II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [22] and Rule 19b–4(f)(6) thereunder.[23]

At any time within 60 days of the filing of the 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 to determine whether the proposed rule 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–EDGA–2014–17 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–EDGA–2014–17. 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2014–17 and should be submitted on or before August 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18117 Filed 7–31–14; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72688; File No. SR–BATS–2014–028]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change To Establish a New Market Data Product Called the BATS One Feed

July 28, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 14, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b–4.

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

The Exchange proposes to establish a new market data product called the BATS One Feed as well as to establish related market data fees. The text of the proposed BATS One Feed is attached as Exhibit 5A. The proposed changes to the fee schedule are attached as Exhibit 5B. Exhibits 5A and 5B are available on the Exchange's Web site at *www.batstrading.com,* at the Exchange's principal office and at the Public Reference Room of the Commission.

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish a new market data product called the BATS One Feed. As described more fully below, the BATS One Feed is a data feed that will disseminate, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on BATS and its affiliated exchanges [3] (collectively, the ''BATS Exchanges'') and for which the BATS Exchanges report quotes under the Consolidated

[3] The Exchange's affiliated exchanges are EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), and BATS Y-Exchange, Inc. (''BYX''). On January 23, 2014, BATS Global Markets, Inc. (''BGMI''), the former parent company of the Exchange and BYX, completed its business combination with Direct Edge Holdings LLC, the parent company of EDGA and EDGX. *See* Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059; SR–BYX–2013–039). Upon completion of the business combination, DE Holdings and BGMI each became intermediate holding companies, held under a single new holding company. The new holding company, formerly named ''BATS Global Markets Holdings, Inc.,'' changed its name to ''BATS Global Markets, Inc.'' and BGMI changed its name to ''BATS Global Markets Holdings, Inc.''

Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan.[4] The BATS One Feed will also contain the individual last sale information for BATS and each of its affiliated exchanges. In addition, the BATS One Feed will contain optional functionality which will enable recipients to elect to receive aggregated two-sided quotations from the BATS Exchanges for up to five (5) price levels.

The BATS One Feed is designed to meet the needs of prospective Members that do not need or are unwilling to pay for the individual book feeds offered by each of the individual BATS Exchanges. In addition, the BATS One Feed offers market data vendors and purchasers a suitable alternative to the use of consolidated data where consolidated data are not required to be purchased or displayed. Finally, the proposed new data feed provides investors with new options for receiving market data and competes with similar market data products offered by NYSE Technologies, an affiliate of the New York Stock Exchange, Inc. (''NYSE'') and the Nasdaq Stock Market LLC (''Nasdaq'').[5] The provision of new options for investors to receive market data was a primary goal of the market data amendments adopted by Regulation NMS.[6]

Description of the BATS One Feed

The BATS One Feed will contain the aggregate BBO of the BATS Exchanges for all securities that are traded on the BATS Exchanges and for which the BATS Exchanges report quotes under the CTA Plan or the Nasdaq/UTP Plan. The aggregate BBO would include the total size of all orders at the BBO available on all BATS Exchanges.[7] The BATS One Feed would also disseminate last sale information for each of the individual BATS Exchanges (collectively with the aggregate BBO, the ''BATS One Summary Feed''). The last sale information will include the price, size, time of execution, and individual BATS Exchange on which the trade was executed. The last sale message will also include the cumulative number of shares executed on all BATS Exchanges for that trading day. The Exchange will disseminate the aggregate BBO of the BATS Exchanges and last sale information through the BATS One Feed no earlier than each individual BATS Exchange provides its BBO and last sale information to the processors under the CTA Plan or the Nasdaq/UTP Plan.

The BATS One Feed would also consist of Symbol Summary, Market Status, Retail Liquidity Identifier on behalf of BYX, Trading Status, and Trade Break messages. The Symbol Summary message will include the total executed volume across all BATS Exchanges. The Market Status message is disseminated to reflect a change in the status of one of the BATS Exchanges. For example, the Market Status message will indicate whether one of the BATS Exchanges is experiencing a systems issue or disruption and quotation or trade information from that market is not currently being disseminated via the BATS One Feed as part of the aggregated BBO. The Market Status message will also indicate where BATS Exchange is no longer experiencing a systems issue or disruption to properly reflect the status of the aggregated BBO.

