eXtensible Business Reporting Language (XBRL). This collection of information is located primarily in registration statement and report exhibit provisions, which require interactive data, and Rule 405 of Regulation S–T (17 CFR 232.405), which specifies how to submit and post interactive data. The exhibit provisions are in Item 601(b)(101) of Regulation S–K (17 CFR 229.601(b)(101)), Form F–10 under the Securities Act (17 CFR 239.40) and Forms 20–F, 40–F and 6–K under the Exchange Act (17 CFR 249.220f, 17 CFR 249.240f and 17 CFR 249.306).

In interactive data format, financial statement information could be downloaded directly into spreedsheets and analyzed in a variety of ways using commercial off-the-shelf software. The specified financial information already is and will continue to be required to be submitted to the Commission in traditional format under existing requirements. The purpose of the interactive data requirement is to make financial information easier for investors to analyze and assist issuers in automating regulatory filings and business information processing. We estimate that 8601 respondents per year will each submit an average of 4.5 reponses per year for an estimated total of 38,705 responses. We further estimate an internal burden of 56 hours per response for a total annual internal burden of 2,167,480 hours (56 hours per response × 38,705 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov* . Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 20, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–01394 Filed 1–25–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76937; File No. SR–NYSEArca–2016–09]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees for NYSE Arca BBO and NYSE Arca Trades

January 20, 2016.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 11, 2016, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 the fees for NYSE Arca BBO and NYSE Arca Trades to: (1) Establish a multiple data feed fee; (2) discontinue fees relating to managed non-display; (3) modify the application of the access fee; and (4) reduce the Enterprise Fee. The proposed rule change is available on the Exchange's Web site at *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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 the fees for NYSE Arca BBO and NYSE Arca Trades market data products,[4] as set forth on the NYSE Arca Equities Proprietary Market Data Fee Schedule ("Fee Schedule"). The Exchange proposes to make the following fee changes effective January 4 [sic],[5] 2016:

- Establish a multiple data feed fee;
- Discontinue fees relating to managed non-display;
- Modify the application of the access fee; and
- Reduce the Enterprise Fee.

Multiple Data Feed Fee [6]

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 a market data product in more than two locations. Data recipients taking NYSE Arca BBO or NYSE Arca Trades in more than two locations would be charged $200 per additional location per product per month. No new reporting would be required.[7]

Managed Non-Display Fees

Non-Display Use of NYSE Arca market data means accessing, processing, or consuming NYSE Arca market data delivered via direct and/or Redistributor [8] data feeds for a purpose

[4] *See* Securities Exchange Act Release Nos. 62188 (May 27, 2010), 75 FR 31484 (June 3, 2010) (SR–NYSEArca–2010–23); 69315 (April 5, 2013), 78 FR 21668 (April 11, 2013) (SR–NYSEArca–2013–37) ("2013 Non-Display Filing"); 70213 (Aug. 15, 2013), 78 FR 51796 (Aug. 21, 2013) (SR–NYSEArca–2013–81) ("2013 Arca BBO and Trades Filing"); 73011 (Sept. 5, 2014), 79 FR 54315 (Sept. 11, 2014) (SR–NYSEARCA–2014–93) ("2014 Non-Display Filing"); and 73998 (Jan. 6, 2015), 80 FR 1549 (Jan. 12, 2015) (SR–NYSEArca–2014–148) ("2015 NYSE Arca BBO and Trades Filing").

[5] The Commission notes that, as stated in the Exhibit 5, the proposed fee changes were effective as of January 11, 2016.

[6] The text of footnote 5 in Exhibit 5 of this proposed rule change was previously filed under a separate filing. *See* SR–NYSEArca–2016–01 (Proposed Rule Change to Amend the Fees for NYSE ArcaBook).

[7] 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 BBO product, that data recipient will pay the Multiple Data Feed fee with respect to three of the five locations.

