

sole postal retail facility serving a community. *Id.* at 8.

In *Green Mountain*, the Commission reiterated that section 404(b) applies to sole source CPOs:

It is the view of the Commission that Congress expected the section 404(b) procedures to apply not only to independent post offices, as defined by the Postal Service, but also Community Post Offices when they are the sole source of postal services to a community. The Postal Service's consistent position is that the service of a Community Post Office is equivalent to that of an independent post office it seeks to consolidate. Therefore, the most reasonable reading of section 404(b) and Congressional intent is that 404(b) must apply whenever there is a proposed closure or consolidation of a community's sole retail postal facility, including a Community Post Office.<sup>18</sup>

Over the last 30 years, when determining whether a CPU is the sole source of postal retail services in a community, the Commission has considered other sources of retail postal services to the community at issue. For example, in *Alplaus*, since there was a post office located approximately 1 mile from the Alplaus CPO and there were over 20 alternate access locations within a 5-mile radius, the Commission concluded that the Alplaus CPO was not the "sole source" of postal services for the community.<sup>19</sup> Accordingly, the Commission determined that since the Alplaus CPO was not the sole source of postal services for the community, section 404(d) did not apply.

Similarly, in the past 3 decades since the sole source standard was set forth in *Knob Fork*, there have been advancements in technology, creation and expansion of commercial business centers, evolution of the postal retail network, and different modes of transportation. The Commission has continued to apply the sole source framework using a reasonable standard based on the statute and legislative intent. The sole source standard is not based simply on whether a facility is the only postal retail service facility located in a community. The standard is whether that retail facility is the sole provider of services to a community. This standard allows the Commission to recognize ongoing developments in travel, communication, and other

services that may impact a community in how it receives its postal services.

In *Careywood*, the most recent Commission decision to apply the sole source standard, the Commission recognized that approved shippers, contract units such as VPOs, and automated postal centers may not be currently available. However, it acknowledged that other categories of postal services, such as another postal retail facility approximately a 7-minute drive away, rural carriers, <https://www.usps.com>, and the Internet are available. Order No. 2505 at 12. The Commission noted that a facility that decades previously may have been considered the sole source may no longer be the sole source in part due to improved road safety, provisions of services by alternate means, and migration of business services to different areas. *Id.* The Commission also referenced Congress's requirement in section 302 of the Postal Accountability and Enhancement Act of 2006, that the Postal Service develop a plan for the expansion of access to alternate retail services including the Internet and non-post office access channels. *Id.* The Commission also held that while the Careywood CPU was the only physical postal retail provider in the community, it was not the community's only source for postal retail services, therefore section 404(d) did not apply. *Id.* at 13. The Commission explained that the closure of the Careywood CPU did not eliminate the Careywood community's access to postal retail services. *Id.*

The Commission requests comments on the issue of the sole source standard used to determine whether section 404(d) applies to the closure or consolidation of a CPU.

### III. Conclusion

The Commission invites public comment on the Commission's interpretation of the language and intent of 39 U.S.C 404(d) with regards to the relocation and rearrangement of postal retail facilities, and the criteria and application of a sole source standard to CPU closures and consolidations. Additional information may be accessed via the Commission's Web site at <http://www.prc.gov>. Interested persons may submit comments no later than January 29, 2016. Reply comments may be filed no later than February 23, 2016.

### IV. Public Representative

Pursuant to 39 U.S.C. 505, Lauren A. D'Agostino is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

### V. Ordering Paragraphs

*It is ordered:*

1. The Commission hereby establishes Docket No. PI2016-2 to review issues related to the scope of its appellate authority over relocations and rearrangements of postal retail facilities and the closure or consolidation of CPUs.

2. Interested persons may submit comments no later than January 29, 2016.

3. Reply comments may be filed no later than February 23, 2016.

4. Pursuant to 39 U.S.C. 505, the Commission appoints Lauren A. D'Agostino to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

5. The Secretary shall arrange for publication of this notice in the **Federal Register**.

By the Commission.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2015-31572 Filed 12-15-15; 8:45 am]

BILLING CODE 7710-FW-P

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76613; File No. SR-NYSEMKT-2015-89]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change to Its Rules To Provide That the Co-Location Services Offered by the Exchange Include Three Time Feeds and Four Bundles of Co-Location Services

December 10, 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 November 27, 2015, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I 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.

<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>18</sup> Docket No. A94-9, *In the Matter of Green Mountain, Iowa* 50637, Commission Opinion Affirming Decision Under 39 U.S.C. 404(b), August 16, 1994, at 5 (*Green Mountain*).