The Retail Liquidity Identifier indicator message will be disseminated via the BATS One Feed on behalf of BYX only pursuant to BYX's Retail Price Improvement (''RPI'') Program.[8] The Retail Liquidity Identifier indicates when RPI interest priced at least $0.001 better than BYX's Protected Bid or Protected Offer for a particular security is available in the System. The Exchange proposes to disseminate the Retail Liquidity Indicator via the BATS One Feed in the same manner as it is currently disseminated through consolidated data streams (*i.e.,* pursuant to the Consolidated Tape Association Plan/Consolidated Quotation Plan, or CTA/CQ, for Tape A and Tape B securities, and the Nasdaq UTP Plan for Tape C securities) as well as through proprietary BATS data feeds. The Retail Liquidity Identifier will reflect the symbol and the side (buy or sell) of the RPI interest, but does not include the price or size of the RPI interest. In particular, like CQ and UTP quoting outputs, the BATS One Feed will include a field for codes related to the Retail Price Improvement Identifier. The codes indicate RPI interest that is priced better than BYX's Protected Bid or Protected Offer by at least the minimum level of price improvement as required by the Program.

The Trade Break message will indicate when an execution on a BATS Exchange is broken in accordance with the individual BATS Exchange's rules.[9] The Trading Status message will indicate the current trading status of a security on each individual BATS Exchange. For example, a Trading Status message will be sent when a short sale price restriction is in effect pursuant to Rule 201 of Regulation SHO (''Short Sale Circuit Breaker''),[10] or the security is subject to a trading halt, suspension or pause declared by the listing market. A Trading Status message will be sent whenever a security's trading status changes.

Optional Aggregate Depth of Book. The BATS One Feed will also contain optional functionality which will enable recipients to receive two-sided quotations from the BATS Exchanges for five (5) price levels for all securities that are traded on the BATS Exchanges in addition to the BATS One Summary Feed (''BATS One Premium Feed''). For each price level on one of the BATS Exchanges, the BATS One Premium Feed option of the BATS One Feed will include a two-sided quote and the number of shares available to buy and sell at that particular price level.[11]

BATS One Feed Fees

The Exchange proposes to amend its fee schedule to incorporate fees related to the BATS One Feed. The Exchange

[4] The Exchange understands that each of the BATS Exchanges will separately file substantially similar proposed rule changes with the Commission to implement the BATS One Feed and its related fees.

[5] *See* Nasdaq Basic, *http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic* (last visited May 29, 2014) (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq Trade Reporting Facility (''TRF'')); Nasdaq NLS Plus, *http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus* (last visited July 8, 2014) (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX); NYSE Technologies Best Book and Trade (''BQT''), *http://www.nyxdata.com/Data-Products/NYSE-Best-Quote-and-Trades* (last visited May 27, 2014) (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

[7] The Exchange notes that quotations of odd lot size, which is generally less than 100 shares, are included in the total size of all orders at a particular price level in the BATS One Feed but are currently not reported by the BATS Exchanges to the consolidated tape.

[8] For a description of BYX's RPI Program, *see* BYX Rule 11.24. *See also* Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (SR–BYX–2012–019) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 2, to Adopt a Retail Price Improvement Program); Securities Exchange Act Release No. 67734 (August 27, 2012), 77 FR 53242 (August 31, 2012) (SR–BYX–2019–019) (Notice of Filing of Proposed Rule Change to Adopt a Retail Price Improvement Program).

[9] *See, e.g., Exchange [sic] and EDGA Rule 11.13, Clearly Erroneous Executions, and BATS and BYX Rule 11.17, Clearly Erroneous Executions.*

[10] 17 CFR 242.200(g); 17 CFR 242.201

[11] Recipients who do not elect to receive the BATS One Premium Feed will receive the aggregate BBO of the BATS Exchanges under the BATS Summary Feed, which, unlike the BATS Premium Feed, would not delineate the size available at the BBO on each individual BATS Exchange.

proposes to charge different fees to vendors depending on whether the vendor elects to receive: (i) BATS One Summary Feed; or (ii) the optional BATS One Premium Feed. These fees include the following, each of which are described in detail below: (i) Distributor Fees; [12] (ii) Usage Fees for both Professional and Non-Professional Users; [13] and (iii) Enterprise Fees.[14] The amount of each fee may differ depending on whether they use the BATS One Feed data for internal or external distribution. Vendors that distribute the BATS One Feed data both internally and externally will be subject to the higher of the two Distribution Fees.

