

Shares, equity securities, futures contracts, and options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, equity securities, futures contracts, and options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also states that the Adviser is not a broker-dealer but is affiliated with a broker-dealer, and the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.<sup>31</sup>

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws and that these procedures are adequate to

<sup>31</sup> See *supra* note 5. An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value will be disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Exchange Act,<sup>32</sup> as provided by NYSE Arca Equities Rule 5.3.

(6) The equity securities in which the Fund will invest, including Underlying ETPs, Depositary Receipts, REITs, common stocks, preferred securities, warrants, convertible securities, and U.S. dollar-denominated foreign securities, as well as certain derivatives such as options and futures contracts, will trade in markets that are ISG members or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(7) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser and master demand notes.

(8) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

(9) The Fund's investments will be consistent with the Fund's investment objectives and will not be used to enhance leverage. The Fund may invest up to 10% of its net assets in inverse Underlying ETPs, but it will not invest

in leveraged or inverse leveraged Underlying ETPs.

(10) The Fund will only enter into transactions in derivative instruments with counterparties that First Trust reasonably believes are capable of performing under the contract<sup>33</sup> and will post as collateral at least \$250,000 each day. In addition, to the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice.<sup>34</sup>

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>35</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>36</sup> that the proposed rule change (SR-NYSEArca-2013-70) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>37</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70287; File No. SR-NYSE-2013-60]

#### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the New York Stock Exchange Price List To Provide for Fees for a 40 Gigabit Liquidity Center Network Connection in the Exchange Data Center

August 29, 2013.

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

<sup>33</sup> See *supra* note 17.

<sup>34</sup> The Commission notes that it does not regulate the market for futures in which the Fund plans to take positions. Limits on the positions that any person may take in futures may be directly set by the Commodity Futures Trading Commission or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

<sup>35</sup> 15 U.S.C. 78f(b)(5).

<sup>36</sup> 15 U.S.C. 78s(b)(2).

<sup>37</sup> 17 CFR 200.30-3(a)(12).

<sup>32</sup> 17 CFR 240.10A-3.

“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 20, 2013, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, 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 amend its Price List in order to provide for fees for a 40 gigabit (“Gb”) Liquidity Center Network (“LCN”) connection in the Exchange’s data center. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](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 Exchange proposes to amend its Price List in order to provide for fees for a 40 Gb LCN connection in the Exchange’s data center.<sup>4</sup> The Exchange proposes to implement the fee change effective September 3, 2013.

Users are currently able to purchase access to the Exchange’s LCN, a local area network that is available in the data center and that provides Users with access to the Exchange’s trading and execution systems via the Common Customer Gateway (“CCG”) and to the Exchange’s proprietary market data products.<sup>5</sup> LCN access is currently available in one and 10 Gb capacities, for which Users incur an initial and monthly fee per connection. The Exchange also recently submitted a proposal to expand its co-location services to include 40 Gb LCN connections.<sup>6</sup> This higher-capacity LCN access is designed to have lower latency in the transmission of data between Users and the Exchange. The Exchange proposed to expand its co-location services to include 40 Gb LCN connections in order to make an additional service available to its co-location Users and thereby satisfy demand for more efficient, lower-latency connections.

The Exchange hereby proposes to establish the following fees for 40 Gb LCN connections:

Type of service	Description	Amount of charge
LCN Access .....	40 Gb Circuit .....	\$15,000 per connection initial charge plus \$20,000 monthly per connection.
Bundled Network Access, Option 1 (2 LCN connections, 2 SFTI connections, and 2 optic connections to outside access center).	40 Gb Bundle (LCN connections at 40 Gb; SFTI and optic connections at 10 Gb).	\$60,000 initial charge plus \$64,500 monthly charge.
Bundled Network Access, Option 2 (2 LCN connections, 2 SFTI connections, 1 optic connection to outside access center, and 1 optic connection in data center).	40 Gb Bundle (LCN connections at 40 Gb; SFTI and optic connections at 10 Gb).	\$60,000 initial charge plus \$71,000 monthly charge.
Bundled Network Access, Option 3 (2 LCN connections, 2 SFTI connections, and 2 optic connections in data center).	40 Gb Bundle (LCN connections at 40 Gb; SFTI and optic connections at 10 Gb).	\$60,000 initial charge plus \$77,500 monthly charge.