<sup>19</sup> Docket No. A2012-88, *Alplaus Post Office, Alplaus, New York*, Order Dismissing Appeal, March 21, 2012, at 6 (Order No. 1293).

**I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change**

The Exchange proposes to change its rules to provide that the co-location services offered by the Exchange include three time feeds and four bundles of co-location services (“Partial Cabinet Solution bundles”). The Exchange proposes to amend the NYSE MKT Equities Price List (“Price List”) and the NYSE Amex Options Fee Schedule (“Fee Schedule”) to reflect the time feeds and the Partial Cabinet Solution bundles. 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 its rules to provide that the co-location<sup>4</sup> services offered by the Exchange include three time feeds and four new Partial Cabinet Solution bundles. In addition, the Exchange proposes to amend the Price List and Fee Schedule to reflect the time feeds and the Partial Cabinet Solution bundles. The Exchange proposes to offer the Partial Cabinet Solution bundles beginning January 1, 2016.

**Time Feeds**

The proposed rule change would provide that Users<sup>5</sup> may purchase access to three time feeds, each of which provides a feed with the current time of day using one of three different time protocols: GPS Time Source, the Network Time Protocol feed (“NTP”), and Precision Timing Protocol (“PTP”).<sup>6</sup>

Time feeds are used to receive time and to synchronize clocks between computer systems or throughout a computer network. A User may opt to connect to a time feed for various reasons, including record keeping or measuring response times.<sup>7</sup> The proposed connectivity to time feeds would provide Users a convenient way to access time protocols.

The proposed change includes three time feeds. Global Positioning System (“GPS”) is a time and location system maintained by the United States government. The Exchange accesses the GPS Time Source feed through dedicated equipment and subscribing Users connect to the feed over dedicated cables. For the NTP and PTP time feeds, the Exchange routes the GPS data through dedicated equipment that reformats the GPS data into NTP and PTP.<sup>8</sup> Subscribing Users connect to PTP over dedicated cables and NTP over the Liquidity Center Network (“LCN”), a local area network available in the data center.

Currently, the Exchange’s co-location services allow a User to request a physical cabinet to house its servers and other equipment in the data center. A User has the option of receiving an entire cabinet that is dedicated solely to that User (“dedicated cabinet”) or a partial cabinet available in increments of eight-rack units of space (“partial cabinet”).<sup>9</sup> Connectivity to all three time protocols would be available for dedicated cabinets. Due to technical limitations, connectivity to the NTP and PTP would be available for partial cabinets, but connectivity to GPS would not.<sup>10</sup>

The Exchange proposes to amend its Price List and the Fee Schedule to reflect fees related to these services, as follows:

Connection to time protocol feed .....	Network time protocol feed (Note: LCN only) .. Precision Time Protocol .....	\$300 initial charge plus \$100 monthly. \$1,000 initial charge plus \$250 monthly. \$3,000 initial charge plus \$400 monthly.
	GPS Time Source (Note: Dedicated cabinets only).	

<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. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR-NYSEArca-2010-100) (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.

<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, a “Hosting User” means a User that hosts a Hosted Customer in the User’s co-location space, and a “Hosted Customer” means a customer of a Hosting User that is hosted in a Hosting User’s co-location space. See Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR-NYSEArca-2015-82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the

same co-location service charged by the Exchange’s affiliates New York Stock Exchange LLC and NYSE MKT LLC. See Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR-NYSEArca-2013-80).

<sup>6</sup> The time feeds are unrelated to trading on the Exchange or the Exchange’s data feeds. A User does not require connectivity to a time feed to trade on the Exchange, and usage of a time feed has no effect on a User’s orders going to, or trade data coming from, the Exchange.

<sup>7</sup> For example, a User may connect to a time feed for record keeping purposes if it uses that specific time protocol for all its activities, both inside and out of the data center.

<sup>8</sup> The reformatting equipment is programmed by the vendor to generate NTP and PTP time feeds that comply with industry standards. The Exchange does not program or manage the reformatting of the GPS data into NTP and PTP.

<sup>9</sup> See Original Co-location Filing, at 70049 and Securities Exchange Act Release No. 71130 (December 18, 2013), 78 FR 77765 (December 24,

2013) (SR-NYSEArca-2013-143) (notice of filing and immediate effectiveness of proposed rule change to offer partial cabinets).

<sup>10</sup> The Exchange does not propose to make connectivity to GPS available for partial cabinets because the proximity of the GPS and power connections into a partial cabinet would expose GPS to interference from the cable power connections, interfering with the delivery of the GPS data.

