

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-CBOE-2015-122 and should be submitted on or before February 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2016-00899 Filed 1-19-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76894; File No. SR-ISE Gemini-2015-17]

### Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend Rule 804(g)

January 13, 2016.

On November 12, 2015, ISE Gemini, LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to require clearing member approval before a market maker could resume trading after the activation of a market-wide speed bump under Exchange Rule 804(g). The proposed rule change was published for comment in the **Federal Register** on November 30, 2015.<sup>3</sup> The Commission has received no comment letters on the proposal.

Section 19(b)(2) of the Act<sup>4</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the

proposed rule change, or institute proceedings to determine whether these proposed rule changes should be disapproved. The 45th day for this filing is January 14, 2016.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider and take action on the Exchange’s proposed rule change.

Accordingly, pursuant to section 19(b)(2)(A)(ii)(I) of the Act<sup>5</sup> and for the reasons stated above, the Commission designates February 28, 2016 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-ISE Gemini-2015-17).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2016-00904 Filed 1-19-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76890; File No. SR-NYSEArca-2015-130]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Market Data Fees for the NYSE Arca Options Product

January 13, 2016.

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 December 31, 2015, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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 fees for NYSE Arca Options Product, as set forth on the NYSE Arca Options Proprietary Market Data Fee Schedule (“Fee Schedule”). The Exchange proposes to establish a multiple data feed fee effective January 1, 2016. Specifically, the Exchange proposes to establish a new monthly fee, the “Multiple Data Feed Fee,” that would apply to data recipients that take a data feed for NYSE Arca Options Product in more than two locations. Data recipients taking NYSE Arca Options Product in more than two locations would be charged \$200 per additional location per product per month. 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 amend the fees for NYSE Arca Options Product,<sup>4</sup> as set forth on the NYSE Arca Options Proprietary Market Data Fee Schedule (“Fee Schedule”). The Exchange proposes to establish a multiple data feed fee effective January 1, 2016. Specifically, the Exchange proposes to establish a new monthly fee, the “Multiple Data Feed Fee,” that would apply to data recipients that take a data feed for NYSE Arca Options Product in more than two locations. Data recipients

<sup>4</sup> See Securities Exchange Act Release Nos. 76023 (Sept. 29, 2015), 80 FR 60208 (Oct. 5, 2015) (SR-NYSEArca-2015-83). The single fee for the NYSE Arca Options Product set forth on the Fee Schedule is comprised of three data feeds: Arca Options Top, Arca Options Deep and Arca Options Complex products.

<sup>26</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.

<sup>3</sup> See Securities Exchange Act Release No. 76505 (November 23, 2015), 80 FR 74824.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> 15 U.S.C. 78s(b)(2)(A)(ii)(I).

<sup>6</sup> 17 CFR 200.30-3(a)(31).

<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.

taking NYSE Arca Options Product in more than two locations would be charged \$200 per additional location per product per month. No new reporting would be required.<sup>5</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6 of the Act,<sup>6</sup> in general, and sections 6(b)(4) and 6(b)(5) of the Act,<sup>7</sup> in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The fees are also equitable and not unfairly discriminatory because they will apply to all data recipients that choose to subscribe to NYSE Arca Options Product.

The Exchange believes that it is reasonable to require data recipients to pay a modest additional fee taking a data feed for a market data product in more than two locations, because such data recipients can derive substantial value from being able to consume the product in as many locations as they want. In addition, there are administrative burdens associated with tracking each location at which a data recipient receives the product. The Multiple Data Feed Fee is designed to encourage data recipients to better manage their requests for additional data feeds and to monitor their usage of data feeds. The proposed fee is designed to apply to data feeds received in more than two locations so that each data recipient can have one primary and one backup data location before having to pay a multiple data feed fee. The Exchange notes that this pricing is consistent with similar pricing adopted in 2013 by the Consolidated Tape Association (“CTA”).<sup>8</sup> The Exchange also notes that the OPRA Plan imposes a similar charge of \$100 per connection for circuit connections in addition to the primary and backup connections.<sup>9</sup>

<sup>5</sup> Data vendors currently report a unique Vendor Account Number for each location at which they provide a data feed to a data recipient. The Exchange considers each Vendor Account Number a location. For example, if a data recipient has five Vendor Account Numbers, representing five locations, for the receipt of the NYSE Arca Options Product, that data recipient will pay the Multiple Data Feed fee with respect to three of the five locations, or \$600.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4), (5).

<sup>8</sup> See Securities Exchange Act Release No. 70010 (July 19, 2013), 78 FR 44984 (July 25, 2013) (SR-CTA/CQ-2013-04).

<sup>9</sup> See “Direct Access Fee,” Options Price Reporting Authority Fee Schedule Fee Schedule

The Exchange notes that NYSE Arca Options Product is entirely optional. The Exchange is not required to make NYSE Arca Options Product available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase NYSE Arca Options Product. Firms that do purchase NYSE Arca Options Product do so for the primary goals of using it to increase revenues, reduce expenses, and in some instances compete directly with the Exchange (including for order flow); those firms are able to determine for themselves whether NYSE Arca Options Product or any other similar products are attractively priced or not.

