

from sections 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses relating to distribution and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its shares and provide investors with a broader choice of shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f-3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f-3 as if it were an open-end investment company.

#### *Early Withdrawal Charges*

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company shall purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c-3 under the Act permits a registered closed-end investment company (an "interval fund") to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c-3(b)(1) under the Act permits an interval fund to deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the interval fund and is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

4. Applicants request relief under section 6(c), discussed above, and section 23(c)(3) from rule 23c-3 to the extent necessary for the Funds to

impose EWCs on shares of the Funds submitted for repurchase that have been held for less than a specified period.

5. Applicants state that the EWCs they intend to impose are functionally similar to CDSLs imposed by open-end investment companies under rule 6c-10 under the Act. Rule 6c-10 permits open-end investment companies to impose CDSLs, subject to certain conditions. Applicants note that rule 6c-10 is grounded in policy considerations supporting the employment of CDSLs where there are adequate safeguards for the investor and state that the same policy considerations support imposition of EWCs in the interval fund context. In addition, applicants state that EWCs may be necessary for the distributor to recover distribution costs. Applicants represent that any EWC imposed by the Funds will comply with rule 6c-10 under the Act as if the rule were applicable to closed-end investment companies. The Funds will disclose EWCs in accordance with the requirements of Form N-1A concerning CDSLs.

#### *Asset-Based Distribution Fees*

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d-1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d-3 under the Act provides an exemption from section 17(d) and rule 17d-1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b-1 under the Act. Applicants request an order under section 17(d) and rule 17d-1 under the Act to the extent necessary to permit the Fund to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b-1 and 17d-3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution

of its shares through asset-based distribution fees.

For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based distribution fees is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

#### **Applicants' Condition**

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c-10, 12b-1, 17d-3, 18f-3, 22d-1, and, where applicable, 11a-3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the NASD Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

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

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015-28696 Filed 11-10-15; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 31893; 812-14531]**

### **Forum Funds and Exceed Advisory LLC; Notice of Application**

November 5, 2015.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements in rule 20a-1 under the Act, Item 19(a)(3) of

Form N-1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X (“Disclosure Requirements”). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

**APPLICANTS:** Forum Funds (the “Trust”), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Exceed Advisory LLC (the “Adviser”), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 (together, the Trust and Adviser are “Applicants”).

**FILING DATES:** The application was filed on August 11, 2015, and amended on October 8, 2015.

**HEARING OR NOTIFICATION OF HEARING:**

An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 30, 2015, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

Applicants: Zachary R. Tackett, Esq., Forum Funds, Three Canal Plaza, Suite 600, Portland, ME 04101, and Joseph Halpern, Exceed Advisory LLC, 28 West 44th Street, 16th Floor, New York, NY 10036.

**FOR FURTHER INFORMATION CONTACT:**

Courtney S. Thornton, Senior Counsel, at (202) 551–6812, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel’s Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application

may be obtained via the Commission’s Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551–8090.

**Summary of the Application**

1. The Adviser serves as the investment adviser to certain series of the Trust (the “Series”) pursuant to an investment advisory agreement with the Trust (the “Advisory Agreement”).<sup>1</sup> The Adviser provides the Subadvised Series with continuous and comprehensive investment management services subject to the supervision of, and policies established by, each Subadvised Series’ board of trustees (“Board”). The Advisory Agreement permits the Adviser, subject to the approval of the Board, to delegate to one or more Sub-Advisers the responsibility to provide the day-to-day portfolio investment management for all or a portion of the assets of each Subadvised Series, subject to the supervision and direction of the Adviser.<sup>2</sup> The Adviser will continue to have overall responsibility for the management and investment of the assets of each Subadvised Series. The Adviser will hire, evaluate, allocate assets to and oversee the Sub-Advisers, including determining whether a Sub-Adviser should be terminated, at all times subject to the authority of the Board.

2. Applicants request an exemption to permit the Adviser, subject to Board approval, to hire Sub-Advisers pursuant to investment sub-advisory agreements

<sup>1</sup> Applicants request relief with respect to the named Applicants, any future Series of the Trust and any other registered open-end management company or series thereof that intends to rely on the requested order in the future and that: (a) Is advised by the Adviser or its successor or by any entity controlling, controlled by, or under common control with the Adviser or its successor (included in the term “Adviser”); (b) uses the multi-manager structure described in the application; and (c) complies with the terms and conditions of the application (each, a “Subadvised Series”). For purposes of the requested order, “successor” is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

<sup>2</sup> A “Sub-Adviser” for a Series is (1) an indirect or direct “wholly owned subsidiary” (as such term is defined in section 2(a)(43) of the Act) of the Adviser for that Series, or (2) a sister company of the Adviser for that Series that is an indirect or direct wholly owned subsidiary of the same company that, indirectly or directly, wholly owns the Adviser (each of (1) and (2) a “Wholly-Owned Sub-Adviser” and collectively, the “Wholly-Owned Sub-Advisers”), or (3) an investment sub-adviser for that Series that is not an “affiliated person” (as such term is defined in section 2(a)(3) of the Act) of the Series or the Adviser, except to the extent that an affiliation arises solely because the sub-adviser serves as a sub-adviser to one or more Series (each a “Non-Affiliated Sub-Adviser” and collectively, the “Non-Affiliated Sub-Advisers”).

