

2. Each Fund will consist of a portfolio of securities and other assets and investment positions ("Portfolio Holdings"). Each Fund will disclose on its Web site the identities and quantities of the Portfolio Holdings that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments ("Deposit Instruments"), and shareholders redeeming their shares will receive specified instruments ("Redemption Instruments"). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c-1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Holdings and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units

for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Holdings currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.<sup>2</sup> The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser

<sup>2</sup> The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

having substantially the same investment objectives as the Feeder Fund ("Master Fund") beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) 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 provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

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

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79730; File No. SR-NYSE-2016-92]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Exchange's Price List Related to Co-location Services To Increase LCN and IP Network Fees and Add a Description of Access To Trading and Execution Services and Connectivity to Included Data Products

January 4, 2017.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the

<sup>1</sup> 15 U.S.C.78s(b)(1).

“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 22, 2016, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange’s Price List related to co-location services to (a) provide a more detailed description of the access to trading and execution services and connectivity to data provided to Users with local area networks available in the data center, and (b) modify certain fees for access to the local area networks in the Exchange’s data center. 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 related to co-location<sup>4</sup> services offered by the Exchange to (a)

provide a more detailed description of the access to trading and execution services and connectivity to data provided to Users<sup>5</sup> with connections to the Liquidity Center Network (“LCN”) and internet protocol (“IP”) network, local area networks available in the data center, and (b) modify certain fees for access to the LCN and IP networks. The Exchange proposes to implement the fee changes effective January 1, 2017.

The Exchange offers LCN access of 1, 10 and 40 Gigabits (“Gb”) as well as a lower-latency 10 Gb LCN connection, referred to as the “LCN 10 Gb LX.”<sup>6</sup> The Exchange offers IP network access in 1, 10 and 40 Gb capacities.<sup>7</sup> A User also may purchase access to the LCN or IP network through purchase of 1 Gb or 10 Gb bundled network access or a Partial Cabinet Solution bundle, which include 1 and 10 Gb LCN and IP network connections.<sup>8</sup>

#### Access to Trading and Execution Services and Connectivity to Data

As the Exchange has previously stated, a User’s connection to the LCN or IP network provides it access to the Exchange’s trading and execution systems and Exchange market data

products.<sup>9</sup> More specifically, when a User purchases access to the LCN or IP network, it will receive *access* to the trading and execution systems of the Exchange and its Affiliate SROs (the “Exchange Systems”), provided the User has authorization from the Exchange or relevant Affiliate SRO. In addition, when a User purchases access to the LCN or IP network, it will receive *connectivity* to certain market data products (the “Included Data Products”), provided the User has have entered into a contract with the provider of the data feed. The Exchange proposes to revise the Price List to provide a more detailed description of the *access* to the Exchange Systems (“Access”) and *connectivity* to Included Data Products (“Connectivity”) that comes with connections to the LCN or IP network when the User has authorization from the Exchange or Affiliate SRO for such access or has a contract from the market data provider for such connectivity.

Access to certification and testing feeds comes with the purchase of some Included Data Products from the provider of such data. Certification feeds are used to certify that a User conforms to any relevant technical requirements for receipt of data or access to Exchange Systems. Test feeds provide Users an environment in which to conduct tests with non-live data, including testing for upcoming Exchange releases and product enhancements or the User’s own software development. Such feeds are solely used for certification and testing and do not carry live production data. When access to certification and testing feeds comes with the purchase of an Included Data Product from the provider of such data, the purchase of access to the IP network from the Exchange<sup>10</sup> will provide Connectivity to such certification and testing feeds.’

The Exchange provides Access and Connectivity as conveniences to Users. Use of Access or Connectivity is completely voluntary, and several other access and connectivity options are available to a User. As alternatives to

<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 (“NYSE MKT”) and NYSE Arca, Inc. (“NYSE Arca”) and, together with NYSE MKT, the “Affiliate SROs”). See Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR-NYSE-2013-59).