<sup>11</sup> The Exchange believes that the 12-month minimum period is common practice for colocation offerings. See, e.g., Securities Exchange Act Release No. 68735 (January 25, 2013), 78 FR 6842 (January 31, 2013) (SR-NASDAQ-2012-119) (noting that NASDAQ represented that the lock-in feature “is common practice for colocation offerings”). If a User upgrades a service (*i.e.*, goes from a 10 Gb to a 40 Gb LCN circuit), it will not be held to the minimum period for the first service, but will be subject to a 12-month minimum period for the upgraded service, starting from the date of the upgrade.

Users that order the proposed time feed services will be subject to a 12-month minimum commitment, after which period they are subject to a 60-day rolling time period.<sup>11</sup>

#### Partial Cabinet Solution Bundles

The Exchange proposes to offer four Partial Cabinet Solution bundles intended to make it more cost effective for smaller Users to utilize co-location. These proposed Partial Cabinet Solution bundles would provide smaller Users a convenient way to create a colocation environment, by including in each Partial Cabinet Solution bundle cabinet space, network access, fiber connections (“cross connects”), and the choice of either the NTP or PTP time feed. The Exchange expects that such Users would include those with minimal power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome. The Exchange expects that the majority of Users that purchase a Partial Cabinet Solution bundle will not previously have been a User or Hosted Customer, but recognizes that it is possible that purchasing Users may include entities that otherwise would be Hosted Customers. The Exchange proposes to offer the Partial Cabinet Solution bundles beginning January 1, 2016.

As noted above, currently a User may opt to receive a partial cabinet available in increments of eight-rack units of space. Each partial cabinet is allocated up to two kilowatts (“kW”) of power.

In addition, the Exchange offers Users access to two local area networks available in the data center: The LCN and the internet protocol (“IP”) network.<sup>12</sup> The Exchange offers 1 and 10 gigabit (“Gb”) IP network access, 1, 10,

and 40 Gb LCN network access, and LCN 10 Gb LX network access.<sup>13</sup>

Users may use cross connects to connect cabinets within the data center, including between a User’s cabinet and a non-User’s equipment within the data center. For example, a User may utilize a cross connect with a non-User to connect to a carrier’s equipment in order to access the carrier’s network outside the data center.<sup>14</sup>

The Exchange proposes to offer four Partial Cabinet Solution bundles. Because the Partial Cabinet Solution bundles are intended to make it more cost effective for smaller Users to utilize co-location, the Exchange proposes only to provide access to a Partial Cabinet Solution bundle to a User that meets the following conditions: (1) The User purchases only one Partial Cabinet Solution bundle; (2) the User and its Affiliates<sup>15</sup> do not currently have a Partial Cabinet Solution bundle; and (3) after the purchase of the Partial Cabinet Solution bundle, the User, together with its Affiliates, will have an aggregate cabinet footprint of no more than 2 kW.<sup>16</sup> A User’s aggregate cabinet footprint is the total kW of its cabinets, including both partial and dedicated cabinets, and a Hosted Customer’s aggregate cabinet footprint is the total kW of the portion of the Hosting User’s cabinet, whether partial or dedicated, allocated to such Hosted Customer.<sup>17</sup>

The Exchange proposes to aggregate the aggregate cabinet footprint of a User

<sup>13</sup> The Exchange also proposes to provide 40 Gb IP network access. The 40 Gb IP network connection is expected to be available no later than April 15, 2016. The Exchange will announce the date that the 40 Gb IP network connection will be available through a customer notice. See Securities Exchange Act Release No. 76372 (November 5, 2015), 80 FR 70039 (November 12, 2015) (SR–NYSEArca–2015–105) (notice of filing and immediate effectiveness of proposed rule change to include IP 40 Gb network connections).

<sup>14</sup> See Release No. 74219, *supra* note 12.

<sup>15</sup> For purposes of the Partial Cabinet Solution bundles, an “Affiliate” of a User would be any other User or a Hosted Customer that is under 50% or greater common ownership or control of the first User.

<sup>16</sup> For example, a User with a 4 kW dedicated cabinet would not be eligible for a Partial Cabinet Solution bundle, as its aggregate cabinet footprint would be either 5 kW or 6 kW once a Partial Cabinet Solution bundle was added.

