As stated above, the RWD Plan is designed to enhance OCC's ability to address extreme stresses or crises by establishing a framework that OCC could use to navigate the use of its Enhanced Risk Management Tools and Recovery Tools, with the aim of maintaining OCC's viability as a going concern. In the event that OCC's recovery efforts are not successful, the RWD Plan would seek to improve the possibility that a resolution of OCC's operations can be conducted in an orderly manner, thereby minimizing the disruption to clearing Members and market participants and improving the likelihood of minimizing the risk of contagion to the broader financial system. Accordingly, OCC believes the updates to the RWD Plan would improve the possibility of OCC's effectively addressing a variety of potential risks, thereby improving OCC's ability to ultimately maintain market and public confidence during a time of unprecedented stress. In this regard, OCC believes the proposed change would promote robust risk management and safety and soundness and thereby reduce systemic risks and support the stability of the broader financial system.

OCC also believes that the proposed change is consistent with Exchange Act Rule 17Ad–22(e)(3)(ii), which requires each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to include plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.\textsuperscript{25} As stated above, the RWD Plan would describe OCC's plans to recover from, or orderly resolve its operations as a result of, severe stress brought about by credit losses, liquidity shortfalls, losses from general business risk or other losses.\textsuperscript{26} The proposed updates to the RWD Plan would improve the accuracy of the inventory of OCC's Recovery Tools and improve OCC's evaluation of scenarios which may potentially prevent OCC from providing its Critical Services as a going-concern, as well as OCC's plans for recovery or orderly wind-down. Further, the proposed changes to the Plan would update and improve the information that a resolution authority may reasonably anticipate as necessary for purposes of recovery and orderly wind-down planning.\textsuperscript{27} In this regard, OCC believes the proposed change is consistent with Rule 17Ad–22(e)(3)(ii).\textsuperscript{28}

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its website of proposed changes that are implemented. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision 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–OCC–2020–806 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–OCC–2020–806. 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 website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 website 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 self-regulatory organization.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not read or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2020–806 and should be submitted on or before December 3, 2020.

By the Commission.

J. Matthew DeLesDernier,
Assistant Secretary.

November 12, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

\textsuperscript{25} 17 CFR 240.17Ad–22(e)(3)(ii).

\textsuperscript{26} 17 CFR 240.17Ad–22(e)(3)(ii).

\textsuperscript{27} See 81 FR at 70810.

\textsuperscript{28} 17 CFR 240.17Ad–22(e)(3)(ii).
reduce the fees associated with the NYSE BQT proprietary data product, which competes directly with similar products offered by both the Nasdaq and Cboe families of U.S. equity exchanges. Collectively, the proposed fee decreases are intended to respond to the competition posed by similar products offered by the other exchange groups. Specifically, the Exchange proposes to (1) reduce the Access Fees by more than 93% for Redistributors of NYSE American BBO and NYSE American Trades that subscribe to only such data feeds and do not subscribe to any other market data product listed on the Fee Schedule, and use such market data products for external distribution only; and (2) waive the Redistribution Fee for Redistributors that are eligible for the Per User Access Fee if the Redistributor provides NYSE American Trades externally to at least one data feed recipient and reports such recipient to the Exchange. All of the proposed changes would decrease fees for market data on the Exchange. The Exchange proposes to implement these proposed fee changes on January 1, 2021.

Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.” Indeed, equity trading is currently dispersed across 16 exchanges, numerous alternative trading systems, and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 18% market share (whether including or excluding auction volume).

With the NYSE BQT market data product, NYSE American and its affiliates compete head to head with the Nasdaq Basic and Cboe One Feed market data products. Similar to those market data products, NYSE BQT, which was established in 2014, consists of certain elements from the NYSE American BBO and NYSE American Trades market data products as well as from market data products from the Exchange’s affiliates, NYSE, NYSE Arca, NYSE Chicago, Inc. (“NYSE Chicago”), and NYSE National, Inc. (“NYSE National”). Similar to both Nasdaq Basic and the Cboe One Feed, NYSE BQT provides investors with a unified view of comprehensive last sale and BBO data in all Tape A, B, and C securities that trade on the Exchange, NYSE, NYSE Arca, NYSE Chicago, and

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 decrease the fees for certain NYSE American market data products, as set forth on the NYSE American Proprietary Market Data Fee Schedule (“Fee Schedule”). These fee decreases, taken together with similar fee decreases filed by the Exchange’s affiliated exchanges, New York Stock Exchange LLC (“NYSE”) and NYSE Arca, Inc. (“NYSE Arca”), will

NYSE National.

Also similar to Nasdaq Basic and the Cboe One Feed, NYSE BQT is not intended to be used for purposes of making order-routing or trading decisions, but rather provides indicative prices for Tape A, B, and C securities.15

Currently, to subscribe to NYSE BQT, subscribers are charged an access fee of $250 per month.16 Additionally, subscribers must also subscribe to, and pay applicable fees for NYSE American BBO, NYSE American Trades, NYSE BBO, NYSE Trades, NYSE Arca BBO, NYSE Arca Trades, NYSE Chicago BBO, NYSE Chicago Trades, NYSE National BBO, and NYSE National Trades. Thus, an NYSE BQT subscriber currently pays the $250 access fee for NYSE BQT, plus a $1,500 access fee for each of NYSE BBO and NYSE Trades,17 plus a $750 access fee for each of NYSE American BBO and NYSE American Trades,18 plus a $750 access fee for each of NYSE Arca BBO and NYSE Arca trades.19 For a total of $6,250 ($250 + $3,000 + $1,500 + $1,500 + $750). In addition, an NYSE BQT subscriber would need to pay for the applicable Professional or Non-Professional User Fees for the underlying market data products, as applicable.20