<sup>6</sup> See Original Co-location Filing, *supra* note 4, at 59311; and Securities Exchange Act Release Nos. 70206 (Aug. 15, 2013), 78 FR 51765 (Aug. 21, 2013) (SR-NYSE-2013-59) (notice of filing and immediate effectiveness of proposed rule change to offer LCN 40 Gb connection); and 70888 (Nov. 15, 2013), 78 FR 69907 (Nov. 21, 2013) (SR-NYSE-2013-73) (notice of filing and immediate effectiveness of proposed rule change to offer LCN 10 Gb LX connection).

<sup>7</sup> See Securities Exchange Act Release Nos. 74222 (Feb. 6, 2015), 80 FR 7888 (Feb. 12, 2015) (SR-NYSE-2015-05) (notice of filing and immediate effectiveness of proposed rule change to offer IP network connections as co-location services) (the “IP Network Release”), and 76369 (Nov. 5, 2015), 80 FR 70027 (Nov. 12, 2015) (SR-NYSE-2015-54) (notice of filing and immediate effectiveness of proposed rule change to offer 40 Gb IP network connection).

<sup>8</sup> See Securities Exchange Act Release Nos. 62732 (Aug. 16, 2010), 75 FR 51512 (August 20, 2010) (notice of proposed rule change to reflect fees charged for co-location services, including bundled network access); and 77072 (February 5, 2016), 81 FR 7394 (February 11, 2016) (SR-NYSE-2015-53) (notice of filing and accelerated approval of proposed rule change to offer Partial Cabinet Bundle Options).

<sup>9</sup> See Original Co-location Filing, *supra* note 4, at 59311 (“According to NYSE, SFTI and LCN both provide Users with access to the Exchange’s trading and execution systems and to the Exchange’s proprietary market data products.”) and IP Network Release, *supra* note 7, at 7889 (“Like the LCN, the IP network provides Users with access to the Exchange’s trading and execution systems and to the Exchange’s proprietary market data products.”). The IP network was previously sometimes referred to as SFTI. See *id.*

<sup>10</sup> Access to certification and testing feeds is only available over the IP network. A User that does not have an IP network connection may obtain an IP network circuit for purposes of testing and certification for free for three months. See IP Network Release, *supra* note 7, at 7889.

<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 “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.

using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the Secure Financial Transaction Infrastructure (“SFTI”) network, or a combination thereof.<sup>11</sup>

#### Access to Exchange Systems

As the Exchange has previously stated, Users’ connections to the LCN or IP networks include access to Exchange Systems when the User has authorization from the Exchange or relevant Affiliate SRO.<sup>12</sup> The Exchange notes that including access to Exchange Systems with the purchase of access to the LCN or IP network is consistent with Nasdaq’s colocation service, which does not charge its co-located customers a separate fee for access to Exchange Systems.<sup>13</sup>

Accordingly, the Exchange proposes to add a new note to its Price List stating the following:

When a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the NYSE, NYSE MKT and NYSE Arca (Exchange Systems), subject, in each case, to authorization by the NYSE, NYSE MKT or NYSE Arca, as applicable. Such access includes access to the customer gateways that provide for order entry, order receipt (*i.e.* confirmation that an order has been received), receipt of drop copies and trade reporting (*i.e.* whether a trade is executed or cancelled), as well as for sending information to shared data services for clearing and settlement. A User can change the access it receives at any time, subject to authorization by NYSE, NYSE MKT or NYSE Arca, as applicable. NYSE, NYSE MKT and NYSE Arca also offer access to Exchange Systems to their members, such that a User does not have to purchase access to the LCN or IP network to obtain access to Exchange Systems.

#### Connectivity to Included Data Products

The majority of the Included Data Products are proprietary feeds of the Exchange and the Affiliate SROs.<sup>14</sup> The

<sup>11</sup> A User that opted to obtain connectivity to Included Data Products through another User, a telecommunication provider, third party wireless network, or the SFTI network would receive the corresponding testing and certification feeds.