Definitions. The Exchange also proposes to include in its fee schedule the following defined terms that relate to the BATS One Feed fees.

• ''Distributor'' will be defined as ''any entity that receives the BATS One Feed directly from BATS or indirectly through another entity and then distributes it internally or externally to a third party.'' [15]

• ''Internal Distributor'' will be defined as a ''Distributor that receives the BATS One Feed and then distributes that data to one or more Users within the Distributor's own entity.'' [16]

• ''External Distributor'' will be defined as a ''Distributor that receives the BATS One Feed and then distributes that data to one or more Users outside the Distributor's own entity.'' [17]

• ''User'' will be defined as a ''natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data.''

• ''Non-Professional User'' will be defined as ''a natural person who is not: (i) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association; any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that will require registration or qualification if such functions were performed for an organization not so exempt.'' [18]

• ''Professional User'' will be defined as ''any User other than a Non-Professional User.'' [19]

Internal Distribution Fees. Each Internal Distributor that receives only the BATS One Summary Feed shall pay an Internal Distributor Fee of $10,000.00 per month. Each Internal Distributor shall pay an Internal Distributor Fee of $15,000.00 per month where they elect to also receive the BATS One Premium Feed. The Exchange will charge no usage fees for BATS One Feed where the data is received and subsequently internally distributed to Professional or Non-Professional Users.

External Distribution Fees. The Exchange proposes to charge those firms that distribute the BATS One Feed externally an External Distributor Fee of $2,500.00 per month for the BATS One Summary Feed. Each External Distributor shall pay an External Distributor Fee of $5,000.00 per month where they elect to also receive the BATS One Premium Feed. The Exchange also proposes to establish a New External Distributor Credit under which new External Distributors will not be charged a Distributor Fee for their first three (3) months in order to allow them to enlist new Users to receive the BATS One Feed.

In addition to Internal and External Distribution Fees, the Exchange also proposes to charge recipient firms who receive the BATS One Feed from External Distributors different fees for both their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of $10.00 per user for receipt of the BATS One Summary Feed or $15.00 per user who elect to also receive the BATS One Premium Feed. Non-Professional Users will be assessed a monthly fee of $0.25 per user for the BATS One Summary Feed or $0.50 per user where they elects to also receive the BATS One Premium Feed.

External Distributors must count every Professional User and Non-Professional User to which they provide BATS One Feed data. Thus, the Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data.[20] Distributors must report all Professional and Non-Professional Users in accordance with the following:

• In connection with an External Distributor's distribution of the BATS One Feed, the Distributor should count as one User each unique User that the Distributor has entitled to have access to the BATS One Feed. However, where a device is dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device.

• The External Distributor should identify and report each unique User. If a User uses the same unique method to gain access to the BATS One Feed, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to the BATS One Feed (*e.g.,* a single User has multiple passwords and user identifications), the External Distributor should report all of those methods as an individual User.

• External Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.

• If an External Distributor entitles one or more individuals to use the same device, the External Distributor should

[12] The Exchange notes that distribution fees as well as the distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. *See* Nasdaq Rule 7019(b); *see also* Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR–PHLX–2010–120); Securities Exchange Act Release Nos. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR–NASDAQ–2010–110); 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR–NASDAQ–2008–102); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR–BX–2010–081).

[13] The Exchange notes that usage fees as well as the distinctions based on professional and non-professional subscribers have been previously filed with or approved by the Commission by Nasdaq and the NYSE. *See* Securities Exchange Act Release Nos. 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (Order approving SR–NASDAQ–2008–102).

[14] The Exchange notes that enterprise fees have been previously filed with or approved by the Commission by Nasdaq, NYSE and the CTA/CQ Plans. *See* Nasdaq Rule 7047. Securities Exchange Act Release Nos. 71507 (February 7, 2014), 79 FR 8763 (February 13, 2014) (SR–NASDAQ–20140011); 70211 (August 15, 2013), 78 FR 51781 (August 21, 2013) (SR–NYSE–2013–58); 70010 (July 19, 2013) (File No. SR–CTA/CQ–2013–04).