Because NYSE BQT is priced based on the fees associated with the underlying ten market data feeds, the Exchange and its affiliates propose to compete with the Nasdaq Basic and Cboe One Feed by reducing fees for the underlying market data products that comprise NYSE BQT. Together with NYSE and NYSE Arca, the Exchange similarly proposes to compete for subscribers to NYSE BQT by designing its fee decreases to be attractive to Redistributors that intend to subscribe to and externally redistribute only NYSE BQT. The Exchange understands that data recipients that are interested in subscribing to NYSE BQT obtain their data from Redistributors that do not currently subscribe to either the NYSE BQT data feed or any other market data product listed on the Fee Schedule. Because such Redistributors do not subscribe to NYSE BQT, the prospective data recipients that are the customers of such Redistributors are unable to subscribe to NYSE BQT. The proposed fee changes are designed to provide a financial incentive for such Redistributors to subscribe to NYSE BQT so that their customers, which have expressed an interest in subscribing to NYSE BQT, would be able to access the product via such Redistributors.

Access Fee—NYSE American BBO and NYSE American Trades

NYSE American BBO is a NYSE American-only market data product that allows a vendor to redistribute on a real-time basis the same best-bid-and-offer information that NYSE American reports under the Consolidated Quotation Plan (“CQ Plan”) for inclusion in the CQ Plan’s consolidated quotation information data stream (“NYSE American BBO Information”).22 NYSE American BBO Information includes the best bids and offers for all securities that are traded on the Exchange and for which NYSE American reports quotes under the CQ Plan. NYSE American BBO is available over a single data feed, regardless of the markets on which the securities are listed. NYSE American BBO is made available to its subscribers no earlier than the information it contains is made available to the processor under the CQ Plan.

NYSE American Trades is a NYSE American-only market data product that allows a vendor to redistribute on a real-time basis the same last sale information that NYSE American reports to the Consolidated Tape Association (“CTA”) for inclusion in the CTA’s consolidated data stream and certain other related data elements (“NYSE American Last Sale Information”).23 NYSE American Last Sale Information includes last sale information for all securities that are traded on the Exchange. NYSE American Trades is made available to its subscribers at the same time as the information it contains is made available to the processor under the CTA Plan.

Currently, subscribers of each of the NYSE American BBO and NYSE American Trades products that receive a data feed pay an Access Fee of $750 per month. In February 2020, the Exchange added the Per User Access Fee, which is a reduced Access Fee of $100 per month currently available only for subscribers of NYSE American BBO and NYSE American Trades that receive those products in a display-only format, including for internal use for Professional Users and external distribution to both Professional and Non-Professional Users.24

The Exchange now proposes that Redistributors of NYSE American BBO and NYSE American Trades data feeds that do not subscribe to any other market data product listed on the Fee Schedule, and use such market data products for external distribution only, would also be eligible for the reduced Per User Access Fee. A Redistributor that receives a data feed of NYSE American BBO and NYSE American Trades and uses the market data products for any other purpose (such as internal use) or that subscribes to any other products listed on the Fee Schedule would continue to pay the $1,500 per month General Access Fee. As currently set forth in footnote 3 to the Fee Schedule, a subscriber would be charged only one access fee for each of the NYSE American BBO and NYSE American Trades products, depending on the use of that product.

To effect this change, the Exchange proposes to modify footnote 3 to the Fee

Schedule as follows (proposed text is italicized, proposed deletions bracketed):

The Per User Access Fee is charged to: (i) [A] a subscriber that receives a data feed and uses the market data product only for Professional Users and Non-Professional Users in a display-only format, including for internal use and external redistribution in a display-only format, [will be charged the Per User Access Fee] and (ii) a Redistributor that subscribes only to the NYSE American BBO and NYSE American Trades data feeds, and does not subscribe to any other Products listed on this Fee Schedule, and uses these market data products for external distribution only. A subscriber that receives a data feed and uses the market data product for any other purpose, including if combined with Per User use, will be charged the General Access Fee. A subscriber will be charged only one access fee for each of the NYSE American BBO and NYSE American Trades products, depending on the use of that product.

The proposed rule change would result in lower fees for Redistributors of each of the NYSE American BBO and NYSE American Trades products that receive NYSE American BBO and NYSE American Trades data feeds and do not subscribe to any other market data product listed on the Fee Schedule, and use such market data products for external distribution only.25 The Exchange believes that the proposed fee reduction in NYSE American BBO and NYSE American Trades would provide an incentive for such Redistributors to subscribe to the NYSE BQT data feeds so that such product would be available to their customers, which have expressed an interest in subscribing to NYSE BQT.

The proposed rule change is intended to encourage greater use of NYSE BQT by making it more affordable for Redistributors that have customers interested in subscribing to NYSE BQT but that do not currently subscribe to NYSE American BBO or NYSE American Trades or any other products listed on the Fee Schedule. The proposed fee reduction would allow the Exchange to compete more effectively with Nasdaq Basic and Choe One Feed by expanding the number of Redistributors that would subscribe to NYSE BQT, and therefore make the product available to data subscribers interested in NYSE BQT.

Redistributor Fee—NYSE American Trades

The Exchange currently charges a Redistribution Fee of $750 per month for NYSE American Trades. A Redistributor is required to report to the Exchange each month the number of Professional and Non-Professional Users and data feed recipients that receive NYSE American Trades.

The Exchange proposes to waive the Redistribution Fee for a Redistributor that is eligible for the Per User Access Fee if the Redistributor provides NYSE American Trades externally to at least one data feed recipient and reports such data feed recipient or recipients to the Exchange. For example, a Redistributor that subscribes to the NYSE American BBO and NYSE American Trades data feeds and does not subscribe to any other product listed on the Fee Schedule would have the Redistribution Fee waived for the month if such Redistributor provides NYSE American BBO and NYSE American Trades externally to at least one data feed recipient and reports such data feed recipient to the Exchange.