<sup>12</sup> See note 9, *supra*.

<sup>13</sup> See Nasdaq Stock Market Rule 7034—Connectivity to Nasdaq.

<sup>14</sup> See Securities Exchange Act Release Nos. 44138 (December 7, 2001), 66 FR 64895 (December 14, 2001) (SR–NYSE–2001–42) (establishing fees for NYSE OpenBook); 50844 (December 13, 2004), 69 FR 76806 (December 22, 2004) (SR–NYSE–2004–53)

Included Data Products also include the data feeds disseminated by the Consolidated Tape Association (“CTA”) (such data feeds, the “NMS feeds”). CTA is responsible for disseminating consolidated, real-time trade and quote information in NYSE listed securities (Network A) and NYSE MKT, NYSE Arca and other regional exchanges’ listed securities (Network B) pursuant to a national market system plan.<sup>15</sup> The NMS feeds include the Consolidated Tape System and Consolidated Quote System data streams, as well as Options Price Reporting Authority feeds.

In order to connect to an Included Data Product, a User enters into a contract with the provider of such data, pursuant to which the User is charged for the Included Data Product. After the User and data provider enter into the contract and the Exchange receives authorization from the provider of the data feed, the Exchange provides the User with connectivity to the Included Data Product over the User’s LCN or IP network port. The Exchange does not charge the User separately for such connectivity to the Included Data Product, as it is included in the purchase of the access to the LCN or IP network.

The Included Data Products are available over both the LCN and IP network.<sup>16</sup> For a User that purchases access to the LCN and IP network, the Exchange works with such User to allocate its connectivity to Included Data Products between its LCN and IP network connections. Some Included

(establishing fee for NYSE Alerts); 59290 (January 23, 2009) 74 FR 5707 (January 30, 2009) (SR–NYSE–2009–05) (establishing pilot program for NYSE Trades); 59543 (March 9, 2009), 74 FR 11159 (March 16, 2009) (establishing fee for NYSE Order Imbalances); 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR–NYSE–2010–30) (establishing NYSE BBO); 65669 (Nov. 2, 2011), 76 FR 69311 (Nov. 8, 2011) (SR–NYSEArca–2011–78) (establishing the NYSE Arca Integrated Feed); 73553 (Nov. 6, 2014), 79 FR 67491 (Nov. 13, 2014) (SR–NYSE–2014–40) (establishing the NYSE Best Quote & Trades Data Feed); 74128 (Jan. 23, 2015), 80 FR 4951 (Jan. 29, 2015) (SR–NYSE–2015–03) (establishing the NYSE Integrated Feed); 74127 (Jan. 23, 2015), 80 FR 4956 (Jan. 29, 2015) (SR–NYSEMKT–2015–06) (establishing the NYSE MKT Integrated Feed); and 76968 (January 22, 2016), 81 FR 4689 (January 27, 2016) (establishing NYSE Arca Order Imbalances).

<sup>15</sup> The Included Data Products do not include the data feeds disseminated pursuant to the “Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis” (the “UTP Plan”). The UTP Plan is responsible for disseminating consolidated, real-time trade and quote information in Nasdaq Stock Exchange LLC listed securities (Network C).

<sup>16</sup> As noted above, certification and testing feeds included by a data provider with an Included Data Product are only available over the IP network.

Data Products require a network connection with a minimum Gb size in order to accommodate the feed.<sup>17</sup> The Included Data Products do not provide access or order entry to the Exchange’s execution system.

The Exchange offers connectivity to Included Data Products in three forms: as a resilient feed, as “Feed A” or as “Feed B.” Resilient feeds include two copies of the same feed, for redundancy purposes. Feed A and Feed B are identical feeds.<sup>18</sup>

For some Included Data Products, connectivity to identical Feeds A and B is only available on the IP network.