<sup>17</sup> The Exchange’s subsidiary NYSE Arca Equities similarly aggregates eligible activity of member organization affiliates for purposes of charges or credits based on volume. See Securities Exchange Act Release No. 74604 (March 30, 2015), 80 FR 18270 (April 3, 2015) (SR–NYSEArca–2015–20), 80 FR 20043 (April 14, 2015) (correction). The threshold percentage used in the definition of “affiliate” for purposes of charges or credits based on volume is 75%. *Id.* The Exchange proposes a lower threshold in the present case in order to discourage any User from taking deliberate advantage of the proposed Partial Cabinet Solution bundle by setting up separate corporate entities to act as Users or Hosted Customers.

of a Partial Cabinet Solution bundle with the aggregate cabinet footprint of its Affiliates for purposes of determining whether the User has satisfied the conditions in order to avoid disparate treatment of Users that have divided their various business activities between separate corporate entities, including between a User and a Hosted Customer, as compared to Users that operate those business activities within a single corporate entity. Accordingly, the Exchange proposes that a User requesting a Partial Cabinet Solution bundle be required to represent to the Exchange (a) whether it has any Affiliates that are Users or Hosted Customers, and (b) that its aggregate cabinet footprint, together with the aggregate cabinet footprint of its Affiliates that are also Users or Hosted Customers and the cabinet footprint of the Partial Cabinet Solution bundle, will not exceed 2 kW. In addition, the User of a Partial Cabinet Solution bundle would be required to inform the Exchange immediately of any event that causes another User or Hosted Customer to become an Affiliate.<sup>18</sup> The Exchange proposes to revise the Price List and Fee Schedule accordingly.

If a User of a Partial Cabinet Solution bundle became Affiliated with one or more other Users or Hosted Customers and thereby no longer met the conditions for access to the Partial Cabinet Solution bundle, or if the User otherwise ceased to meet the conditions for access, the Exchange would no longer offer access to the Partial Cabinet Solution bundle to such User. Once the User ceased to meet the conditions for access to the Partial Cabinet Solution bundle, it would be charged for each of the services individually, at the price for each such service set out in the Price List and Fee Schedule. Such price change would be effective as of the date that the User ceased to meet the conditions.

The Exchange proposes that Users that purchase a Partial Cabinet Solution bundle would be charged a non-recurring initial charge (“NRC”) and a monthly recurring charge (“MRC”).<sup>19</sup>

<sup>18</sup> The Exchange would review available information regarding the entities and may request additional information to verify the Affiliate status of a User or Hosted Customer. The Exchange would approve a request for a Partial Cabinet Solution bundle unless it determines that the certification is not accurate.

<sup>19</sup> A User that changes its Partial Cabinet Solution bundle would not be subject to a second NRC. Rather, it would pay the difference, if any, between the NRCs. For example, a User that buys an Option A Partial Cabinet Solution bundle would pay a \$7,500 NRC. If it then opted to change to Option C, it would pay \$2,500, *i.e.* the difference between the Option A and Option C NRCs of \$7,500 and \$10,000, respectively.

<sup>11</sup> The Exchange believes that the 12-month minimum period is common practice for colocation offerings. See, e.g., Securities Exchange Act Release No. 68735 (January 25, 2013), 78 FR 6842 (January 31, 2013) (SR–NASDAQ–2012–119) (noting that NASDAQ represented that the lock-in feature “is common practice for colocation offerings”). If a User upgrades a service (*i.e.*, goes from a 10 Gb to a 40 Gb LCN circuit), it will not be held to the minimum period for the first service, but will be subject to a 12-month minimum period for the upgraded service, starting from the date of the upgrade.

<sup>12</sup> See Original Co-location Filing, at 70049 and Securities Exchange Act Release Nos. 74219 (February 6, 2015), 80 FR 7899 (February 12, 2015) (SR–NYSEArca–2015–03) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections and fiber cross connects between a User’s cabinet and a non-User’s equipment) (“Release No. 74219”) and 70887 (November 15, 2013), 78 FR 69897 (November 21, 2013) (SR–NYSEArca–2013–123) (notice of filing and immediate effectiveness of proposed rule change to include LCN 10 Gb LX connection).

The Exchange proposes that Users that order a Partial Cabinet Solution bundle on or before December 31, 2016 would

have their MRC reduced by 50% for the first 12 months.