By targeting this proposed fee waiver to Redistributors that provide external distribution of NYSE American Trades, the Exchange believes that this would provide an incentive for Redistributors to make the NYSE BQT market data product available to its customers. Specifically, if a data recipient is interested in subscribing to NYSE BQT and relies on a Redistributor to obtain market data products from the Exchange, that data recipient would need its Redistributor to redistribute NYSE BQT. Currently, Redistributors that redistribute some NYSE American market data products do not necessarily also make NYSE BQT available. The Exchange believes that this proposed fee waiver for Redistributors of NYSE American Trades would provide an incentive for Redistributors to make NYSE BQT available to their customers, which will increase the availability of NYSE BQT to a larger potential population of data recipients.26

Applicability of Proposed Rule Change

As noted above, the proposed rule change is designed to further reduce the overall cost of NYSE BQT by reducing specified fees applicable to the underlying market data products that comprise NYSE BQT. Prior to the BQT Fee Reduction Filing, the Exchange had only one subscriber to NYSE BQT. Today, the Exchange has seven subscribers, three of whom became customers as a direct result of the BQT Fee Reduction Filing and currently pay the reduced Per User Access Fee. The Exchange believes that the proposed rule changes would provide a further incentive for Redistributors to subscribe to NYSE BQT for purposes of providing external distribution of NYSE BQT to potential data recipients interested in the product.

Because the proposed rule change is targeted to potential Redistributors of NYSE BQT that do not currently subscribe to any NYSE market data products, the proposed changes to the availability of the NYSE American BBO and NYSE American Trades Per User Access Fees, together with the proposed changes on NYSE and NYSE Arca, are narrowly tailored with that purpose in mind. Accordingly, these proposed fee changes are not designed for Redistributors that are existing customers of NYSE American market data products or that engage in internal use of NYSE BQT. This proposed rule change would not result in any changes to the market data fees for NYSE American BBO and NYSE American Trades for such data subscribers.

The Exchange believes that there are at least three potential Redistributors that would meet the qualifications to be eligible for these proposed fee changes. The Exchange further believes that this proposed rule change has the potential to attract these three Redistributors as new Redistributors for NYSE BQT, as well as new NYSE BQT subscribers that would be subscribing to NYSE American BBO and NYSE American Trades for the first time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,27 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 Proposed Rule Change Is Reasonable

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining

25 The Per User Access Fee is 93% lower than the General Access Fee. Together with the corresponding proposed rule changes by NYSE and NYSE Arca to similarly reduce the access fees to their BBO and Trades products for Redistributors, such Redistributors would be eligible for significantly lower access fees for NYSE BQT, from $8,250 per month to $850 per month ($250 + $200 + $200 + $200), a reduction of more than 86%.

26 NYSE American does not charge a Redistribution Fee for NYSE American BBO.


prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”29

With respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in NetCoalition v. SEC upheld the Commission’s reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of 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.”30

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.’”31

More recently, the Commission confirmed that it applied a “market-based” test in its assessment of market data fees, and that under that test: the Commission considers whether the exchange was subject to significant competitive forces in setting the terms of its proposal for [market data], including the level of any fees. If an exchange meets this burden, the Commission will find that its fee rate is consistent with the Act unless there is a substantial countervailing basis to find that the terms of the rule violate the Act or the rules thereunder.”32

1. The Proposed Fees Are Constrained by Significant Competitive Forces
   a. Exchange Market Data Is Sold in a Competitive Market

   In 2018, Charles M. Jones, the Robert W. Lear of Professor of Finance and Economics of the Columbia University School of Business, conducted an analysis of the market for equity market data in the United States. He canvassed the demand for both consolidated and exchange proprietary market data products and the uses to which those products were put by market participants, and reported his conclusions in a paper annexed hereto.33 Among other things, Professor Jones concluded that:

   • “The market [for exchange market data] is characterized by robust competition: Exchanges compete with each other in selling proprietary market data products. They also compete with consolidated data feeds and with data provided by alternative trading systems (‘ATSes’). Barriers to entry are very low, so existing exchanges must also take into account competition from new entrants, who generally try to build market share by offering their proprietary market data products for free for some period of time.”34

   • “Although there are regulatory requirements for some market participants to use consolidated data products, there is no requirement for market participants to purchase any proprietary market data product for regulatory purposes.”35

   • “There are a variety of data products, and consumers of equity market data choose among them based on their needs. Like most producers, exchanges offer a variety of market data products at different price levels. Advanced proprietary market data products provide greater value to those who subscribe. As in any other market, each potential subscriber takes the features and prices of available products into account in choosing what market data products to buy based on its business model.”36

   • “Exchange equity market data fees are a small cost for the industry overall: the data demonstrates that total exchange market data revenues are orders of magnitude smaller than (i) broker-dealer commissions, (ii) investment bank earnings from equity trading, and (iii) revenues earned by third-party vendors.”37

   • “For proprietary exchange data feeds, the main question is whether there is a competitive market for proprietary market data. More than 40 active exchanges and alternative trading systems compete vigorously in both the market for order flow and in the market for market data. The two are closely linked: an exchange needs to consider the negative impact on its order flow if it raises the price of its market data. Furthermore, new entrants have been frequent over the past 10 years or so, and these venues often give market data away for free, serving as a check on pricing by more established exchanges. These are all the standard hallmarks of a competitive market.”38

Professor Jones’ conclusions are consistent with the demonstration of the competitive constraints on the pricing of market data demonstrated by analysis of exchanges as platforms for market data and trading services, as shown below.39

b. Exchanges That Offer Market Data and Trading Services Function as Two-Sided Platforms

An exchange may demonstrate that its fees are constrained by competitive forces by showing that platform competition applies.