The Included Data Products are as follows:

NMS feeds
NYSE: NYSE Alerts NYSE BBO NYSE Integrated Feed NYSE OpenBook NYSE Order Imbalances NYSE Trades
NYSE Amex Options
NYSE Arca: NYSE ArcaBook NYSE Arca BBO NYSE Arca Integrated Feed NYSE Arca Order Imbalances NYSE Arca Trades
NYSE Arca Options
NYSE Best Quote and Trades (BQT)
NYSE Bonds
NYSE MKT: NYSE MKT Alerts NYSE MKT BBO NYSE MKT Integrated Feed NYSE MKT OpenBook NYSE MKT Order Imbalances NYSE MKT Trades

<sup>17</sup> Because each Included Data Product uses part of a User’s bandwidth, a User may wish to limit the number of Included Data Products that it receives to those that it requires.

<sup>18</sup> A User that wants redundancy would connect to both Feed A and Feed B or two resilient feeds, using two different ports. A User may opt to connect both Feed A and Feed B to the same port, the effect of which would be the same as if the User had connected to a resilient feed. The form of feed that a User selects may affect the connection it requires. For example, a User connecting to the NYSE Arca Integrated Feed, NYSE Integrated Feed or NYSE MKT Integrated Feed would need at least a 1 Gb IP network connection in order to connect to either Feed A or Feed B. To connect to a resilient feed, the User would require an LCN or IP network connection of at least 10 Gb.

In addition to the above list of Included Data Products, the Exchange proposes to add the following language to the Price List:

When a User purchases access to the LCN or IP network it receives connectivity to any of the Included Data Products that it selects, subject to any technical provisioning requirements and authorization from the provider of the data feed. Market data fees for the Included Data Products are charged by the provider of the data feed. A User can change the Included Data Products to which it receives connectivity at any time, subject

to authorization from the provider of the data feed. The Exchange is not the exclusive method to connect to the Included Data Products.

**Fees for Access to the LCN and IP Network**

Users that connect to the LCN or IP network pay an initial non-recurring charge and a monthly recurring charge (“MRC”). A User that purchases five 10 GB LCN Circuits receives the sixth 10 GB LCN Circuit without being subject to an additional MRC.

The Exchange proposes to amend the MRCs for 10 and 40 Gb LCN circuits, 10 Gb LX LCN circuits, 10 and 40 Gb IP network circuits, and the 10 Gb bundled network access (together, the “Network Access Services”). The Exchange has not increased the MRCs for the Network Access Services since they were first filed: the proposed change will be the first increase in such fees.<sup>19</sup>

The proposed changes to the Network Access Service MRCs are as follows:

Type of service	Description	Amount of current MRC	Amount of proposed MRC
LCN Access .....	10 Gb Circuit .....	\$12,000	\$14,000
LCN Access .....	10 Gb LX Circuit .....	20,000	22,000
LCN Access .....	40 Gb Circuit .....	20,000	22,000
Bundled Network Access (2 LCN connections, 2 IP network connections, and 2 optic connections to outside access center).	10 Gb Bundle .....	47,000	53,000
IP Network Access .....	10 Gb Circuit .....	10,000	11,000
IP Network Access .....	40 Gb Circuit .....	17,000	18,000

The initial non-recurring charge for the Network Access Services would not change, and Users that purchase five 10 Gb LCN circuits will continue to receive the sixth 10 Gb LCN Circuit without an additional MRC. The Exchange does not propose to change the fees associated with 1 Gb LCN and 1 Gb IP network access, 1 Gb bundled network access, or the Partial Cabinet Solution bundles.

Currently, the Price List uses both “Gb” and “GB” as an abbreviation for gigabits. To make the usage consistent, the Exchange proposes to make non-substantive changes to the Price List to replace “GB” with “Gb.”