[8] "Redistributor" means a vendor or any other person that provides an NYSE Arca data product to a data recipient or to any system that a data

Continued

other than in support of a data recipient's display usage or further internal or external redistribution.[9] Managed Non-Display Services fees apply when a data recipient's non-display applications are hosted by a Redistributor that has been approved for Managed Non-Display Services.[10] A Redistributor approved for Managed Non-Display Services manages and controls the access to NYSE Arca BBO and NYSE Arca Trades and does not allow for further internal distribution or external redistribution of NYSE Arca BBO and NYSE Arca Trades by the data recipients. A Redistributor approved for Managed Non-Display Services is required to report to NYSE Arca on a monthly basis the data recipients that are receiving NYSE Arca market data through the Redistributor's managed non-display service and the real-time NYSE Arca market data products that such data recipients are receiving through such service. Recipients of data through Managed Non-Display Service have no additional reporting requirements. Data recipients that receive NYSE Arca BBO from an approved Redistributor of Managed Non-Display Services are charged a Managed Non-Display Services Fee of $200 per month, and data recipients that receive NYSE Arca Trades from an approved Redistributor of Managed Non-Display Services are charged a Managed Non-Display Services Fee of $800 per month. Data recipients that receive NYSE Arca BBO and NYSE Arca Trades from an approved Redistributor of Managed Non-Display Services are also charged an Access Fee of $375 per month.[11]

The Exchange proposes to discontinue the fees related to Managed Non-Display Services because of the limited number of Redistributors that have qualified for Managed Non-Display Services and the administrative burdens associated with the program in light of the limited number of Redistributors that have qualified for Managed Non-Display Services. As proposed, all data recipients currently using NYSE Arca BBO and NYSE Arca Trades on a managed non-display basis would be subject to the same access fee of $750 per month, and the same non-display services fees,[12] as other non-display data recipients.[13]

Modification of the Application of the Access Fee

The Exchange proposes to modify the application of the access fees for NYSE Arca BBO and NYSE Arca Trades.

Each NYSE Arca BBO data feed recipient currently pays a monthly $750 access fee for NYSE Arca BBO, and each NYSE Arca Trades data feed recipient currently pays a monthly $750 access fee for NYSE Arca Trades. A single access fee applies for data recipients receiving both NYSE Arca BBO and NYSE Arca Trades.[14] The Exchange proposes to amend the access fees so that recipients of NYSE Arca BBO and NYSE Arca Trades would be required to pay a separate access fees [sic] for NYSE Arca BBO ($750 per month) and NYSE Arca Trades ($750 per month). This change would have no impact on customers who receive only NYSE Arca BBO or only NYSE Arca Trades.

Reduction to Enterprise Fee

The Exchange currently charges an enterprise fee of $175,000 per month for an unlimited number of professional and non-professional users for each of NYSE Arca BBO and NYSE Arca Trades. A single Enterprise Fee applies for clients receiving both NYSE Arca BBO and NYSE Arca Trades.[15] The Exchange proposes to lower the enterprise fee to $170,000 per month.

As an example, under the current fee structure for per user fees, if a firm had 40,000 professional users who each received NYSE Arca Trades at $4 per month and NYSE Arca BBO at $4 per

month, then the firm would pay $320,000 per month in professional user fees. However, under the current pricing structure, the fees would be capped at $175,000 and effective January, the fees would be capped at $170,000.

Under the proposed enterprise fee, the firm would pay a flat fee of $170,000 for an unlimited number of professional and non-professional users for both products. As is the case currently, a data recipient that pays the enterprise fee would not have to report the number of such users on a monthly basis.[16] However, every six months, a data recipient must provide the Exchange with a count of the total number of natural person users of each product, including both professional and non-professional users.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[17] in general, and sections 6(b)(4) and 6(b)(5) of the Act,[18] 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 BBO and NYSE Arca Trades.

Multiple Data Feed Fee

The Exchange believes that it is reasonable to require data recipients to pay a modest additional fee for 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

recipient uses, irrespective of the means of transmission or access.

[9] *See e.g.* 2014 Non-Display Filing, *supra* note 4.

[10] To be approved for Managed Non-Display Services, a Redistributor must manage and control the access to NYSE Arca BBO and NYSE Arca Trades for data recipients' non-display applications and not allow for further internal distribution or external redistribution of the information by data recipients. In addition, the Redistributor is required to (a) host the data recipients' non-display applications in equipment located in the Redistributor's data center and/or hosted space/cage and (b) offer NYSE Arca BBO and NYSE Arca Trades in the Redistributor's own messaging formats (rather than using raw NYSE Arca message formats) by reformatting and/or altering NYSE Arca BBO and NYSE Arca Trades prior to retransmission without affecting the integrity of NYSE Arca BBO and NYSE Arca Trades and without rendering NYSE Arca BBO and NYSE Arca Trades inaccurate, unfair, uninformative, fictitious, misleading or discriminatory.