As the United States Supreme Court recognized in Ohio v. American Express, platforms are firms that act as intermediaries between two or more sets of agents, and typically the choices made on one side of the platform affect the results on the other side of the platform via externalities, or “indirect network effects.”40 Externalities are linkages between the different “sides” of a platform such that one cannot understand pricing and competition for goods or services on one side of the platform in isolation; one must also account for the influence of the other side. As the Supreme Court explained:

To ensure sufficient competition, two-sided platforms must be sensitive to the prices that they charge each side. . . . Raising the price on side A risks losing participation on that side, which decreases the value of the platform to side B. If the

---

32 See Regulation NMS Adopting Release, 70 FR 37495 at 37499.
34 Id. at 535.
36 See Exhibit 3A, Charles M. Jones, Understanding the Market for U.S. Equity Market Data, August 31, 2018 (hereinafter ‘‘Jones Paper’’).
38 Id.
39 More recently, Professors Jonathan Brogaard and James Brugler also looked at the market for proprietary market data products and confirmed that it is competitive. The authors document that introducing fees for market data leads to lower market share, and identify informed traders as the most affected trader categories after fees are introduced. See Jonathan Brogaard and James Brugler, Competition and Exchange Data Fees, October 2, 2020 (Exhibit 3B).
participants on side B leave due to this loss in value, then the platform has even less value to side A—risking a feedback loop of declining demand. . . . Two-sided platforms therefore must take these indirect network effects into account before making a change in price on either side.41

The Exchange and its affiliated exchanges have long maintained that they function as platforms between consumers of market data and consumers of trading services. Proving the existence of linkages between the two sides of this platform requires an in-depth economic analysis of both public data and confidential Exchange data about particular customers’ trading activities and market data purchases. Exchanges, however, are prohibited from sharing details about these specific customer activities and purchases. For example, pursuant to Exchange Rule 7.41E, transactions executed on the Exchange are processed anonymously.42

The Exchange and its affiliated exchanges retained a third party expert, Marc Rysman, Professor of Economics at Boston University, to analyze how platform economics applies to stock exchanges’ sale of market data products and trading services, and to explain how this affects the assessment of competitive forces affecting the exchanges’ data fees.43 Professor Rysman was able to analyze exchange data that is not otherwise publicly available in a manner that is consistent with the exchanges’ confidentiality obligations to customers. As shown in his paper, Professor Rysman surveyed the existing economic literature analyzing stock exchanges as platforms between market data and trading activities, and explained the types of linkages between market data access and trading activities that must be present for an exchange to function as a platform. In addition, Professor Rysman undertook an empirical analysis of customers’ trading activities within the NYSE group of exchanges in reaction to NYSE’s introduction in 2015 of the NYSE Integrated Feed, a full order-by-order depth of book data product.44

Professor Rysman’s analysis of this confidential firm-level data shows that firms that purchased the NYSE Integrated Feed market data product after its introduction were more likely to route orders to NYSE as opposed to one of the other NYSE-affiliated exchanges, such as NYSE Arca or NYSE American.45 Moreover, Professor Rysman shows that the same is true for firms that did not subscribe to the NYSE Integrated Feed: The introduction of the NYSE Integrated Feed led to more trading on NYSE (as opposed to other NYSE-affiliated exchanges) by firms that did not subscribe to the NYSE Integrated Feed.46 This is the sort of externality that is a key characteristic of a platform market.47

From this empirical evidence, Professor Rysman concludes:

• “Data is more valuable when it reflects more trading activity and more liquidity-providing orders. These linkages alone are enough to make platform economics necessary for understanding the pricing of market data.”48

• “[L]inkages running in the opposite direction, from data to trading, are also very likely to exist. This is because market data from an exchange reduces uncertainty about the likelihood, price, or timing of execution for an order on that exchange. This reduction in uncertainty makes trading on that exchange more attractive for traders that subscribe to that exchange’s market data. Increased trading by data subscribers, in turn, makes trading on the exchange in question more attractive for traders that do not subscribe to the exchange’s market data.”49

• “The ‘mechanisms by which market data makes trading on an exchange more attractive for subscribers to market data . . . apply to a wide assortment of market data products, including BBO, order book, and full order-by-order depth of book data products at all exchanges.”50

• “[E]mpirical evidence confirms that stock exchanges are platforms for data and trading.”51

• “The platform nature of stock exchanges means that data fees cannot be analyzed in isolation, without accounting for the competitive dynamics in trading services.”52

• “Competition is properly understood as being between platforms (i.e., stock exchanges) that balance the needs of consumers of data and traders.”53

• “Data fees, data use, trading fees, and order flow are all interrelated.”54

• “Competition for order flow can discipline the pricing of market data, and vice-versa.”55

• “As with platforms generally, overall competition between exchanges will limit their overall profitability, not margins on any particular side of the platform.”56

c. Exchange Market Data Fees Are Constrained by the Availability of Substitute Platforms

Professor Rysman’s conclusions that exchanges function as platforms for market data and transaction services mean that exchanges do not set fees for market data products without considering, and being constrained by, the effect the fees will have on the order-flow side of the platform. And as the D.C. Circuit recognized in NetCoalition I, “[n]o one disputes that competition for order flow is fierce.”57 The court further noted that “no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers,” and that an exchange “must compete vigorously for order flow to maintain its share of trading volume.”58

As noted above, while Regulation NMS has enhanced competition, it has also fostered a “Fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”59 The Commission’s Division of Trading and Markets has also recognized that with so many “operating equities exchanges and dozens of ATSs, there is vigorous price competition among the U.S. equity markets and, as a result, [transaction fees] are tailored and frequently modified to attract particular types of order flow, some of which is highly fluid and price sensitive.”56 Indeed.
today, equity trading is currently dispersed across 16 exchanges,60 numerous alternative trading systems,61 broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 18% market share.62