As with the existing pricing for one and 10 Gb LCN connections, Users of the proposed 40 Gb LCN connections would be subject to an initial charge plus a monthly recurring charge per

connection. However, in order to incentivize Users to upgrade to the proposed higher-bandwidth connections, the Exchange proposes that a User that submits a written order for

a 40 Gb Circuit or 40 Gb Bundle between September 3, 2013 and September 30, 2013 would not be subject to the portion of the initial charge related to the LCN connections.<sup>7</sup>

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> The Securities and Exchange Commission (“Commission”) initially approved the Exchange’s co-location services in Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56) (the “Original Co-location Approval”). The Exchange operates a data center in Mahwah, New Jersey (the “data center”) from which it provides co-location services to Users. The Exchange’s co-location services allow Users to rent space in the data center so they may locate their electronic servers in close physical proximity to the Exchange’s trading and execution system. *See id.* at 59310.

<sup>5</sup> For purposes of the Exchange’s co-location services, the term “User” includes (i) member organizations, as that term is defined in NYSE Rule

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

<sup>6</sup> *See* Securities Exchange Act Release No. 70206 (August 15, 2013) (SR-NYSE-2013-59). The Exchange did not propose making LCN content service provider access (“LCN CSP Access”) available at a 40 Gb bandwidth because, at least initially, User demand was not anticipated to exist. Also, the Exchange noted that, for a 40 Gb “Bundle,” SFTI and optic connections would be at 10 Gb and only the LCN connections would be at 40 Gb, because 40 Gb bandwidths are not currently offered for SFTI and optic connections. The Exchange proposes to include language in the Price

List to reflect this fact. The Exchange’s affiliates, NYSE MKT LLC (“NYSE MKT”) and NYSE Arca, Inc. (“NYSE Arca,” and together with NYSE MKT, “Affiliates”) have filed substantially the same proposed rule change to expand their co-location services to include 40 Gb LCN connections. *See* Securities Exchange Act Release No. 70176 (August 13, 2013) (SR-NYSEMKT-2013-67) and Securities Exchange Act Release No. 70173 (August 13, 2013) (SR-NYSEArca-2013-80).

<sup>7</sup> For a Bundle, this would mean that a User would not be subject to the \$30,000 LCN portion of the initial charge. The Exchange notes that each 40 Gb Bundle would include two 40 Gb LCN connections. The initial charge proposed for a non-Bundled LCN Circuit is \$15,000. Therefore, the LCN portion of the initial Bundle charge would be \$30,000. A User would remain subject to the remaining \$30,000 non-LCN portion of the initial Bundle charge, i.e. for SFTI and optic connections.

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>8</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 or both of its Affiliates.<sup>9</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>10</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>11</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 change is reasonable because the Exchange proposes to offer the additional services described herein (i.e., the proposed 40 Gb LCN connection) 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 ongoing

monitoring, support and maintenance of such services.

The Exchange further believes that the proposed change is reasonable because the proposed fees directly relate to the level of services provided by the Exchange and, in turn, received by the User. In this regard, the fees proposed for 40 Gb LCN connections are higher than, for example, the fees for 10 Gb LCN connections because costs for the initial purchase and ongoing maintenance of the 40 Gb connections are generally higher than those of the lower-bandwidth connections. However, these costs are not anticipated to be four times higher than the existing 10 Gb LCN connection. The Exchange therefore notes that while the proposed bandwidth of the 40 Gb LCN connection is four times greater than the existing 10 Gb LCN connection, the proposed fees for the 40 Gb LCN connection are significantly less than four times the fees for the 10 Gb LCN connection. Specifically, the proposed initial charge of \$15,000 is only 50% greater than the initial charge of \$10,000 for the existing 10 Gb LCN connection and the proposed monthly recurring charge of \$20,000 is less than double the \$12,000 monthly charge for the existing 10 Gb LCN connection. The Exchange believes that this supports a finding that the proposed pricing is reasonable because the Exchange anticipates realizing efficiencies as customers adopt higher-bandwidth connections, and, in turn, reflecting such efficiencies in the pricing for such connections.