[15] The proposed definition of ''Distributor'' is similar to Nasdaq Rule 7047(d)(1).

[16] The proposed definition of ''Internal Distributor'' is similar to Nasdaq Rule 7047(d)(1)(A).

[17] The proposed definition of ''External Distributor'' is similar to Nasdaq Rule 7047(d)(1)(B).

[18] The proposed definition of ''Professional User'' is similar to Nasdaq Rule 7047(d)(3)(A).

[19] The proposed definition of ''Non-Professional User'' is similar to Nasdaq Rule 7047(d)(3)(B).

[20] Requiring that every person or device to which they provide the data is counted by the Distributor receiving the BATS One Feed is similar to the NYSE Unit-of-Count Policy. The only difference is that the NYSE Unit-of-Count Policy requires the counting of users receiving a market data product through both internal and external distribution. Because the Exchange proposes to charge Usage Fees solely to recipient firms whose Users receive data from an external distributor and not through internal distribution, it only requires the counting of Users by Distributors that disseminate the BATS One Feed externally.

include only the individuals, and not the device, in the count.

Each External Distributor will receive a credit against its monthly Distributor Fee for the BATS One Feed equal to the amount of its monthly Usage Fees up to a maximum of the Distributor Fee for the BATS One Feed. For example, an External Distributor will be subject to a $5,000.00 monthly Distributor Fee where they elect to receive the BATS One Premium Feed. If that External Distributor reports User quantities totaling $5,000.00 or more of monthly usage of the BATS One Premium Feed, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling $4,000.00 of monthly usage, it will pay a net of $1,000 for the Distributor Fee.

Enterprise Fee. The Exchange also proposes to establish a $50,000.00 per month Enterprise Fee that will permit a recipient firm who receives the BATS Summary Feed portion of the BATS One Feed from an external distributor to receive the data for an unlimited number of Professional and Non-Professional Users and $100,000.00 per month for recipient firms who elect to also receive the BATS One Premium Feed. For example, if a recipient firm had 15,000 Professional Subscribers who each receive the BATS One Summary Feed portion of the BATS One Feed at $10.00 per month, then that recipient firm will pay $150,000.00 per month in Professional Subscriber fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of $50,000.00 for an unlimited number of Professional and Non-Professional Users for the BATS Summary Feed portion of the BATS One Feed. A recipient firm must pay a separate Enterprise Fee for each External Distributor that controls display of the BATS One Feed if it wishes such Subscriber to be covered by an Enterprise Fee rather than by per-Subscriber fees. A Subscriber that pays the Enterprise Fee will not have to report the number of such Subscribers on a monthly basis. However, every six months, a Subscriber 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.

Implementation Date

The Exchange will announce the effective date of the proposed rule change in a Trading Notice to be published as soon as practicable following approval of the proposed rule change by the Commission. The Exchange anticipates making available the BATS One Feed for evaluation as soon as practicable after approval of the proposed rule change by the Commission.

2. Statutory Basis

The BATS One Feed

The Exchange believes that the proposed BATS One Feed is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(5) of the Act,[22] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of the BATS One Feed. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving market data as requested by market data vendors and purchasers that expressed an interest in exchange-only data for instances where consolidated data is no longer required to be purchased and displayed. The proposed rule change would benefit investors by facilitating their prompt access to real-time last sale information and best-bid-and-offer information contained in the BATS One Feed.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [23] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[24] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[25]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well. The BATS One Feed is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

The BATS One Feed would be distributed and purchased on a voluntary basis, in that neither the BATS Exchanges nor market data distributors are required by any rule or regulation to make this data available. Accordingly, distributors and users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged.

BATS One Feed Fees

The Exchange also believes that the proposed fees for the BATS One Feed are consistent with Section 6(b) of the Act,[26] in general, and Section 6(b)(4) of the Act,[27] in particular, in that it [sic] they provide for an equitable allocation of reasonable fees among users and recipients of the data and are not

[21] 15 U.S.C. 78f.

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78k–1.

[24] *See* 17 CFR 242.603.

[25] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04).

[26] 15 U.S.C. 78f.