Further, low barriers to entry mean that new exchanges may, and do, rapidly and inexpensively enter the market and offer additional substitute platforms to compete with the Exchange.63 For example, in 2020 alone, three new exchanges have entered the market: Long Term Stock Exchange (LTSE), which began operations as an exchange on August 28, 2020;64 Members Exchange (MEMX), which began operations as an exchange on September 29, 2020;65 and Miami International Holdings (MIAX), which began operations of its first equities exchange on September 29, 2020.66

These low barriers enable existing exchange customers to disintermediate and start their own exchanges if they think the prices charged for exchange proprietary market data products are too high. This is precisely the rationale behind the creation of MEMX, which was formed by some of the largest and most well capitalized financial firms that are also Exchange customers (including Bank of America, BlackRock, Charles Schwab, Citadel, Citi, E*Trade, Fidelity, Goldman Sachs, J.P. Morgan, Jane Street, Morgan Stanley, TD Ameritrade, and others).67

For example, one of MEMX’s founding principles is that exchange proprietary market data prices are too high, and that MEMX will benefit its members by offering “[l]ower pricing on market data.”68 Nor is this a new phenomenon: Exchange customers formed BATS to compete with incumbent exchanges and once registered as an exchange in 2008, BATS did not initially charge for market data. The BATS venture was a financial success for its founders, first through rechanneling their investment in its initial public offering and then in the subsequent sale of BATS to Choe, which now charges for market data from those exchanges. Notably, MEMX has some of the same founding broker-dealer customers, leading some to dub MEMX “BATS 2.0.”69

The fact that this cycle is viable and repeatable by entities that both trade on and compete with existing exchanges confirms that barriers to entry are low and that these markets are competitive and contestable.70 And low barriers to entry act as a market check on high prices.71

Given Professor Rysman’s conclusion that exchanges are platforms for market data and trading, this fierce competition for order flow on the trading side of the platform acts to constrain, or “discipline,” the pricing of market data on the other side of the platform.72 And due to the ready availability of substitutes and the low cost to move order flow to those substitute trading venues, an exchange setting market data fees that are not at competitive levels would expect to quickly lose business to alternative platforms with more attractive pricing.73 Although the various exchanges may differ in their strategies for pricing their market data products and their transaction fees for trades—with some offering market data for free along with higher trading costs, and others charging more for market data and comparatively less for trading—the fact that exchanges are platforms ensures that no exchange makes pricing decisions for one side of its platform without considering, and being constrained by, the effects that price will have on the other side of the platform.74

In sum, the fierce competition for order flow thus constrains any exchange from pricing its market data at a supracompetitive price, and constrains the Exchange in setting its fees at issue here.

The proposed fees are therefore reasonable because in setting them, the Exchange is constrained by the availability of numerous substitute platforms offering market data products and trading. Such substitutes need not be identical, but only substantially similar to the product at hand. More specifically, in reducing specified fees for the NYSE American BBO and NYSE American Trades market data products, the Exchange is constrained by the fact that, if its pricing across the platform is unattractive to customers, customers have their pick of an increasing number of alternative platforms to use instead of the Exchange. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in

by competition authorities in part in reliance on planned and likely entry of other firms).

62 Rysman Paper ¶ 98.
63 See Jones Paper at 11.
64 In the context of the fee proposal that led to the National IF Approval Order, supra note 33, one commenter contended that trading was not a platform with exchange proprietary market data, and that the exchanges’ proprietary market data products were instead “complements” for which exchanges could charge supracompetitive prices. Professor Rysman debunked these contentions in an additional paper. See Marc Rysman, Complements, Competition, and Exchange Proprietary Data Products, August 13, 2020 (Exhibit 3D)
order to establish reasonable fees. The existence of numerous alternative platforms to the Exchange’s platform ensures that the Exchange cannot set unreasonable market data fees without suffering the negative effects of that decision in the fiercely competitive market for trading order flow.

d. The Availability of Substitute Market Data Products Constrains Fees for NYSE American BBO, NYSE American Trades, and NYSE BQT

Even putting aside the facts that exchanges are platforms and that pricing decisions on the two sides of the platform are intertwined, the Exchange is constrained in setting the proposed market data fees by the availability of numerous substitute market data products. The Commission has been clear that substitute products need not be identical, but only substantially similar to the product at hand.75

The NYSE BQT market data product is subject to significant competitive forces that constrain its pricing. Specifically, as described above, NYSE BQT competes head-to-head with the Nasdaq Basic product and the Cboe One Feed. These products each serve as reasonable substitutes for one another as they are each designed to provide investors with a unified view of real-time quotes and last-sale prices in all Tape A, B, and C securities. Each product provides subscribers with consolidated top-of-book quotes and trades from multiple U.S. equities markets. In the case of NYSE BQT, this product provides top-of-book quotes and trades data from five NYSE-affiliated U.S. equities exchanges, which together account for approximately 22% of consolidated U.S. equities trading volume as of September 2020.76 Cboe One Feed similarly provides top-of-book quotes and trades data from Cboe’s four U.S. equities exchanges, NYSE BQT, Nasdaq Basic, and Cboe One Feed are all intended to provide indicative pricing and are not intended to be used for order routing or trading decisions. In addition to competing with proprietary data products from Nasdaq and Cboe, NYSE BQT also competes with the consolidated data feed. However, the Exchange does not claim that NYSE BQT is a substitute for consolidated data with respect to requirements under the Vendor Display Rule, which is Regulation NMS Rule 603(c). The fact that this filing is proposing reductions in certain fees and fee waivers is itself confirmation of the inherently competitive nature of the market for the sale of proprietary market data. For example, in August 2019, Cboe filed proposed rule changes to reduce certain of its Cboe One Feed fees and noted that it attracted two additional customers because of the reduced fees.77