**General**

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User’s customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (e.g., a service bureau providing

order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;<sup>20</sup> and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one of its Affiliate SROs.<sup>21</sup>

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

**2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>22</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>23</sup> 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 revising the Price List to provide a more detailed description of the Access and Connectivity Users receive with their purchase of access to the LCN or IP network 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 the proposed changes would make the descriptions of access to the LCN and IP

<sup>19</sup>The 10 Gb LCN circuits and 10 Gb bundled network access were first filed in 2010, and the 40 Gb LCN and 10 Gb LX LCN circuits were first filed in 2013. The 10 and 40 Gb IP network circuits were first filed in 2015. See Securities Exchange Act Release Nos. 62732, *supra* note 8; 65237 (Aug. 31, 2011), 76 FR 55432 (Sept. 7, 2011) (SR–NYSE–2011–46) (notice of filing and immediate effectiveness of proposed rule change adding MRC for 10 Gb circuit); 70287 (Aug. 29, 2013), 78 FR 54704 (Sept. 5, 2013) (SR–NYSE–2013–60) (notice of filing and immediate effectiveness of proposed rule change to offer LCN 40 Gb connection); 70979 (Dec. 4, 2013), 78 FR 74200 (Dec. 10, 2013) (SR–NYSE–2013–77) (notice of filing and immediate effectiveness of proposed rule change amending

price list in order to provide fees for LCN 10 Gb LX); 74222 (Feb. 6, 2015), 80 FR 7888 (Feb. 12, 2015) (SR–NYSE–2015–05) (notice of filing and immediate effectiveness of proposed rule change to offer 1 Gb and 10 Gb IP network connections) and 76369 (Nov. 5, 2015), 80 FR 70027 (Nov. 12, 2015) (SR–NYSE–2015–54) (notice of filing and immediate effectiveness of proposed rule change to offer 40 Gb IP network connection).

<sup>20</sup>As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange’s trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange’s trading and execution systems through the same order gateway,

regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies, as compared to Users that are not co-located, in sending orders to, and receiving market data from, the Exchange.

<sup>21</sup>See SR–NYSE–2013–59, *supra* note 5, at 51766. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. See SR–NYSEMKT–2016–126 and SR–NYSEArca–2016–172.

<sup>22</sup>15 U.S.C. 78f(b).

<sup>23</sup>15 U.S.C. 78f(b)(5).

network more accessible and transparent, thereby providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP network. Including the more detailed description of Access and Connectivity in the Price List is consistent with Nasdaq's Rule 7034, which includes similar information.<sup>24</sup>

Co-location was created to permit Users "to rent space on premises controlled by the Exchange in order that they may locate their electronic servers in close physical proximity to the Exchange's trading and execution systems."<sup>25</sup> The expectation was that normally Users "would expect reduced latencies in sending orders to the Exchange and in receiving market data from the Exchange."<sup>26</sup> Accordingly, the Exchange believes the Access and Connectivity is directly related to the purpose of co-location, and so revising the Price List to increase the description of such Access and Connectivity 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 by increasing the transparency around Access and Connectivity.

Further, the Exchange believes that revising the Price List to provide a more detailed description of the Access and Connectivity Users receive with their purchase of access to the LCN or IP network would promote just and equitable principles of trade and remove impediments to, and perfect the mechanisms of, a free and open market and a national market system as it would make clear that all Users that voluntarily select to access the LCN or IP network would receive the same Access and Connectivity, and would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. Users are not required to use any of their bandwidth to access Exchange Systems or connect to an Included Data Product unless they wish to do so. Rather, a User only receives the Access and Connectivity that it selects, and a User can change what Access or Connectivity it receives at any time, subject to authorization from the data

provider or relevant Exchange or Affiliate SRO.

The Exchange believes that the proposed changes 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, by offering Access and Connectivity, the Exchange gives each User additional options for addressing its access and connectivity needs, responding to User demand for access and connectivity options. Providing Access and Connectivity helps each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of access and connectivity that best suits its needs. The Exchange provides Access and Connectivity as conveniences to Users. Use of Access or Connectivity is completely voluntary, and each User has several other access and connectivity options available to it. As alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof.