[11] A single Managed Non-Display Access Fee applies for clients receiving both NYSE Arca BBO and NYSE Arca Trades. The Exchange is also proposing in this filing to modify this application of the access fees. *See* ''Modification of the application of the access fee,'' below.

[12] *See* Fee Schedule.

[13] In order to harmonize its approach to fees for its market data products, the Exchange is simultaneously proposing to remove fees related to Managed Non-Display Services for NYSE ArcaBook and NYSE Arca Integrated Feed. *See* SR–NYSEArca–2016–01 and SR–NYSEArca–2016–03.

[14] *See* Securities Exchange Act Release No. 62188 (May 27, 2010), 75 FR 31484 (June 3, 2010) (SR–NYSEArca–2010–23).

[15] *See* 2013 NYSE Arca BBO and Trades Filing, *supra* note 4.

[16] Professional users currently are subject to a per display device count. *See* 2015 NYSE Arca BBO and Trades Filing, *supra* note 4.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4), (5).

in 2013 by the Consolidated Tape Association ("CTA").[19] 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.[20]

Managed Non-Display Fees

The Exchange believes that it is reasonable to discontinue Managed Non-Display Fees. As the Exchange noted in the 2013 Non-Display Filing, the Exchange determined at that time that its fee structure, which was then based primarily on counting both display and non-display devices, was no longer appropriate in light of market and technology developments. Since then, the Exchange also modified its approach to display and non-display fees with changes to the fees as reflected in the 2014 Non-Display Filing.[21] Discontinuing the fees applicable to Managed Non-Display as proposed reflects the Exchange's continuing review and consideration of the application of non-display fees, and would harmonize and simplify the application of Non-Display Use fees by applying them consistently to all users. In particular, after further experience with the application of non-display use fees, the Exchange believes that it is more equitable and less discriminatory to discontinue the distinction for Managed Non-Display services because all data recipients using data on a non-display basis are using it in a comparable way and should be subject to similar fees regardless of whether or not they receive the data directly from the Exchange. The Exchange believes that applying the same non-display fees to all data recipients on the same basis better reflects the significant value of non-display data to data recipients and eliminates what is effectively a discount for certain data recipients, and as such is not unfairly discriminatory. The Exchange believes that the non-display fees directly and appropriately reflect the significant value of using non-display data in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.

Modifications to Access Fee

The Exchange believes that it is reasonable to make the changes proposed to the application of access fees for NYSE Arca BBO and NYSE Arca Trades. The Exchange believes the proposed changes will make the application of the access fees to each of the products so that an access fee entitles a customer to receive, for the applicable product, a data feed or feeds. Specifically, data recipients that take the NYSE Arca BBO and/or NYSE Arca Trades products receive value from each product they choose to take. A data recipient that chooses to take multiple products (no recipient is required to take any of these products, or any specific combination of them) uses each product in a different way and therefore obtains different value from each. The Exchange believes that each product has a separate and distinct value that is appropriate to reflect in a separate access fee. Finally, the requirement to pay separate access fees for each market data product is equitable and not unfairly discriminatory because it would apply to all data recipients and appropriately reflects the value of each product to those who choose to use them.

Reduction to Enterprise Fee

The proposed enterprise fees for NYSE Arca BBO and NYSE Arca Trades are reasonable because they could result in a fee reduction for data recipients with a large number of professional and nonprofessional users, as described in the example above. If a data recipient has a smaller number of professional users of NYSE Arca BBO and/or NYSE Arca Trades, then it may continue to use the per user fee structure. By reducing prices for data recipients with a large number of professional and non-professional users, the Exchange believes that more data recipients may choose to offer NYSE Arca BBO and NYSE Arca Trades, thereby expanding the distribution of this market data for the benefit of investors. The Exchange also believes that offering an enterprise fee expands the range of options for offering NYSE Arca BBO and NYSE Arca Trades and allows data recipients greater choice in selecting the most appropriate level of data and fees for the professional and non-professional users they are servicing.

The Exchange notes that NYSE Arca BBO and NYSE Arca Trades are entirely optional. The Exchange is not required to make NYSE Arca BBO and NYSE Arca Trades available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase NYSE Arca BBO and NYSE Arca Trades. Firms that do purchase NYSE Arca BBO and NYSE Arca Trades do so for the primary goals of using them 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 BBO and NYSE Arca Trades or any other similar products are attractively priced or not.[22]

Firms that do not wish to purchase NYSE Arca BBO and NYSE Arca Trades at the new prices have a variety of alternative market data products from which to choose,[23] or if NYSE Arca BBO and NYSE Arca Trades do not provide sufficient value to firms as offered based on the uses those firms have or planned to make of them, such firms may simply choose to conduct their business operations in ways that do not use NYSE Arca BBO and NYSE Arca Trades or use them 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.[24] 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 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.