The fact that this filing is proposing reductions in certain fees and fee waivers is itself confirmation of the inherently competitive nature of the market for the sale of proprietary market data. For example, in August 2019, Cboe filed proposed rule changes to reduce certain of its Cboe One Feed fees and noted that it attracted two additional customers because of the reduced fees.77

The fact that this filing is proposing reductions in certain fees and fee waivers is itself confirmation of the inherently competitive nature of the market for the sale of proprietary market data. For example, in August 2019, Cboe filed proposed rule changes to reduce certain of its Cboe One Feed fees and noted that it attracted two additional customers because of the reduced fees.77
themselves whether or not the products
in question or any other similar
products are attractively priced. If
market data feeds from the Exchange
and its affiliates do not provide
sufficient value to firms based on the
uses those firms may have for it, such
firms may simply choose to conduct
their business operations in ways that
do not use the products.\(^\text{80}\)

In addition, in the case of products
that are also redistributed through
market data vendors, such as Bloomberg
and Refinitiv, the vendors themselves
provide additional pricing discipline for
proprietary data products because they
type the primary means of access to
certain end users. These vendors impose
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.
This competitive constraint is precisely
what is driving the proposed fee
changes here, which are designed to
attract new market data vendors, and
through them new subscribers, to the
NYSE BQT product. Currently, only four vendors subscribe to NYSE BQT,
and each vendor has limited
redistribution of NYSE BQT. No other
vendors currently subscribe to NYSE
BQT and likely will not unless their
customers request it, and customers will
not elect to pay the proposed fees unless
such 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.

Because of the availability of
substitutes, an exchange 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 setting the proposed fees, 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 reasonable fees. The existence
of numerous alternatives to the
Exchange’s platform and, more
specifically, alternatives to the market
data products, including proprietary
data from other sources, ensures that the
Exchange cannot set unreasonable fees 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.

2. The Proposed Fees Are Reasonable

The specific fees that the Exchange
proposes for NYSE American BBO and
NYSE American Trades are reasonable,
for the following additional reasons.

**Overall.** This proposed fee change is
a result of the competitive environment,
as the Exchange seeks to decrease
certain of its fees to attract
Redistributors that do not currently
subscribe to the NYSE BQT market data
product. The Exchange is proposing the
fee reductions at issue to make the
Exchange’s fees more competitive for a
specific segment of market participants,
thereby increasing the availability of the
Exchange’s data products, and
expanding the choice available to firms
making data purchasing decisions based
on their business needs. The Exchange
believes that this is consistent with the
principles contained in Regulation NMS to
“promote the wide availability of
market data and to allocate revenues to
SROs that produce the most useful data
for investors.”\(^\text{81}\)

**Access Fee.** By making the reduced
Per User Access Fee available to
Redistributors that subscribe only to the
NYSE American BBO and NYSE
American Trades data feeds and NYSE
BQT and do not have any internal use
of such products, and do not subscribe
to any other products listed on the Fee
Schedule, the Exchange believes that
more Distributors may choose to
subscribe to these products, thereby
expanding the distribution of this
market data for the benefit of investors
that participate in the national market
system and increasing competition
generally. The Exchange also believes
that offering the Per User Access Fee to
these Redistributors would expand the
availability of NYSE BQT to potential
data recipients that are interested in
subscribing to NYSE BQT but do not
have access to a Redistribution who
subscribes to the data feeds.

The Exchange determined to make the
reduced Per User Access Fee available
to these Redistributors because it
constitutes a substantial reduction of the
current fee, with the intended purpose
of increasing use of NYSE BQT by
Redistributors that do not currently
subscribe to any NYSE American market
data products. NYSE BQT has been in
place since 2014 but has a very small
number of subscribers. The Exchange
believes that in order to compete with
other indicative pricing products such as
Nasdaq Basic and Cboe One Feed, it
needs to provide a meaningful financial
incentive for more Distributors to
subscribe to NYSE BQT so that they can make it available to their
customers. Accordingly, the proposed
reduction to the access fees for NYSE
American BBO and NYSE American
Trades, together with the proposed
reduction to the access fees for NYSE
BBO, NYSE Trades, NYSE Arca BBO,
and NYSE Arca Trades, is reasonable
because the reductions will make NYSE
BQT a more attractive offering for
Redistributors that do not currently
subscribe to any NYSE American market
data products and make it more
competitive with Nasdaq Basic and
Cboe One Feed. For example, the
External Distribution Fee for Cboe One
Feed is currently $5,000 (which is the
sum of the External Distribution fees for
the four exchange data products that are
included in Cboe One Feed) plus a Data
Consolidation Fee of $1,000, for a total
of $6,000. Evidence of the competition
among exchange groups for these
products has previously been
demonstrated via fee changes. For
example, following the introduction of
the Cboe One Feed, Nasdaq responded
by reducing its fees for the Nasdaq Basic
product.\(^\text{82}\) With the proposed changes
by the Exchange, NYSE, and NYSE
Arca, the Exchange is similarly seeking
to compete by decreasing the total
access fees for NYSE BQT from $6,250
to $850 for Distributors that do not
currently subscribe to any NYSE
American market data products and
have customers that are interested in
subscribing to NYSE BQT but cannot
do so until their Redistribution also
subscribes. This proposed rule change
therefore demonstrates the existence of
an effective, competitive market because
this proposal resulted from a need to
generate innovative approaches in
response to competition from other
exchanges that offer market data for a
specific segment of market participants.