Firms that do not wish to purchase NYSE Arca Options Product have a variety of alternative market data products from which to choose,<sup>10</sup> or if NYSE Arca Options Product does not provide sufficient value to firms as offered based on the uses those firms have or planned to make of it, such firms may simply choose to conduct their business operations in ways that do not use NYSE Arca Options Product or use it at different levels or in different configurations. The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations.<sup>11</sup>

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (“Commission”) upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

In fact, the legislative history indicates that the Congress intended that the market system ‘evolve through the interplay of competitive

PRR Plan at [http://www.opradata.com/pdf/fee\\_schedule.pdf](http://www.opradata.com/pdf/fee_schedule.pdf).

<sup>10</sup> For example, Chicago Board Options Exchange (“CBOE”) charges, for its “Complex Order Book Feed,” a Distributor Fee of \$3,000 per month, a Professional User Fee of \$25 per month and a Non-Professional User Fee of \$1 per month. See the CBOE “Complex Order Book Feed” product and pricing information, available at <https://www.cboe.org/MDX/CSM/OBOOKMain.aspx>. NASDAQ OMX PHLX LLC (“PHLX”) also offers a market data product entitled “PHLX Orders,” which includes order and last sale information for complex strategies and other market data, and charges a \$3,000 internal monthly fee (\$3,500 for external), \$2,000 per Distributor and \$500 per subscriber. See PHLX “PHLX Orders” market data product and pricing information, available at <http://www.nasdaqtrader.com/Micro.aspx?id=PHLXOrders> and <http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#PHLX>, respectively.

<sup>11</sup> See FINRA Regulatory Notice 15-46, “Best Execution,” November 2015.

forces as unnecessary regulatory restrictions are removed’ and that the SEC wield its regulatory power ‘in those situations where competition may not be sufficient,’ such as in the creation of a ‘consolidated transactional reporting system.’

*Id.* at 535 (quoting H.R. Rep. No. 94-229 at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 323). The court agreed with the Commission’s conclusion that “Congress intended that ‘competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.’”<sup>12</sup>

As explained below in the Exchange’s Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards.<sup>13</sup> In addition, the existence of alternatives to these data products, such as options data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for proprietary market data would be so complicated that it could not be done practically or offer any significant benefits.<sup>14</sup>

<sup>12</sup> *NetCoalition*, 615 F.3d at 535.

<sup>13</sup> Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”) amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make clear that all exchange fees for market data may be filed by exchanges on an immediately effective basis.

<sup>14</sup> The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties and the Commission to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress’s direction that the Commission use its

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data.

#### The Existence of Actual Competition

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for options trades and sales of market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own options market data. Proprietary options data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice ("DOJ") (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges "compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale."<sup>15</sup>

authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. See Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at <http://www.sec.gov/rules/concept/s72899/buck1.htm>.

<sup>15</sup> Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), available at <http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html>; see also Complaint in U.S. v. Deutsche Borse AG and NYSE Euronext, Case No. 11-cv-2280 (D.C. Dist.) ¶ 24 ("NYSE and Direct Edge compete head-to-head . . .

Similarly, the options markets vigorously compete with respect to options data products.<sup>16</sup>

Moreover, competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary options data products and therefore constrain markets from overpricing proprietary options market data. Broker-dealers send their order flow to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. Options markets, similar to the equities markets, are highly fragmented.<sup>17</sup>

If an exchange succeeds in competing for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary options market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade executions, then its options market data products may be less desirable to customers using them in support of order routing and trading decisions in light of the diminished content; options data products offered by competing venues may become correspondingly more attractive. Thus, competition for quotations, order flow, and trade executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are also redistributed through market data vendors, such as Bloomberg and Thompson Reuters, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Vendors will not elect to make available NYSE Arca Options Product unless their

in the provision of real-time proprietary equity data products.").

<sup>16</sup> See, e.g., Securities Exchange Act Release No. 67466 (July 19, 2012), 77 FR 43629 (July 25, 2012) (SR-Phlx-2012-93), which describes a variety of options market data products and their pricing.

<sup>17</sup> See, e.g., Press Release, TABB Says US Equity Options Market Makers Need Scalable Technology to Compete in Today's Complex Market Structure (February 25, 2013), available at <http://www.tabbgroup.com/PageDetail.aspx?PageID=16&ItemID=1231>; Fragmentation Vexes Options Markets (April 21, 2014), available at <http://marketsmedia.com/fragmentation-vexes-options-market/>.

customers request it, and customers will not elect to pay the proposed fees unless NYSE Arca Options Product can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors operate as constraints on pricing proprietary data products.

#### Joint Product Nature of Exchange Platform

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, proprietary market data and trade executions are a paradigmatic example of joint products with joint costs. The decision of whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data availability and quality, and price and distribution of data products. Without a platform to post quotations, receive orders, and execute trades, exchange data products would not exist.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's platform for posting quotes, accepting orders, and executing transactions and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs.