The Exchange proposes to amend its Price List and Fee Schedule to reflect

fees related to these new services, as follows:

Type of service	Description	Amount of charge
Partial Cabinet Solution bundles (effective from January 1, 2016). Note: A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an aggregate cabinet footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle.	Option A: 1 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.  Option B: 2 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.  Option C: 1 kW partial cabinet, 1 LCN connection (10 Gb), 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.  Option D: 2 kW partial cabinet, 1 LCN connection (10 Gb), 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	\$7,500 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2016: \$3,000 monthly for first 12 months of service, and \$6,000 monthly thereafter. • For Users that order after December 31, 2016: \$6,000 monthly. \$7,500 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2016: \$3,500 monthly for first 12 months of service, and \$7,000 monthly thereafter. • For Users that order after December 31, 2016: \$7,000 monthly. \$10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2016: \$7,000 monthly for first 12 months of service, and \$14,000 monthly thereafter. • For Users that order after December 31, 2016: \$14,000 monthly. \$10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2016: \$7,500 monthly for first 12 months of service, and \$15,000 monthly thereafter. • For Users that order after December 31, 2016: \$15,000 monthly.

Each proposed Partial Cabinet Solution bundle is made up of a number of different services. If a User purchased each of the components of a Partial Cabinet Solution bundle, whether over several purchases or in one order, and met the conditions described above for access to the Partial Cabinet Solution bundle, the Exchange would automatically treat the User's services as a Partial Cabinet Solution bundle and, effective the date of installation of the final component, reduce the User's MRC to the MRC for the relevant bundle.<sup>20</sup>

Finally, the Exchange proposes to make non-substantive changes to the Price List and Fee Schedule to add subheadings under "Co-Location Fees" for "Definitions" and "General Notes". Definitions of aggregate cabinet footprint and Affiliate would be added

under "Definitions". The existing note stating that a User that incurs co-location fees for a particular co-location service would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates would become note one under "General Notes" and the proposed provisions regarding aggregate cabinet footprints and what portion of an NRC, if any, a User would be subject to if it changed bundles would become note two.<sup>21</sup>

Users that purchase a proposed Partial Cabinet Solution bundle would not be subject to the 12-month minimum commitment, but rather would be subject to a 90-day commitment, after which period they would be subject to the 60-day rolling time period. As noted above, the Exchange anticipates that Users of the Partial Cabinet Solution bundles would include those with minimum power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome. The

Exchange proposes to have a reduced minimum commitment period for the Partial Cabinet Solution bundle to further reduce the cost commitment for such Users.

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>22</sup> and (iii) a User would only

<sup>20</sup> The Exchange proposes to implement the proposed Partial Cabinet Solution bundle changes effective January 1, 2016. If as of that date a User already had each of the components of a Partial Cabinet Solution bundle and met the conditions described above for access to the Partial Cabinet Solution bundle, the Exchange would automatically treat the User's services as a Partial Cabinet Solution bundle and reduce the User's MRC to the MRC for the relevant bundle, effective January 1, 2016.

<sup>21</sup> See note 18, *supra*.

<sup>22</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

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 or both of its affiliates.<sup>23</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.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>24</sup> in general, and furthers the objectives of Sections 6(b)(5) of the Act,<sup>25</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 providing connectivity to time feeds is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the service would offer connectivity to different time feed options, allowing a User that opts to connect to a time feed to select the time protocol that best suits its needs, helping it tailor its data center operations to the requirements of its business operations. The time feeds are unrelated to trading on the Exchange or the Exchange's data feeds. A User does not require connectivity to a time feed to trade on the Exchange, and usage of a time feed has no effect on a User's orders going to, or trade data coming from, the Exchange.

The Exchange believes that providing connectivity to GPS for dedicated cabinets but not partial cabinets and to NTP through the LCN but not the IP network is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the

Exchange proposes to offer connectivity to time feeds, including GPS and NTP, as a convenience to Users, and usage of a time feed has no effect on a User's orders going to, or trade data coming from, the Exchange. Regarding GPS, the proximity of GPS and power connections into a partial cabinet would expose GPS to interference from the cable power connections, interfering with the delivery of the GPS data, and so the Exchange is not able to offer connectivity to GPS for partial cabinets. A User that requires connectivity to GPS could opt to purchase a dedicated cabinet or become a Hosted Customer of a Hosting User with a dedicated cabinet. Regarding NTP, the Exchange has opted to offer the NTP only over the LCN due to a lack of demand for the NTP over the IP network. A User that requires connectivity to NTP could connect to the LCN.

The Exchange believes that the Partial Cabinet Solution bundles are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the Partial Cabinet Solution bundles would offer four different Partial Cabinet Solution bundles with options with respect to cabinet footprint and network connections. Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them.

The Exchange believes that its proposal would remove impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest because the proposed connectivity to time feeds would provide Users a convenient way to access time protocols. Having different time feed options would allow a User with a dedicated cabinet to select the time protocol that suits its needs, and for a User with a partial cabinet to select between the NTP and PTP.