Similarly, the Exchange believes that the proposed fee changes 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, by offering the Network Access Services, the Exchange gives each User options for access to the LCN and IP network, responding to User demand for options. Users have the convenience of choosing among the array of different Network Access Services available, as well as the 1 Gb LCN and 1 Gb IP network access options, 1 Gb bundled network access and Partial Cabinet Solutions, helping them tailor their data center operations to the requirements of their business operations by allowing them to select the capacity, form and latency of connectivity that best suits their needs.

The Exchange believes that the proposed fee changes 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 the Exchange provides Network Access Services as conveniences to Users. Use of Network Access Services is completely

voluntary, and each User has several other options available to it. As alternatives to using the Network Access Services provided by the Exchange, a User may access or connect to the Exchange through another User, as well as through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof.

The Exchange believes that conforming the use of "Gb" 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 the proposed changes would make the Price List more transparent, thereby providing market participants with additional clarity.

The Exchange also believes that the proposed rule changes are consistent with Section 6(b)(4) of the Act,<sup>27</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed changes are consistent with Section 6(b)(4) of the Act<sup>28</sup> for multiple reasons. The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have

<sup>24</sup> See Nasdaq Stock Market Rule 7034—Market Data Connectivity ("Pricing is for connectivity only and is similar to connectivity fees imposed by other vendors. The fees are generally based on the amount of bandwidth needed to accommodate a particular feed and Nasdaq is not the exclusive method to get market data connectivity. Market data fees are charged independently by the Nasdaq Stock Market and other exchanges.")

<sup>25</sup> Original Co-Location Filing, *supra* note 4, at 59310.

<sup>26</sup> *Id.*

<sup>27</sup> 15 U.S.C. 78f(b)(4).

<sup>28</sup> 15 U.S.C. 78f(b)(4).

additional follow-on effects on the market share and revenue of the affected exchange.

The Exchange believes that the proposed changes to the Network Access Service MRCs would provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because the Network Access Services are available to all Users on an equal basis (*i.e.*, the same products and services are available to all Users). All Users that voluntarily purchase a Network Access Service would be charged the same amount for the same service. As is currently the case, the purchase of any colocation service (including Network Access Services) would be completely voluntary. Furthermore, each of the Network Access Services can be purchased independently of each other, and independently of any other colocation services or products that a User may choose.

The Exchange believes that the proposed changes to the Network Access Service MRCs are reasonable, equitably allocated and not unfairly discriminatory because the MRCs for the Network Access Services have been the same since they were first filed, with some MRCs dating to the inception of co-location in 2010.<sup>29</sup> During the time since the MRCs for the Network Access Services were filed, however, the Exchange has made numerous improvements to the network hardware and technology infrastructure. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users, including the increasing demand for bandwidth, and has established additional administrative controls. The Exchange offers the Network Access Services as conveniences to Users, but in order to do so must provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of the Network Access Services, including by responding to any production issues. The Exchange accordingly believes that the proposed changes to the Network Access Service MRCs will allow them to more

accurately reflect the value of the services provided.

The Exchange believes the proposed fees are reasonable because they allow the Exchange to defray or cover the costs associated with offering the Network Access Services while providing Users the benefit of choosing among the array of different Network Access Services available, as well as the 1 Gb LCN and 1 Gb IP network access options, 1 Gb bundled network access and Partial Cabinet Solutions, helping them tailor their data center operations to the requirements of their business operations by allowing them to select the capacity, form and latency of connectivity that best suits their needs.

In addition, the Exchange believes the proposed increases in the MRCs for the Network Access Services are reasonable because they reflect the inclusion of additional data products in the list of Included Data Products. More specifically, the Exchange has opted to include connectivity to the three integrated feeds and the NYSE BQT as Included Data Products.