[27] 15 U.S.C. 78f(b)(4).

designed to permit unfair discrimination among customers, brokers, or dealers. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Exchange also notes that products described herein are entirely optional. Firms are not required to purchase the BATS One Feed. Firms have a wide variety of alternative market data products from which to choose. Moreover, the Exchange is not required to make these proprietary data products available or to offer any specific pricing alternatives to any customers. 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 market forces 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.' [28]

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.' '' [29]

The 2010 Dodd-Frank amendments to the Exchange Act reinforce the court's conclusions about congressional intent. On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Exchange Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.'' The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act. 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 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.[30] In addition, the existence of alternatives to these data products, such as proprietary last sale 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 elect such alternatives. As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach.

User Fees. The Exchange believes that implementing the Professional and Non-Professional User fees for the BATS One Feed is reasonable because it will make the product more affordable and result in their greater availability to Professional and Non-Professional Users. Moreover, introducing a Non-Professional User fee for the BATS One Feed is reasonable because it provides an additional method for retail investors to access the BATS One Feed data and provides the same data that is available to Professional Users.

In addition, the proposed fees are reasonable when compared to fees for comparable products offered by the NYSE, Nasdaq, and under the CTA and CQ Plans. Specifically, Nasdaq offers Nasdaq Basic, which includes best bid and offer and last sale data for Nasdaq and the FINRA/Nasdaq TRF, for a monthly fee of $26 per professional subscriber and $1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of $100,000 per month for distribution to an unlimited number of non-professional users or $365,000 per month for up to 16,000 professional users, plus $2 for each additional professional user over 16,000.[31] The Exchange notes that Nasdaq Basic also offers data for Nasdaq OMX BX and Nasdaq OMX PSX, as described below. The NYSE offers BQT, which provides BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT, for a monthly fee of $18 per professional subscriber and $1 per non-professional subscriber; alternatively, a broker-dealer may purchase an enterprise license at a rate of $365,000 per month for an unlimited number of professional users. The NYSE does not offer an enterprise license for non-professional users. BATS's proposed per-user fees are lower than the NYSE's and Nasdaq's fees. In addition, the Exchange is proposing Professional and Non-Professional User fees and Enterprise Fees that are less than the fees currently charged by the CTA and CQ Plans. Under the CTA and CQ Plans, Tape A consolidated last sale and bid-ask data are offered together for a monthly fee of $20–$50 per device, depending on the number of professional subscribers, and $1.00 per non-professional subscriber, depending on the number of non-professional subscribers.[32] A monthly enterprise fee of $686,400 is available under which a

[28] *Id.* at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 323).

[29] *Id.*

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

[31] *See* Nasdaq Rule 7047.

[32] *See* CTA Plan dated September 9, 2013 and CQ Plan dated September 9, 2013, available at *https://cta.nyxdata.com/CTA.*

U.S. registered broker-dealer may distribute data to an unlimited number of its own employees and its nonprofessional subscriber brokerage account customers. Finally, in contrast to Nasdaq UTP and the CTA and CQ Plans, the Exchange also will permit enterprise distribution by a non-broker-dealer.

Enterprise Fee. The proposed Enterprise Fee for the BATS One Feed is reasonable as the fee proposed is less than the enterprise fees currently charged for NYSE BQT, Nasdaq Basic, and consolidated data distributed under the Nasdaq UTP and the CTA and CQ Plans. In addition, the Enterprise Fee could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of the BATS One Feed, then it may continue using the per user structure and benefit from the per user fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the BATS One Feed, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count natural person users every six months, which is a significant reduction in administrative burden.

The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users that select these products. The fee structure of differentiated professional and non-professional fees has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.[33] Offering the BATS One Feed to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of users.

Distribution Fee. The Exchange believes that the proposed Distribution Fees are also reasonable, equitably allocated, and not unreasonably discriminatory. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution.[34] The Exchange believes that the Distribution Fees for the BATS One Feed are reasonable and fair in light of alternatives offered by other market centers. First, although the Internal Distribution fee is higher than those of competitor products, there are no usage fees assessed for Users that receive the BATS One Feed data through Internal Distribution, which results in a net cost that is lower than competitor products for many data recipients and will be easier to administer. In addition, for External Distribution, the Distribution Fees are similar to or lower than similar products. For example, under the Nasdaq UTP and CTA and CQ Plans, consolidated last sale and bid-ask data are offered for a combined monthly fee of $3,000 for redistribution.[35] The Exchange is proposing Distribution Fees that are less than the fees currently charged by the Nasdaq UTP and CTA and CQ Plans.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. An exchange's ability to price its proprietary 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 last sale data. Because other exchanges already offer similar products,[36] the Exchange's proposed BATS One Feed will enhance competition. Specifically, the BATS One Feed was developed to compete with similar market data products offered by Nasdaq and NYSE Technologies, an affiliate of the NYSE.[37] The BATS One Feed will foster competition by providing an alternative market data product to those offered by Nasdaq and the NYSE for less cost, as described in more detail in Section 3(b) above. This proposed new data feed provides investors with new options for receiving market data, which was a primary goal of the market data amendments adopted by Regulation NMS.[38]