In addition, the Exchange believes that its proposal would remove impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest because the proposed Partial Cabinet Solution bundles would make it more cost effective for Users that meet the conditions described above for access to the Partial Cabinet Solution bundle to utilize co-location by creating a convenient way to create a colocation environment, through four Partial Cabinet Solution bundles with options with respect to cabinet footprint and network connections. The Exchange expects that such Users would include

those with minimal power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome. Such Users may choose to pass on such cost savings to their customers. The Exchange expects that the majority of Users that purchase a Partial Cabinet Solution bundle will not previously have been a User or Hosted Customer, but recognizes that it is possible that purchasing Users may include entities that otherwise would be Hosted Customers.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>26</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its member organizations, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Overall, the Exchange believes that the proposed fees for the time feed connectivity and Partial Cabinet Solution bundles are reasonable because the Exchange proposes to offer the services as a convenience to Users, but in doing so will incur certain costs, including costs related to the data center facility, hardware and equipment and costs related to personnel required for initial installation and monitoring, support and maintenance of such services. The higher fee in connection with the GPS reflects the greater costs for its equipment, installation and maintenance in comparison with the other time feeds. The Exchange believes that submitting Users that order the proposed time feed services to a 12-month minimum commitment, after which period they would be subject a 60-day rolling time period, is reasonable, as it reflects the investment the Exchange incurs in order to provide the service. The Exchange believes that the 12-month minimum period is common practice for colocation offerings.

In addition, the Exchange believes that its proposal to limit access to Partial Cabinet Solution bundles to a User that meets the conditions described above, specifically, that (1) the User purchases only one Partial Cabinet Solution bundle, (2) the User and its Affiliates do not currently have a Partial Cabinet Solution bundle, and, (3) after the purchase of a Partial Cabinet Solution bundle, the User, together with its Affiliates, will have an aggregate cabinet footprint of no more than 2 kW, is reasonable, because the

receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

<sup>23</sup> See SR-NYSEMKT-2013-67, *supra* note 5 at 50471. The Exchange's affiliates have also submitted the same proposed rule change to propose the changes described herein. See SR-NYSE-2015-53 and SR-NYSEArca-2015-102.

<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> 15 U.S.C. 78f(b)(4).

Partial Cabinet Solution bundles are intended to make it more cost effective for smaller Users to utilize co-location. All Users would be subject to the same limits on the number of Partial Cabinet Solution bundles and aggregate cabinet footprint. The Exchange believes that the proposal is reasonable because it establishes a manner for the Exchange to treat Users for purposes of assessing aggregate cabinet footprint. The provision is equitable because all Users seeking to purchase a Partial Cabinet Solution bundle would be subject to the same parameters. The Exchange further notes that the proposal would serve to reduce any potential for confusion on how cabinet footprint can be aggregated or what entities would constitute Affiliates.

The Exchange believes that, by aggregating the aggregate cabinet footprint of a User with the aggregate cabinet footprint of its Affiliates for purposes of determining whether the User has satisfied the conditions, the proposed rule change avoids disparate treatment of Users that have divided their various business activities between separate corporate entities, including between a User and a Hosted Customer, as compared to Users that operate those business activities within a single corporate entity. The Exchange believes that setting the common ownership or control threshold in the definition of Affiliates at 50% is reasonable because it will discourage any User from taking deliberate advantage of the proposed Partial Cabinet Solution bundle by setting up separate corporate entities to act as Users or Hosted Customers.

The Exchange believes that it is reasonable that Users that order a Partial Cabinet Solution bundle on or before December 31, 2016 would have their MRC reduced by 50% for the first 12 months because the Partial Cabinet Solution bundles are a new service, and so it is reasonable to offer such reduction as an incentive to Users to utilize the new service. Similarly, the Exchange believes that submitting Users that purchase the proposed Partial Cabinet Solution bundle to a 90-day commitment, rather than the 12-month minimum commitment, after which period they would be subject to the 60-day rolling time period, is reasonable. As noted above, the Exchange anticipates that Users of the Partial Cabinet Solution bundles would include those with minimum power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome. The Exchange believes that it is reasonable to have a reduced minimum

commitment period for the Partial Cabinet Solution bundle to further reduce the cost commitment for such Users as an incentive to Users to utilize the new service.

The Exchange believes that it is reasonable not to charge a User that changes its Partial Cabinet Solution bundle a second NRC, but instead charge the difference, if any, between the NRCs, because the cost to the Exchange of modifying the service to move a User to a different Partial Cabinet Solution bundle is lower than the cost of the initial installation of a Partial Cabinet Solution bundle.