---

80 See generally Jones Paper at 8, 10–11.
81 See Regulation NMS Adopting Release, 70 FR
37495, at 37503.
83751 (July 31, 2018), 83 FR 38428 (August 6, 2018)
(SR-NASDAQ-2018-058) [Notice of Filing and
Immediate Effectiveness of Proposed Rule Change
To Lower Fees and Administrative Costs for
Distributors of Nasdaq Basic, Nasdaq Last Sale, NLS
Plus and the Nasdaq Depth-of-Book Products
Through a Consolidated Enterprise License).
Nasdaq filed the proposed fee change to lower the
Enterprise Fee for Nasdaq Basic and other market
data products in response to the Enterprise Fee for
the Cboe One Feed adopted by Cboe family of
exchanges.
Redistribution Fees. Similarly, the proposed waiver of the NYSE American Trades Redistribution Fee is reasonable because it is designed to provide an incentive for Redistributors to make NYSE BQT available so that data recipients can subscribe to NYSE BQT. The Exchange further believes that the proposed waiver of the NYSE American Trades Redistribution Fee is reasonable because it is designed to compete with market data products offered by the Choe family of equity exchanges.\(^{83}\)

For all of the foregoing reasons, the Exchange believes that the proposed fees are reasonable.

The Proposed Fees Are Equitably Allocated

The Exchange believes the proposed fees for NYSE American BBO and NYSE American Trades are allocated fairly and equitably among the various categories of users of the feed, and any differences among categories of users are justified.

Overall. As noted above, this proposed fee change is a result of the competitive environment for market data products that provide indicative pricing information across a family of exchanges. To respond to this competitive environment, the Exchange seeks to amend its fees to access NYSE American BBO and NYSE American Trades for Redistributors that would be subscribing only to the NYSE American BBO and NYSE American Trades data feeds and would use these market data products for external distribution only, which the Exchange hopes will attract new Redistributor subscribers for the NYSE BQT market data product so that the product can be made available to prospective market data recipients. The Exchange is proposing the fee reductions to make the Exchange’s fees more competitive for a specific segment of market participants, thereby increasing the availability of the Exchange’s data products, expanding the options available to firms making data purchasing decisions based on their business needs, and generally increasing competition.

Access Fee. The Exchange believes that making the Per User Access Fee available to Redistributors that would be subscribing only to the NYSE American BBO and NYSE American Trades data feeds and would use these market data products for external distribution only is equitable as it would apply equally to all data recipients that choose to subscribe to NYSE American BBO or NYSE American Trades for external distribution only and who do not subscribe to any other products listed on the Fee Schedule. Because NYSE American BBO and NYSE American Trades are optional products, any data recipient could choose to subscribe only to NYSE American BBO or NYSE American Trades to distribute externally and be eligible for the proposed reduced fee. The Exchange does not believe that it is inequitable that this proposed fee reduction would be available only to data recipients that subscribe only to NYSE American BBO or NYSE American Trades and only for external distribution. Internal use of data represents a different set of use cases than a Redistributor that is engaged only in external distribution of data. For example, non-display data can be used by data recipients for a wide variety of profit-generating purposes, including proprietary and agency trading and smart order routing, as well as by data recipients that operate order matching and execution platforms that compete directly with the Exchange for order flow. The data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. Although some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce the recipient’s costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting end users. The Exchange believes that charging a different access fee for a Redistributor that is engaged solely in external distribution of only the NYSE American BBO and NYSE American Trades products is equitable because it would make NYSE BQT available to more data recipients that are customers of such Redistributors and who would not otherwise be able to access NYSE BQT if their Redistributor did not subscribe to and redistribute NYSE BQT.

Redistribution Fees. The Exchange believes the proposed change to provide a waiver of the Redistribution Fee to a Redistributor that would be eligible for the Per User Access Fee because it only externally redistributes NYSE American Trades to at least one data feed recipient is equitable as it would apply equally to all Redistributors that are eligible for the Per User Access Fee and choose to externally redistribute the NYSE American Trades product, and would serve as an incentive for Redistributors to make NYSE American Trades more broadly available for use by both Professional and Non-Professional Users. This, in turn, could provide an incentive for Redistributors that do not currently subscribe to any NYSE American market data products to subscribe to NYSE BQT and make it available to their customers.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE American market data products are equitably allocated.

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes the proposed fees are not unfairly discriminatory because any differences in the application of the fees are based on meaningful distinctions between customers, and these meaningful distinctions are not unfairly discriminatory between customers.

Overall. As noted above, this proposed fee change is a result of the competitive environment for market data products that provide indicative pricing information across a family of exchanges. To respond to this competitive environment, the Exchange seeks to amend its fees to provide a financial incentive for Redistributors that do not currently subscribe to any NYSE American market data products that decide to subscribe to NYSE BQT, which the Exchange hopes will attract more subscribers for the NYSE BQT market data product. The Exchange is proposing the fee reductions to make the Exchange’s fees more competitive for a specific segment of market participants, thereby increasing the availability of the Exchange’s data products, expanding the options available to firms making data purchasing decisions based on their business needs, and generally increasing competition.

Access Fee. The Exchange believes that making the Per User Access Fee available to Redistributors that would be subscribing only to the NYSE American BBO and NYSE American Trades data feeds and would use these market data products for external distribution only is not unfairly discriminatory as it would apply equally to all Redistributors that choose to subscribe to NYSE American BBO or NYSE American Trades for external distribution only and who do not subscribe to any other products listed on the Fee Schedule. Because NYSE American BBO and NYSE American Trades

---

Trades are optional products, any data recipient could choose to subscribe only to NYSE American BBO or NYSE American Trades to distribute externally and be eligible for the proposed reduced fee. The Exchange does not believe that it is unfairly discriminatory that this proposed fee reduction would be available only to data recipients that subscribe only to NYSE American BBO or NYSE American Trades and only for external distribution. Internal use of data represents a different set of use cases than a Redistributor that is engaged only in external distribution of data. For example, non-display data can be used by data recipients for a wide variety of profit-generating purposes, including proprietary and agency trading and smart order routing, as well as by data recipients that operate order matching and execution platforms that compete directly with the Exchange for order flow. The data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. While some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce the recipient’s costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting end users. The Exchange therefore believes that there is a meaningful distinction between internal use and redistribution of market data and that charging a different access fee to a Redistributor that is engaged solely in external distribution of only the NYSE American BBO and NYSE American Trades products is not unfairly discriminatory because it would make NYSE BQT available to more data recipients that are customers of such Redistributors and who would not otherwise be able to access NYSE BQT if their Redistributor did not subscribe to and redistribute NYSE BQT.