The proposed BATS One Feed would enhance competition by offering a market data product that is designed to compete directly with similar products offered by the NYSE and Nasdaq. Nasdaq Basic is a product that includes two feeds, QBBO, which provides BBO information for all U.S. exchange-listed securities on Nasdaq and NLS Plus, which provides last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF,[39] Nasdaq OMX BX, and Nasdaq OMX PSX.[40] Likewise, NYSE BQT includes BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT.[41] As a result, Nasdaq Basic and NYSE BQT comprise a significant view of the market on any given day and both include data from multiple trading venues. As the BATS Exchanges are consistently one of the top exchange operators by market share for U.S. equities trading, excluding opening and closing auction volume, the data included within the BATS One Feed

[33] *See, e.g.,* Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983) (establishing nonprofessional fees for CTA data); NASDAQ Rules 7023(b), 7047.

[34] The Exchange notes that distinctions based on external versus internal distribution have been previously filed with the Commission by Nasdaq, Nasdaq OMX BX, and Nasdaq OMX PSX. *See* Nasdaq Rule 019(b); *see also* Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR–PHLX–2010–120); Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR–NASDAQ–2010–110); Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR–BX–2010–081).

[35] *See* CTA Plan dated September 9, 2013 and CQ Plan dated September 9, 2013, available at *https://cta.nyxdata.com/CTA,* Nasdaq UTP fees available at *http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListUTP#uf.*

[36] *See supra* note 5.

[37] *Id.*

[38] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

[39] *See* Nasdaq Basic, *http://www.nasdaqtrader.com/Trader.aspx?id=nasdaqbasic* (last visited May 29, 2014) (data feed offering the BBO and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq TRF).

[40] *See* Nasdaq NLS Plus, *http://www.nasdaqtrader.com/Trader.aspx?id=NLSplus* (last visited July 8, 2014) (data feed providing last sale data as well as consolidated volume from the following Nasdaq OMX markets for U.S. exchange-listed securities: Nasdaq, FINRA/Nasdaq TRF, Nasdaq OMX BX, and Nasdaq OMX PSX).

[41] *See* NYSE Technologies BQT, *http://www.nyxdata.com/Data-Products/NYSE-Best-Quote-and-Trades* (last visited May 27, 2014) (data feed providing unified view of BBO and last sale information for the NYSE, NYSE Arca, and NYSE MKT).

will provide investors with an alternative to Nasdaq Basic and NYSE BQT and a new option for obtaining a broad market view, consistent with the primary goal of the market data amendments adopted by Regulation NMS.[42]

The BATS One Feed will not only provide content that is competitive with the similar products offered by other exchanges, but will provide pricing that is competitive as well. As previously stated, the fees for the BATS One Feed are significantly lower than alternative exchange products. The BATS One Feed is 60% less expensive per professional user and more than 85% less expensive for an enterprise license for professional users (50% less for non-professional users) when compared to a similar competitor exchange product, offering firms a lower cost alternative for similar content.

As the Exchange considers the integration of the BATS One Feed into External Distributor products an important ingredient to the product's success, the Exchange has designed pricing that enables External Distributors to spend three months integrating BATS One Feed data into their products and to enlist new Users to receive the BATS One Feed data for free with no External Distribution charges. In addition, the Exchange is providing External Distributors a credit against their monthly External Distribution Fee equal to the amount of its monthly Usage Fees up to the amount of the External Distribution Fee, which could result in the External Distributor paying a discounted or no External Distribution Fee once the free three months period has ended. With the fee incentives in place, External Distributors may freely choose to include the BATS One Feed data into their product thereby increasing competition with External Distributors offering similar products, replace alternative data provided by Nasdaq Basic or NYSE BQT with the BATS One Feed data or enhance their product to include BATS One Feed data along with data offered by competitors to create a distributor product that may be more valuable than the BATS One Feed or any competitor product alone. As with any product, the recipients of the data will determine the value of the data provided by the exchange directly or through an External Distributor. Potential subscribers may opt to disfavor the BATS One Feed based on the content provided or the pricing and may believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed BATS One Feed will impair the ability of External Distributors or competing venues to maintain their competitive standing in the financial markets.