The Exchange also believes that the services and fees proposed herein for Partial Cabinet Solution bundles are reasonable because if a User purchased each of the components of a Partial Cabinet Solution bundle, whether over several purchases or in one order, and met the conditions described above for access to the Partial Cabinet Solution bundle, the Exchange would automatically treat the User's services as a Partial Cabinet Solution bundle and, effective the date of installation of the final component, reduce the User's MRC to the MRC for the relevant bundle.

The Exchange believes that the proposed change to provide Users access to time feeds is equitable and not unfairly discriminatory because it will result in fees being charged only to Users that voluntarily select to receive the corresponding services and because those services will be available to all Users. Furthermore, the Exchange believes that the services and fees proposed herein are not unfairly discriminatory and are equitably allocated because, in addition to the connectivity to time feeds being completely voluntary, it is available to all Users on an equal basis (*i.e.*, the same connectivity to time feed products and services is available to all Users, and the same conditions described above for access to the Partial Cabinet Solution bundles would apply to all Users). All Users that voluntarily select connectivity to one or more of the proposed time feeds would be charged the same amount for the same services.

The Exchange believes that the proposed change to provide Partial Cabinet Solution bundles is equitable and not unfairly discriminatory because it would be available to all Users that meet the conditions described above for access to the Partial Cabinet Solution bundle and would result in fees being charged only to such Users that voluntarily select to receive the corresponding service.

The Exchange believes that the proposed change to provide Partial

Cabinet Solution bundles provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities. As previously stated, the proposal would make it more cost effective for Users that meet the conditions described above for access to the Partial Cabinet Solution bundle to utilize co-location. While the Exchange expects that the majority of Users that purchase a Partial Cabinet Solution bundle will not previously have been a User or Hosted Customer, it recognizes that it is possible that purchasing Users may include entities that otherwise would be Hosted Customers. However, it notes that being a Hosted Customer and being a User with a Partial Cabinet Solution bundle are not fungible. A Hosting User manages the service provided to the Hosted Customer, which services may include, for example, supporting the Hosted Customer's technology, whether hardware or software. The Hosted Customer has no relationship with the Exchange. A User with a Partial Cabinet Solution bundle, by contrast, is responsible for supporting its own technology and is in a direct contractual relationship with the Exchange. Providing entities with the additional option of the Partial Cabinet Solution bundle will allow them to select the relationship and type of service that better corresponds to their needs and resources.

Furthermore, the Exchange believes that the Partial Cabinet Solution bundle services and fees proposed herein are not unfairly discriminatory and are equitably allocated because, in addition to the 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, and the same conditions described above for access to the Partial Cabinet Solution bundles would apply to all Users). All Users that voluntarily select the proposed Partial Cabinet Solution bundle service would be subject to the same limits on the number of Partial Cabinet Solution bundles and aggregate cabinet footprint. The Exchange believes that, by aggregating the aggregate cabinet footprint of a User with the aggregate cabinet footprint of its Affiliates for purposes of determining whether the User has satisfied the conditions, the proposed limit on aggregate cabinet footprint avoids disparate treatment of Users that have divided their various business activities between separate corporate entities, including between a User and a Hosted Customer, as compared to Users that operate those business activities within

a single corporate entity. Finally, all Users that order a bundle on or before December 31, 2016 would have their MRC reduced by 50% for the first 12 months.

The Exchange believes that it is equitable and not unfairly discriminatory to not charge a User that changes its Partial Cabinet Solution bundle a second NRC, but instead charge the difference, if any, between the NRCs, because the cost to the Exchange of modifying the service to move a User to a different Partial Cabinet Solution bundle is lower than the cost of the initial installation of a Partial Cabinet Solution bundle.

The Exchange also believes that the services and fees proposed herein for Partial Cabinet Solution bundles are not unfairly discriminatory and are equitably allocated because if a User purchased each of the components of a Partial Cabinet Solution bundle, whether over several purchases or in one order, and met the conditions described above for access to the Partial Cabinet Solution bundle, the Exchange would automatically treat the User's services as a Partial Cabinet Solution bundle and, effective the date of installation of the final component, reduce the User's MRC to the MRC for the relevant bundle.

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. 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,<sup>27</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, and the same conditions described above for access to the Partial Cabinet Solution bundles would apply to all Users).