The Exchange also believes that not charging the initial charge to a User that submits a written order for a 40 Gb Circuit or 40 Gb Bundle between September 3, 2013 and September 30, 2013 is reasonable because the Exchange believes it will incentivize Users to upgrade to higher-bandwidth connections during the first month that they are available, which will assist Users in meeting the growing needs of their business operations.

As with fees for existing co-location services, the fees proposed herein would be charged only to those Users that voluntarily select the related services, which would be available to all Users. Accordingly, the Exchange believes that the proposed change 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 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 also believes that it is equitable and not unfairly discriminatory to not charge the initial charge to a User that submits a written order for a 40 Gb Circuit or 40 Gb Bundle between September 3, 2013 and September 30, 2013 because not charging such fee will incentivize Users to upgrade to higher-bandwidth connections, which, in turn, will assist Users in meeting the growing needs of their business operations. In this regard, all Users would have the option to submit a written order for a 40 Gb Circuit or 40 Gb Bundle and, if done so between September 3, 2013 and September 30, 2013, any such User would not be charged the initial charge related thereto.

For the reasons above, the proposed change would 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>12</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. Instead, the Exchange believes that the proposed change will enhance competition by making a service available to its co-location Users and thereby satisfying demand for more efficient, lower-latency connections. The proposed 40 Gb LCN connection would make a service available to Users that require the increased bandwidth, but Users that do not require the increased bandwidth could continue to request an existing lower-bandwidth LCN connection and pay the correspondingly lower fees. Moreover, the Exchange believes that the proposed change will enhance competition between competing marketplaces by enabling the Exchange to provide a service to Users that is

<sup>8</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 in sending orders to, and receiving market data from, the Exchange.

<sup>9</sup> See SR-NYSE-2013-59, *supra* note 6. The Exchange's Affiliates have also submitted the same proposed rule change to provide for fees for a 40 Gb LCN connection. See SR-NYSEMKT-2013-67 and SR-NYSEArca-2013-80.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>12</sup> 15 U.S.C. 78f(b)(8).

similar to services available on other markets. In this regard, the Exchange notes that The NASDAQ Stock Market LLC (“NASDAQ”) similarly makes a 40 Gb fiber connection available to users of its co-location facilities.<sup>13</sup>

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 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**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>14</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>15</sup> thereunder, because it establishes a due, fee, or other charge imposed by NYSE.

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>16</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 Number SR-NYSE-2013-60 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2013-60. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2013-60 and should be submitted on or before September 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Kevin M. O’Neill,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-70289; File No. SR-OCC-2013-10]

**Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend Its Policy Statement Adopted Under Rule 205 Entitled “Back-up Communication Channel to Internet Access”**

August 29, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 23, 2013, The Options Clearing Corporation (“OCC” or “Corporation”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change**

OCC proposes to make certain changes to its Policy Statement adopted under Rule 205 entitled “Back-up Communication Channel to Internet Access” requiring clearing members that use the Internet as their primary means to access OCC’s information and data systems to maintain a secure back-up means of communication in order to provide for business continuance in the event of an Internet outage.

**II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**(1) Purpose**

OCC Rule 205 prescribes that OCC clearing members are required to submit instructions, notices, reports, data and

<sup>13</sup> See NASDAQ Rule 7034.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

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

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

<sup>2</sup> 17 CFR 240.19b-4.