The Exchange believes that its proposed MRCs for the Network Access Services are comparable to the fees Nasdaq charges its co-location customers. For instance, the ongoing monthly fees for 40 Gb and 10 Gb fiber connections to Nasdaq are \$20,000 and \$10,000, respectively, compared to the proposed \$22,000 and \$14,000 for the 40 Gb and 10 Gb LCN circuits and \$18,000 and \$11,000 for the 40 Gb and 10 Gb IP network circuits, respectively.<sup>30</sup>

Excluding the Partial Cabinet Solutions with 10 Gb connections to the LCN and IP networks from the proposed changes to MRCs is a business decision that the Exchange believes is reasonable, equitably allocated and not unfairly discriminatory because the MRCs for the Partial Cabinet Solutions have been in place less than a year, and so the Exchange believes they more accurately reflect the value of the services provided than those in place for longer periods.<sup>31</sup> The Exchange believes that excluding the Partial Cabinet Solution MRCs from the present proposed changes would continue to make it more cost effective for smaller Users, including those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection

bandwidth are too burdensome, to utilize co-location.<sup>32</sup>

Excluding the 1 Gb LCN, 1 Gb IP network access and 1 Gb bundled network access options from the proposed changes to the MRC is a business decision that the Exchange believes is reasonable, equitably allocated and not unfairly discriminatory, because the Exchange believes that the current MRCs for the services reflect the value of the services provided to the smallest connections. In addition, Users with 1 Gb connections generally do not connect to the new Included Data Products, which generally require a larger connection than 1 Gb.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

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,<sup>33</sup> 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, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users). The Exchange believes that the proposed changes are reasonable and designed to be fair and equitable, and therefore, will not unduly burden any particular group of Users.

The Exchange believes that providing Users with Access and Connectivity does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such Access and Connectivity satisfies User demand for access and connectivity options, and each User has several other access and connectivity options available to it. As alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection

<sup>30</sup> See Nasdaq Stock Market Rule 7034—Connectivity to Nasdaq.

<sup>31</sup> The order approving the proposed rule change to provide that co-location services include the Partial Cabinet Solution Bundles was issued in February, 2016. See Securities Exchange Act Release No. 77072, *supra* note 8.

<sup>32</sup> See *id.*, at 7396.

<sup>33</sup> 15 U.S.C. 78f(b)(8).

<sup>29</sup> See note 19, *supra*. The 10 LCN circuits and 1 Gb bundled network access were first filed in 2010, and the 40 Gb LCN and 10 Gb LX LCN circuits were first filed in 2013. The 10 and 40 Gb IP network circuits were first filed in 2015.

through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof. Users that opt to use Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contract with the relevant market or content provider may receive access or connectivity. In this way, the proposed changes would enhance competition by helping Users tailor their Access and Connectivity to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

The Exchange believes that revising the Price List to provide a more detailed description of the Access and Connectivity available to Users would make such descriptions more accessible and transparent, thereby providing market participants with clarity as to what Access and Connectivity is available to them and what the related costs are, thereby enhancing competition by ensuring that all Users have access to the same information regarding Access and Connectivity.

Similarly, the Exchange believes that the proposed changes to the Network Access Service MRCs would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, by offering the Network Access Services, the Exchange gives each User options for access to the LCN and IP network, responding to User demand for options. All Users that voluntarily purchase Network Access Services would be charged the same amount for the same services. As is currently the case, the purchase of any colocation service (including network and capacities) would be completely voluntary. Furthermore, each of the Network Access Services can be purchased independently of each other, and independently of any other colocation services or products that a User may choose.

The Exchange believes that the proposed changes to the Network Access Service MRCs would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the MRCs for the Network Access Services have been the same since they were first filed, with some MRCs dating to the inception of co-location in 2010.<sup>34</sup> During the time since the MRCs for the Network Access Services were filed, however, the Exchange has made numerous improvements to the network

hardware and technology infrastructure. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users, including the increasing demand for bandwidth, and has established additional administrative controls. The Exchange offers the Network Access Services as conveniences to Users, but in order to do so must provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of the Network Access Services, including by responding to any production issues. The Exchange accordingly believes that the proposed changes to the Network Access Service MRCs will allow them to more accurately reflect the value of the services provided.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

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

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>35</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>36</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>37</sup> of the Act 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](mailto:rule-comments@sec.gov). Please include File No. SR-NYSE-2016-92 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-NYSE-2016-92. 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

<sup>35</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>36</sup> 17 CFR 240.19b-4(f)(2).