The Exchange believes the BATS One Feed will further enhance competition by providing External Distributors with a data feed that allows them to more quickly and efficiently integrate into their existing products. Today, Distributors subscribe to various market data products offered by single exchanges and resell that data, either separately or in the aggregate, to their subscribers as part of the their own market data offerings. Distributors may incur administrative costs when consolidating and augmenting the data to meet their subscriber's need. Consequently, many External Distributors will simply choose to not take the data because of the effort and cost required to aggregate data from separate feeds into their existing products. Those same Distributors have expressed interest in the BATS One Feed so that they may easily incorporate aggregated or summarized BATS Exchange data into their own products without themselves incurring the costs of the repackaging and aggregating the data it would receive by subscribing to each market data product offered by the individual BATS Exchanges. The Exchange, therefore, believes that by providing market data that encompasses combined data from affiliated exchanges, the Exchange enables certain External Distributors with the ability to compete in the provision of similar content with other External Distributors, where they may not have done so previously if they were required to subscribe to the depth-of-book feeds from each individual BATS Exchange.

Although the Exchange considers the acceptance of the BATS One Feed by External Distributors as important to the success of the product, depending on their needs, External Distributors may choose not to subscribe to the BATS One Feed and may rather receive the BATS Exchange individual market data products and incorporate them into their specific market data products. For example, the BATS Premium Feed provides depth-of-book information for up to five price levels while each of the BATS Exchange's individual data feeds offer complete depth-of-book and are not limited to five price levels.[43] Those subscribers who wish to view the complete depth-of-book from each individual BATS Exchange may prefer to subscribe to one or all of individual BATS Exchange depth-of-book data feeds instead of the BATS One Feed. The BATS One Feed simply provides another option for Distributors to choose from when selecting a product that meets their market data needs. Subscribers who seek a broader market view but do not need complete depth-of-book may select the BATS One Feed while subscribers that seek the complete depth-of-book information may subscribe to the depth-of-book feeds of each individual BATS Exchanges.

Latency. The BATS One Feed is not intended to compete with similar products offered by External Distributors. Rather, it is intended to assist External Distributors in incorporating aggregated and summarized data from the BATS Exchanges into their own market data products that are provided to the end user. Therefore, Distributors will receive the data, who will, in turn, make available BATS One Feed to their end users, either separately or as incorporated into the various market data products they provide. As stated above, Distributors have expressed a desire for a product like the BATS One Feed so that they may easily incorporate aggregated or summarized BATS Exchange data into their own products without themselves incurring the administrative costs of repackaging and aggregating the data it would receive by subscribing to each market data product offered by the individual BATS Exchanges.

Notwithstanding the above, the Exchange believes that External Distributors may create a product similar to BATS One Feed based on the market data products offered by the individual BATS Exchanges with minimal latency difference. In order to create the BATS One Feed, the Exchange will receive the individual data feeds from each BATS Exchange and, in turn, aggregate and summarize that data to create the BATS One Feed. This is the same process an External Distributor would undergo should it create a market data product similar to the BATS One Feed to distribute to its end users. In addition, the servers of most External Distributors are likely located in the same facilities as the Exchange, and, therefore, should receive the individual data feed from each BATS Exchange on or about the same time the Exchange would for it to create the BATS One Feed. Therefore, the Exchange believes that it will not incur any potential latency advantage that

[42] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

[43] *See* EDGA Rule 13.8, EDGX Rule 13.8, BZX Rule 11.22(a) and (c), and BATS Rule 11.22 (a) and (c) for a description of the depth of book feeds offered by each of the BATS Exchanges.

will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings and order flow and sales of market data itself, providing virtually limitless opportunities for entrepreneurs who wish to compete in any or all of those areas, including by 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.