[19] *See* Securities Exchange Act Release No. 70010 (July 19, 2013), 78 FR 44984 (July 25, 2013) (SR–CTA/CQ–2013–04).

[20] *See* "Direct Access Fee," Options Price Reporting Authority Fee Schedule Fee Schedule PRA [sic] Plan at *http://www.opradata.com/pdf/fee_schedule.pdf.*

[21] *See* note 4, *supra.*

[22] *See, e.g.,* Proposing Release on Regulation of NMS Stock Alternative Trading Systems, Securities Exchange Act Release No. 76474 (Nov. 18, 2015) (File No. S7–23–15). *See also,* "Brokers Warned Not to Steer Clients' Stock Trades Into Slow Lane," Bloomberg Business, December 14, 2015 (Sigma X dark pool to use direct exchange feeds as the primary source of price data).

[23] *See* NASDAQ Rule 7047 (Nasdaq Basic) and BATS Rule 11.22 (BATS TOP and Last Sale).

[24] *See* FINRA Regulatory Notice 15–46, "Best Execution," November 2015.

national market system for trading equity securities.' '' [25]

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. In addition, the existence of alternatives to these data products, such as consolidated data and proprietary 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.[26]

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 one another for listings and order flow 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 market data. Proprietary 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.'' [27]

Moreover, competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. Broker-dealers send their order flow and transaction reports to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume . . . dispersed among many highly automated trading

centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [28] More recently, SEC Chair Mary Jo White has noted that competition for order flow in exchange-listed equities is ''intense'' and divided among many trading venues, including exchanges, more than 40 alternative trading systems, and more than 250 broker-dealers.[29]

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 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 market data products may be less desirable to customers in light of the diminished content and data products offered by competing venues may become 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 BBO or NYSE Arca Trades unless their customers request it, and

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[25] *NetCoalition,* 615 F.3d at 535.

[26] 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 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.*

[27] 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 . . . in the provision of real-time proprietary equity data products.'').

[28] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598. Data available on ArcaVision show that from June 30, 2013 to June 30, 2014, no exchange traded more than 12% of the volume of listed stocks by either trade or dollar volume, further evidencing the continued dispersal of and fierce competition for trading activity. *See https://www.arcavision.com/Arcavision/arcalogin.jsp.*

[29] Mary Jo White, Enhancing Our Equity Market Structure, Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available on the Commission Web site), citing Tuttle, Laura, 2014, ''OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks,'' at 7–8.

customers will not elect to pay the proposed fees unless NYSE Arca BBO and NYSE Arca Trades 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.[30] 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.[31]

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

[30] *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).

[31] *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 11 equities self-regulatory organization ("SRO") markets, as well as various forms of alternative trading systems ("ATSs"), including dark pools and electronic communication networks ("ECNs"), and internalizing broker-dealers. SRO markets compete to attract order flow and produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities compete to attract transaction reports from the non-SRO venues.

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.[32] 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 constraints with regard to the joint offering.

[32] 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.

Existence of Alternatives

The large number of SROs, ATSs, and internalizing broker-dealers that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and broker-dealer is currently permitted to produce and sell proprietary data products, and many currently do, including but not limited to the Exchange, NYSE, NYSE MKT, NASDAQ OMX, BATS, and Direct Edge.

The fact that proprietary data from ATSs, internalizing broker-dealers, and 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. With respect to NYSE Arca BBO and NYSE Arca Trades, competitors offer close substitute products.[33] 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.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing.

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 Trading 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.

In determining the proposed change to the fees for NYSE Arca BBO and NYSE Arca Trades, the Exchange considered the competitiveness of the market for proprietary 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 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) [34] of the Act and subparagraph (f)(2) of Rule 19b–4 [35] 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) [36] 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.* Please include File Number SR–NYSEArca–2016–09 on the subject line.

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–09. 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 will also 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–NYSEArca–2016–09 and should be submitted on or before February 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Brent J. Fields,

Secretary.

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[33] *See supra* note 23.

[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 CFR 240.19b–4(f)(2).

[36] 15 U.S.C. 78s(b)(2)(B).

[37] 17 CFR 200.30–3(a)(12).