<sup>37</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>34</sup> See note 19, *supra*.

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 such 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-NYSE-2016-92, and should be submitted on or before January 31, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

[FR Doc. 2017-00214 Filed 1-9-17; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-79737; File No. SR-NYSEMKT-2016-127]

**Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Change Modifying the NYSE Amex Options Fee Schedule**

January 4, 2017.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934

("Act") <sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 28, 2016, NYSE MKT LLC ("Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("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 modify the NYSE Amex Options Fee Schedule. The proposed 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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this filing is to modify the Fee Schedule to: (1) Adjust the qualification thresholds and transaction fees for electronic transactions by NYSE Amex Options Marker Makers ("Sliding Scale");<sup>4</sup> and (2) modify the prepayment programs offered by the Exchange, including adding a new prepay option (the "Prepayment Programs").<sup>5</sup>

Market Maker Sliding Scale

Section I.C. of the Fee Schedule sets forth the Sliding Scale of transaction fees charged to NYSE Amex Options Marker Makers (referred to as Market Makers herein), which per contract fees decrease as Market Maker trades higher monthly volumes.<sup>6</sup> Currently, Market Makers that have monthly volume on the Exchange of 0.10% or less of total ICADV are charged a base rate of \$0.25 per contract and, these same market participants, upon reaching certain volume thresholds, or Tiers, receive a reduction of this per contract rate.<sup>7</sup> In addition, the Exchange charges a lower per contract rate to Market Makers that participate in one of the Prepayment Programs or that post monthly volume greater than 0.85% of total ICADV.

Effective January 3, 2017, the Exchange proposes to modify the qualification thresholds and associated transaction fees for all Marker Makers as follows (with new rates/thresholds underlined and deleted rates/thresholds in brackets):

\* \* \* \* \*

Tier	Market maker electronic monthly volume as a percentage of ICADV	Rate per contract	Rate per contract if monthly volume from posted volume is more than .85% of total ICADV or for any NYSE Amex Market Maker participating in a prepayment program pursuant to Section I.D.
1	0.00% to [0.10%] <u>0.15%</u>	\$0.25	[\$0.20] <u>\$0.23</u>
2	[>0.10%] <u>&gt;0.15%</u> to 0.60%	\$0.22	[\$0.17] <u>\$0.18</u>
3	>0.60% to [1.25%] <u>1.10%</u>	[\$0.12] <u>\$0.14</u>	[\$0.07] <u>\$0.08</u>

<sup>38</sup> 17 CFR 200.30-3(a)(12).

<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> See Fee Schedule, Section I. C. (NYSE Amex Options Market Maker Sliding Scale—Electronic), available here, [https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE\\_Amex\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf).

<sup>5</sup> See *id.*, Section I. D. (Prepayment Program).

<sup>6</sup> See Fee Schedule, *supra* note 4. The volume thresholds are based on an NYSE Amex Options Market Maker's volume transacted Electronically as a percentage of total industry Customer equity and ETF options volumes ("ICADV") as reported by the Options Clearing Corporation (the "OCC"). Total ICADV is comprised of those equity and ETF contracts that clear in the Customer account type at OCC and does not include contracts that clear in either the Firm or Market Maker account type at OCC or contracts overlying security other than an

equity or ETF security. See OCC Monthly Statistics Reports, available here, <http://www.theocc.com/webapps/monthly-volume-reports>.

<sup>7</sup> In calculating an NYSE Amex Options Market Maker Electronic volumes, the Exchange excludes any volumes attributable to Mini Options, QCC trades, CUBE Auctions, and Strategy Execution Fee Caps, as these transactions are subject to separate pricing described in Fee Schedule Sections I.B., I.F., I.G., and I.J, respectively. See Fee Schedule, Section I.C, *supra* note 4.