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. The U.S. Department of Justice also has acknowledged the aggressive competition among exchanges, including for the sale of proprietary market data itself. In announcing that the bid for NYSE Euronext by Nasdaq OMX Group Inc. and Intercontinental Exchange Inc. had been abandoned, Assistant Attorney General Christine Varney 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.'' [44]

It is common for broker-dealers to further exploit this recognized competitive constraint by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. 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.'' [45]

In addition, in the case of products that are distributed through market data vendors, 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. Internet portals, such as Google, impose price discipline by providing only data that they believe will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Similarly, vendors will not elect to make available the products described herein unless their customers request them, and customers will not elect to purchase them unless they can be used for profit-generating purposes. All of these 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, market data and trade executions are a paradigmatic example of joint products with joint costs. The decision 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 quality, and price and distribution of their data products. The more trade executions a platform does, the more valuable its market data products become.

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 transaction execution platform 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 view the costs of transaction executions and market data as a unified cost of doing business with the exchange.

Other market participants have noted that the liquidity provided by the order book, trade execution, core market data, and non-core market data are joint products of a joint platform and have common costs.[46] 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.[47]

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. Thus, because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of both obtaining the market data

[44] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding Nasdaq OMX Group Inc. and Intercontinental Exchange 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.*

[45] 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.

[46] *See* Securities Exchange Act Release No. 62887 (Sept. 10, 2010), 75 FR 57092, 57095 (Sept. 17, 2010) (SR–Phlx–2010–121); Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–Nasdaq–2010–110); Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR–Nasdaq–2010–111) (''all 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* August 1, 2008 Comment Letter of Jeffrey S. Davis, Vice President and Deputy General Counsel, Nasdaq OMX Group, Inc., Statement of Janusz Ordover and Gustavo Bamberger (''because market data is both an input to and a byproduct of executing trades on a particular platform, market data and trade execution services are an example of 'joint products' with 'joint costs.'''), attachment at pg. 4, *available at www.sec.gov/comments/34-57917/3457917-12.pdf.*

[47] *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 invariable 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.'').

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 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.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including eleven equities self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). 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 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. 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.

Existence of Alternatives. As stated above, broker-dealers currently have numerous alternative venues for their order flow, including eleven SRO markets, as well as internalizing BDs and various forms of ATSs, including dark pools and ECNs. Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do so or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex, and NYSEArca.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless. The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. The Exchange and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

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, and TracECN. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson-Reuters.

Competitive forces constrain the prices that platforms can charge for non-core market information. A trading platform cannot generate market information unless it receives trade orders. For this reason, a platform can be expected to use its market data product as a tool for attracting liquidity and trading to its exchange.

While, by definition, information that is proprietary to an exchange cannot be obtained elsewhere, this does not enable the owner of such information to exercise monopoly power over that information vis-à-vis firms with the need for such information. Even though market information from one platform may not be a perfect substitute for market information from one or more other platforms, the existence of alternative sources of information can be expected to constrain the prices platforms charge for market data.

Besides the fact that similar information can be obtained elsewhere, the feasibility of supra-competitive pricing is constrained by the traders' ability to shift their trades elsewhere, which lowers the activity on the exchange and thus, in the long run, reduces the quality of the information generated by the exchange.

Competition among platforms has driven the Exchange to improve its platform data offerings and to cater to customers' data needs by proposing the BATS One Feed. The vigor of competition for non-core data information is significant and the Exchange believes that this proposal clearly evidences such competition. The Exchange proposes the BATS One Feed and pricing model in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with the Exchange or other exchanges. The explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this non-core data

information is highly competitive and continually evolves as products develop and change.

In establishing 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 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, because vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost is not justified by the returns that any particular vendor or subscriber would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change.

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

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

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2014–028 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–BATS–2014–028. 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of BATS. 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–BATS–2014–028 and should be submitted on or before August 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–18123 Filed 7–31–14; 8:45 am]

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[48] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72683; File No. SR–EDGX–2014–20]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify for Members and Non-Members the Use of Certain Data Feeds for Order Handling and Execution, Order Routing and Regulatory Compliance of EDGX Exchange, Inc.

July 28, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 15, 2014, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 clarify for Members [3] and non-Members the Exchange's use of certain data feeds for order handling and execution, order routing, and regulatory compliance. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in

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

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).