Moreover, the Exchange does not believe that it is unfairly discriminatory to offer the Per User Access Fee only to those Redistributors that would subscribe only to the NYSE American BBO and NYSE American Trades data feeds and no other products on the Fee Schedule, and only for external distribution. The Exchange does not currently have any Redistributors that fit this description. This proposed rule change is designed to provide an incentive for Redistributors that do not currently subscribe to NYSE BQT or any other products listed on the Fee Schedule, but have customers that are interested in subscribing to NYSE BQT, to subscribe to the NYSE American BBO and NYSE American Trades data feeds so that they can make NYSE BQT available to their customers. This fee incentive is not necessary for Redistributors that currently subscribe to the NYSE American BBO and NYSE American Trades data feeds because such Redistributors could already subscribe to NYSE BQT, but have chosen not to, and a reduction in their existing access fees would likely not result in such Redistributors choosing to subscribe to NYSE BQT.

The Exchange believes the proposed change to provide a waiver of the Redistribution Fee to a Redistributor that would be eligible for the Per User Access Fee because it only externally redistributes NYSE American Trades to at least one data recipient is not unfairly discriminatory. The proposed waiver would apply equally to all Redistributors that are eligible for the Per User Access Fee and choose to externally redistribute the NYSE American Trades product, and would serve an incentive for Redistributors that do not currently subscribe to any NYSE American market data products to subscribe to NYSE American Trades and then make NYSE BQT available to their customers.

For all of the foregoing reasons, the Exchange believes that the proposed fees are 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. Indeed, as demonstrated above, the Exchange believes the proposed rule changes are pro-competitive.

Intramarket Competition. The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the proposed fee schedule would apply to all subscribers of NYSE American market data products, and customers may not only choose whether to subscribe to the products at all, but also may tailor their subscriptions to include only the products and uses that they deem suitable for their business needs. The Exchange also believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue market on competition. As shown above, to the extent that particular proposed fees apply to only a subset of subscribers, those distinctions are not unfairly discriminatory and do not unfairly burden one set of customers over another.

Intermarket Competition. The Exchange believes that the proposed fees do not impose a burden on competition on other exchanges that is not necessary or appropriate; indeed, the Exchange believes the proposed fee changes would have the effect of increasing competition. As demonstrated above and in Professor Rysman’s paper, exchanges are platforms for market data and trading. In setting the proposed fees, the Exchange is constrained by the availability of substitute platforms also offering market data products and trading, and low barriers to entry mean new exchange platforms are frequently introduced. The fact that exchanges are platforms ensures that no exchange can make pricing decisions for one side of its platform without considering, and being constrained by, the effects that price will have on the other side of the platform. In setting fees at issue here, the Exchange is constrained by the fact that, if its pricing across the platform is unattractive to customers, customers will have its pick of an increasing number of alternative platforms to use instead of the Exchange. Given this intense competition between platforms, no one exchange’s market data fees can impose an unnecessary burden on competition, and the Exchange’s proposed fees do not do so here.

In addition, the Exchange believes that the proposed fees do not impose a burden on competition or on other exchanges that is not necessary or appropriate because of the availability of numerous substitute market data products. Specifically, as described above, NYSE BQT competes head-to-head with the Nasdaq Basic product and the Cboe One Feed. These products each serve as reasonable substitutes for one another as they are each designed to provide investors with a unified view of real-time quotes and last-sale prices in all Tape A, B, and C securities. Each product provides subscribers with consolidated top-of-book quotes and trades from multiple U.S. equities markets. NYSE BQT provides top-of-book quotes and trades data from five NYSE-affiliated U.S. equities exchanges, while Cboe One Feed similarly provides top-of-book quotes and trades data from Cboe’s four U.S. equities exchanges. NYSE BQT, Nasdaq Basic, and Cboe One Feed are all intended to provide indicative pricing and therefore, are reasonable substitutes for one another. Additionally, market data vendors are also able to offer close substitutes to NYSE BQT. Because market data users can find suitable substitute feeds, an
The market exchange that overprices its market data products stands a high risk that users may substitute another source of market data information for its own. These competitive pressures ensure that no one exchange’s market data fees can impose an unnecessary burden on competition, and the Exchange’s proposed fees do not do so here.

G. 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) of the Act and subparagraph (f)(2) of Rule 19b–4 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) 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–NYSEAMER–2020–79 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 Number SR–NYSEAMER–2020–79. 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 website (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 website 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. Persons submitting comments are cautioned that we do not redact or edit communications relating to the proposed rule change and that all communications will be made available to the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room.

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

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020–25390 Filed 11–17–20; 8:45 am]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the NYSE American Options Fee Schedule Regarding the Amount of Rebates for Initiating a Complex Customer Best Execution Auction

November 12, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) and Rule 19b–4 thereunder, notice is hereby given that, on November 2, 2020, NYSE American LLC (“NYSE American” 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 the NYSE American Options Fee Schedule (“Fee Schedule”) regarding the amount of rebates for initiating a Complex Customer Best Execution Auction. The Exchange proposes to implement the fee change effective November 2, 2020. The proposed change is available on the Exchange’s website 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.