged separately based on the particular Exchanges to which the ports are configured to access/connect. In this regard, Users that receive co-location services from the Exchanges do not receive any means of access to the Exchanges' trading and execution systems that is separate from, or superior to, that of other Users.

The Exchange believes that the proposed 40 Gb LCN connection is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because it would make a service available to Users that require the increased bandwidth, but Users that do not require the increased bandwidth could continue to request an existing lower-bandwidth LCN connection. The Exchange believes that this would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because it would provide Users with additional choices with respect to the optimal bandwidth for their connections.

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,¹⁷ the Exchange believes that the proposed rule change will 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 its billing practice will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because all Users are only charged once for each co-location service in the data center, even if such User connects to more than one of the Exchanges' markets, or to none of the Exchanges, and the pricing for co-location services is such that as the level of services increases, so does the cost. Additionally, the Exchange believes that its co-location billing practice is consistent with the co-location services billing practice of at least one of its competitors, The NASDAQ Stock Market LLC ("NASDAQ").¹⁸

The Exchange also believes that the proposed 40 Gb LCN connections will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will satisfy User demand for more efficient, lower-latency connections. Additionally, the Exchange believes that the proposed change will enhance competition, in that NASDAQ offers a similar service to its co-location users.¹⁹

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if, for example, they deem fee levels at a particular venue to be excessive or if they determine that another venue's products and services are more competitive than on the Exchange. In such an environment, the Exchange must continually review, and consider adjusting, the services it offers as well as any corresponding 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.

¹⁸ See NASDAQ Rule 7034 for a description of NASDAQ's co-location services. The Exchange understands that NASDAQ only charges its co-location users one fee for each co-location service received, even if such user eventually connects to NASDAQ and any of its affiliates (e.g., NASDAQ OMX BX, Inc. or NASDAQ OMX PHLX LLC).

¹⁹ See *id.*

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

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange noted that the cost incurred by the Exchange to provide co-location services does not vary based on whether the User connects to one or several of the Exchange's Affiliates, or to none of the Affiliates, and co-location services do not directly result in access to the Exchange or its Affiliates. Also, the proposal of a new 40Gb LCN connection would merely make higher-bandwidth, lower-latency LCN connections available on a voluntary basis to Users that require the increased bandwidth. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. With respect to the Exchange's billing practices for co-location for Users that connect to the Exchange and its Affiliates, the waiver of the 30-day operative delay would allow the Exchange's fee schedule to immediately reflect the Exchange's existing practice. Regarding the proposed 40 Gb LCN Connection, it would allow Users to immediately benefit from an additional choice with respect to the optimal bandwidth for

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and 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. The Exchange has met this requirement.

¹⁷ 15 U.S.C. 78f(b)(8).

their connections.²² Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

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.

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-NYSE-2013-59 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-NYSE-2013-59. 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 Number SR-NYSE-2013-59 and should be submitted on or before September 11, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013-20334 Filed 8-20-13; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70209; File No. SR-NYSEArca-2013-60]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change To List and Trade Shares of Market Vectors Low Volatility Commodity ETF and Market Vectors Long/Short Commodity ETF Under NYSE Arca Equities Rule 8.200

August 15, 2013.

I. Introduction

On June 12, 2013, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares ("Shares") of the Market Vectors Low Volatility Commodity ETF ("Low Volatility ETF") and Market Vectors Long/Short Commodity ETF ("Long/Short ETF" and, together with the Low Volatility ETF, "Funds") under NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal Register** on July 2, 2013.³ The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of Proposed Rule Change

The Exchange proposes to list and trade Shares of the Funds pursuant to NYSE Arca Equities Rule 8.200,

Commentary .02.⁴ Each Fund is a series of the Market Vectors Commodity Trust ("Trust"), a Delaware statutory trust.⁵ Van Eck Absolute Return Advisers Corp. is the managing owner of the Funds ("Managing Owner").⁶ The Managing Owner also serves as the commodity pool operator and commodity trading advisor of the Funds. The Managing Owner is registered as a commodity pool operator and commodity trading advisor with the Commodity Futures Trading Commission ("CFTC") and is a member of National Futures Association, Wilmington Trust, National Association ("Trustee"), a national bank with its principal place of business in Delaware, is the sole trustee of the Trust. The Bank of New York Mellon will be the custodian, administrator, and transfer agent for the Funds.

Overview of the Funds

The Low Volatility ETF will seek to track changes, whether positive or negative, in the performance of the Morningstar® Long/Flat Commodity IndexSM ("Long/Flat Index") over time. The Long/Short ETF will seek to track changes, whether positive or negative, in the performance of the Morningstar® Long/Short Commodity IndexSM ("Long/Short Index" and, together with the Long/Flat Index, "Indexes") over time.

Each Fund will seek to achieve its respective investment objective by investing principally in exchange-traded futures contracts on commodities ("Index Commodity Contracts") comprising the Long/Flat Index and the Long/Short Index, respectively, and U.S. Treasury bills maturing in eight weeks or less to reflect "flat" positions and, in certain circumstances (as described below), futures contracts other than Index Commodity Contracts traded on

⁴ Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in "Financial Instruments." The term "Financial Instruments," as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

⁵ The Trust filed a pre-effective amendment to its registration statements with respect to the Funds on Form S-1 under the Securities Act of 1933 ("1933 Act") on December 7, 2012 (File No. 333-179435 for the Low Volatility ETF ("Low Volatility Registration Statement") and File No. 333-179432 for the Long/Short ETF ("Long/Short Registration Statement" and, together with the Low Volatility Registration Statement, "Registration Statements").

⁶ The Managing Owner is affiliated with a broker-dealer and has implemented a "fire wall" with respect to such broker-dealer and has policies and procedures in place regarding access to information concerning the composition and/or changes to the Funds' portfolio composition.

²² For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 69862 (June 26, 2013), 78 FR 39810 ("Notice").