The Exchange believes that providing Users with connectivity to time feeds will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such connectivity satisfies User demand for a convenient way to access time protocols. Having connectivity to different time feed options would allow a User with a dedicated cabinet to select the time protocol that best suits its needs, and for a User with a partial cabinet to select between the NTP and PTP, helping Users tailor their data center operations to the requirements of their business operations. In addition, the Exchange believes that providing connectivity to GPS for dedicated cabinets but not partial cabinets and to NTP through the LCN but not the IP network will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange proposes to offer connectivity to time feeds, including GPS and NTP, as a convenience to Users, and usage of a time feed has no effect on a User's orders going to, or trade data coming from, the Exchange.

The Exchange believes that allowing Users to purchase Partial Cabinet Solution bundles will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such access will satisfy User demand for cost effective options for smaller Users that choose to utilize co-location. All Users that meet the conditions described above for access to the Partial Cabinet Solution bundle would be subject to the same limits on the number of Partial Cabinet Solution bundles and aggregate cabinet footprint, all Users that order a bundle on or before December 31, 2016 would have their MRC reduced by 50% for the first 12 months, and all Users that change Partial Cabinet Solution bundles would not be charged a second NRC, but instead charged the difference, if any, between the NRCs.

The Exchange believes that allowing Users to purchase Partial Cabinet Solution bundles will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as previously stated, the proposal would make it more cost effective for Users that meet the conditions described above for access to the Partial Cabinet Solution bundle to utilize co-location. While the Exchange expects that the majority of Users that purchase a Partial Cabinet Solution bundle will not previously have been a User or Hosted Customer, it recognizes that it is

possible that purchasing Users may include entities that otherwise would be Hosted Customers. However, it notes that being a Hosted Customer and being a User with a Partial Cabinet Solution bundle are not fungible. A Hosting User manages the service provided to the Hosted Customer, which services may include, for example, supporting the Hosted Customer's technology, whether hardware or software. The Hosted Customer has no relationship with the Exchange. A User with a Partial Cabinet Solution bundle, by contrast, is responsible for supporting its own technology and is in a direct contractual relationship with the Exchange. Providing entities with the additional option of the Partial Cabinet Solution bundle will allow them to select the relationship and type of service that better corresponds to their needs and resources.

The proposed changes will also enhance competition by making it more cost effective for Users that meet the conditions described above for access to the Partial Cabinet Solution bundle to utilize co-location by creating a convenient way to create a colocation environment, through Partial Cabinet Solution bundles with options with respect to cabinet footprint and network connections. Such Users may choose to pass on such cost savings to their customers.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its services and related 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.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

<sup>27</sup> 15 U.S.C. 78f(b)(8).

(ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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-NYSEMKT-2015-89 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-NYSEMKT-2015-89. 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 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-NYSEMKT-2015-89, and should be submitted on or before January 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2015-31577 Filed 12-15-15; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76612; File No. SR-NYSE-2015-53]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Its Rules To Provide That the Co-Location Services Offered by the Exchange Include Three Time Feeds and Four Bundles of Co-Location Services

December 10, 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 November 27, 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 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 the Substance of the Proposed Rule Change

The Exchange proposes to change its rules to provide that the co-location services offered by the Exchange include three time feeds and four bundles of co-location services ("Partial Cabinet Solution bundles"). The Exchange proposes to amend the Exchange's Price List ("Price List") to reflect the time feeds and the Partial Cabinet Solution bundles.

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 its rules to provide that the co-location<sup>4</sup> services offered by the Exchange include three time feeds and four new Partial Cabinet Solution bundles. In addition, the Exchange proposes to amend the Price List to reflect the time feeds and the Partial Cabinet Solution bundles. The Exchange proposes to offer the Partial Cabinet Solution bundles beginning January 1, 2016.

##### Time Feeds

The proposed rule change would provide that Users<sup>5</sup> may purchase access to three time feeds, each of which provides a feed with the current time of day using one of three different time protocols: GPS Time Source, the Network Time Protocol feed ("NTP"), and Precision Timing Protocol ("PTP").<sup>6</sup>

Time feeds are used to receive time and to synchronize clocks between computer systems or throughout a

<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.

<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, a "Hosting User" means a User that hosts a Hosted Customer in the User's co-location space, and a "Hosted Customer" means a customer of a Hosting User that is hosted in a Hosting User's co-location space. 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 time feeds are unrelated to trading on the Exchange or the Exchange's data feeds. A User does not require connectivity to a time feed to trade on the Exchange, and usage of a time feed has no effect on a User's orders going to, or trade data coming from, the Exchange.

<sup>28</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.