(“Sub-Advisory Agreements”) and materially amend existing Sub-Advisory Agreements without obtaining the shareholder approval required under section 15(a) of the Act and rule 18f–2 under the Act.<sup>3</sup> Applicants also seek an exemption from the Disclosure Requirements to permit a Subadvised Series to disclose (as both a dollar amount and a percentage of the Subadvised Series’ net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Advisers; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, “Aggregate Fee Disclosure”).

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Subadvised Series’ shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Subadvised Series’ shareholders.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the application, the Advisory Agreements will remain subject to shareholder approval, while the role of the Sub-Advisers is substantially equivalent to that of individual portfolio managers, so that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary delays and expenses on the Subadvised Series. Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Adviser’s ability to negotiate fees paid to the Sub-Advisers that are more advantageous for the Subadvised Series.

<sup>3</sup> The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Series or the Adviser, other than by reason of serving as a sub-adviser to one or more of the Subadvised Series (“Affiliated Sub-Adviser”).

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

Robert W. Errett,  
Deputy Secretary.

[FR Doc. 2015-28694 Filed 11-10-15; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76374; File No. SR-NYSE-2015-52]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to the Co-Location Services Offered by the Exchange (the Offering of a Wireless Connection To Allow Users To Receive Market Data Feeds From Third Party Markets) and To Reflect Changes to the Exchange's Price List Related to These Services

November 5, 2015.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Act") <sup>2</sup> and Rule 19b-4 thereunder, <sup>3</sup> notice is hereby given that, on October 23, 2015, 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, 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 change the co-location services offered by the Exchange to include a means for co-located Users to receive market data feeds from third party markets through a wireless connection. In addition, the proposed rule change reflects changes to the Exchange's Price List related to

these services. 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 change the co-location <sup>4</sup> services offered by the Exchange to include a means for Users to receive market data feeds from third party markets (the "Third Party Data") through a wireless connection. <sup>5</sup> In addition, this proposed rule change reflects changes to the Exchange's Price List related to these co-location services.

The Exchange proposes to offer the wireless connection to provide Users with an alternative means of connectivity for Third Party Data. Wireless connections involve beaming signals through the air between antennas that are within sight of one another. Because the signals travel a straight, unimpeded line, and because light waves travel faster through air than through glass (fiber optics), wireless messages have lower latency than messages travelling through fiber optics.

Under the proposed rule change, the Exchange would utilize a network

vendor to provide a wireless connection to the Third Party Data through wireless connections from the Exchange access centers in Secaucus and Carteret, New Jersey, to its data center in Mahwah, New Jersey, through a series of towers equipped with wireless equipment. <sup>6</sup> The wireless connectivity would be an optional offering, offering an alternative method for connectivity to the Third Party Data.

A User that chooses this optional service would be able to receive data feeds from NASDAQ and BATS Exchange, Inc. over a wireless connection. To receive Third Party Data, the User would enter into a contract with the relevant third party market, which would charge the User the applicable market data fees for the Third Party Data. The Exchange would charge the User fees for the wireless connection for the Third Party Data. <sup>7</sup>

A User would be charged a \$5,000 non-recurring initial charge for each wireless connection and a monthly recurring charge ("MRC") that would vary depending upon the feed that the User opts to receive. If a User purchased two wireless connections, it would pay two non-recurring initial charges. The Exchange proposes to waive the first month's MRC, to allow Users to test the receipt of the feed(s) for a month before incurring any MRCs.

The Exchange proposes that the wireless connections would include the use of one port for connectivity to the Third Party Data. A User will only require one port to connect to the Third Party Data, irrespective of how many of the five wireless connections it orders. If a User that has more than one wireless connection wishes to use more than one port to connect to the Third Party Data, <sup>8</sup> the Exchange proposes to make such additional ports available for a monthly fee per port of \$3,000.

The Exchange proposes to revise its Price List to reflect fees related to these connections and ports, as follows:

<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 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. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users.

<sup>5</sup> 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. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR-NYSE-2015-40). As specified in the Price List, 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 NYSE MKT LLC and NYSE Arca, Inc. See Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR-NYSE-2013-59).

<sup>6</sup> The NASDAQ Stock Market LLC ("NASDAQ") offers a similar wireless service. See Securities Exchange Act Release No. 68735 (January 25, 2013), 78 FR 6842 (January 31, 2013) (SR-NASDAQ-2012-

119) (approving a proposed rule change to establish a new optional wireless connectivity for collocated clients).

<sup>7</sup> A User would only receive the Third Party Data for which it had entered into a contract. For example, a User that contracted with NASDAQ for the NASDAQ Totalview-ITCH data feed but did not contract to receive any other Third Party Data would receive only the NASDAQ Totalview-ITCH data feed through its wireless connection.

<sup>8</sup> For example, a User with two wireless connections for Third Party Data may opt to purchase an additional port in order to route the options and equity data it receives to different cabinets.