Moreover, an exchange's broker-dealer customers generally view the costs of transaction executions and market data as a unified cost of doing business with the exchange. A broker-dealer will only choose to direct orders to an exchange if the revenue from the transaction exceeds its cost, including the cost of any market data that the broker-dealer chooses to buy in support of its order routing and trading decisions. If the costs of the transaction are not offset by its value, then the broker-dealer may choose instead not to purchase the product and trade away from that exchange. There is substantial evidence of the strong correlation between order flow and market data purchases. For example, in September 2015, more than 80% of the transaction volume on each of NYSE Arca and NYSE Arca's affiliates New York Stock Exchange LLC ("NYSE") and NYSE MKT LLC ("NYSE MKT") was executed by market participants that purchased one or more proprietary market data products (the 20 firms were not the

same for each market). A supra-competitive increase in the fees for either executions or market data would create a risk of reducing an exchange's revenues from both products.

Other market participants have noted that proprietary market data and trade executions are joint products of a joint platform and have common costs.<sup>18</sup> The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.<sup>19</sup>

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, and system and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of

<sup>18</sup> See Securities Exchange Act Release No. 72153 (May 12, 2014), 79 FR 28575, 28578 n.15 (May 16, 2014) (SR-NASDAQ-2014-045) (“[A]ll of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.”). See also Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR-NASDAQ-2010-110), and Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR-NASDAQ-2010-111).

<sup>19</sup> See generally Mark Hirschey, *Fundamentals of Managerial Economics*, at 600 (2009) (“It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. . . . Any allocation of common costs is wrong and arbitrary.”). This is not new economic theory. See, e.g., F. W. Taussig, “A Contribution to the Theory of Railway Rates,” *Quarterly Journal of Economics* V(4) 438, 465 (July 1891) (“Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.”).

attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

As noted above, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 13 options self-regulatory organization (“SRO”) markets. Three of the 13 have launched operations since December 2012.<sup>20</sup> The Exchange believes that these new entrants demonstrate that competition is robust.

Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different trading platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing posted liquidity. For example, BATS Global Markets (“BATS”) and Direct Edge, which previously operated as ATSS and obtained exchange status in 2008 and 2010, respectively, provided certain market data at no charge on their Web sites in order to attract more order flow, and used revenue rebates from resulting additional executions to maintain low execution charges for their users.<sup>21</sup> In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive

<sup>20</sup> See Securities Exchange Act Release Nos. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (approving exchange registration for Topaz Exchange, LLC) (known as ISE Gemini); 68341 (December 3, 2012), 77 FR 73065 (December 7, 2012) (approving exchange registration for Miami International Securities Exchange LLC (“Miami Exchange”)); and 75650 (August 7, 2015), 80 FR 48600 (August 13, 2015) (establishing rules governing the trading of options on the EDGX options market).

<sup>21</sup> This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

constraints with regard to the joint offering.

#### Existence of Alternatives

The large number of SROs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO is currently permitted to produce and sell proprietary data products, and many currently do, including but not limited to the Exchange, NYSE MKT, CBOE, C2 Options Exchange, Inc., ISE, ISE Gemini, NASDAQ, PHLX, BX, BATS and Miami Exchange.

The fact that proprietary data from vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. By way of example, BATS and NYSE Arca both published proprietary data on the Internet before registering as exchanges. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. Because market data users can find suitable substitutes for most proprietary market data products, a market that overprices its market data products stands a high risk that users may substitute another source of market data information for its own.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, BATS and Direct Edge. As noted above, BATS launched as an ATS in 2006 and became an exchange in 2008, while Direct Edge began operations in 2007 and obtained exchange status in 2010. As noted above, three new options exchanges have launched operations since December 2012.<sup>22</sup>

In determining the proposed fees, the Exchange considered the competitiveness of the market for proprietary options data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to

<sup>22</sup> See *supra* note 20.

establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

*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>23</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>24</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>25</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-

NYSEArca-2015-130 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-NYSEArca-2015-130. 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-NYSEArca-2015-130, and should be submitted on or before February 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-76893; File No. SR-ISE-2015-30]

**Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend Rule 804(g)**

January 13, 2016.

On November 10, 2015, International Securities Exchange, LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to require clearing member approval before a market maker could resume trading after the activation of a market-wide speed bump under Exchange Rule 804(g). The proposed rule change was published for comment in the **Federal Register** on November 30, 2015.<sup>3</sup> The Commission has received no comment letters on the proposal.

Section 19(b)(2) of the Act<sup>4</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether these proposed rule changes should be disapproved. The 45th day for this filing is January 14, 2016.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider and take action on the Exchange's proposed rule change.

Accordingly, pursuant to section 19(b)(2)(A)(ii)(I) of the Act<sup>5</sup> and for the reasons stated above, the Commission designates February 28, 2016 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to

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

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

<sup>3</sup> See Securities Exchange Act Release No. 76506 (November 23, 2015), 80 FR 74829.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> 15 U.S.C. 78s(b)(2)(A)(ii)(I).

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 17 CFR 240.19b-4(f)(2).

<sup>25</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>26</sup> 17 CFR 200.30-3(a)(12).