(including electronic) communications that are distributed or made available only to institutional investors.

Second, the Exchange proposed to amend Rule 9.21(b), ''Approval by Registered Options Principal'', to replace the phrase ''advertisements, sales literature, and independently prepared reprints'' in Rule 9.21(b)(i) with the new proposed term, ''retail communications.''

Under proposed rule 9.21(b)(ii), correspondence would ''need not be approved by a Registered Options Principal prior to use'' but would be subject to the supervision and review requirements of Exchange Rule 9.8. The Exchange proposed to delete the requirement for principal approval of correspondence that is distributed to 25 or more existing retail customers within a 30 calendar-day period that makes any financial or investment recommendation or otherwise promotes the product or service of a TPH. Under the proposed Rule 9.21(b), such communications would be considered retail communications and therefore would be subject to the principal approval requirement. As such, the proposed change would not substantively change the scope of options communications that would require principal approval.

Third, the Exchange proposed to modify the required approvals of ''Institutional communications'' by adding that a TPH shall ''establish written procedures that are appropriate to its business, size, structure, and customers for review by a Registered Options Principal of institutional communications used by the Trading Permit Holder or TPH organization.''

Fourth, the Exchange proposed to amend Rule 9.21(c) to replace the phrase ''advertisements, sales literature, and independently prepared reprints'' with the new proposed term ''retail communications.'' The Exchange also proposed to further exempt options disclosure documents and prospectuses from Exchange review as other requirements apply to these documents under the Securities Act of 1933.

Fifth, the Exchange proposed to specify in Rule 9.21(d) that TPHs may not use any options communications that ''constitute a prospectus'' unless the communications meet the requirements of the Securities Act of 1933. Finally, the Exchange proposed to move and slightly modify Rule 9.21(d) to state that any statement made referring to ''potential opportunities or advantages presented by options'' must also be accompanied by a statement identifying the potential risks posed.

III. Discussion

As noted above, the Commission received no comments on the proposed rule change. The Commission has carefully reviewed the proposed rule change and finds that it is generally consistent with the Act and the rules and regulations thereunder applicable to the Exchange [5] and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] which requires that the rules of a national securities exchange, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Commission believes the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Commission believes that the proposed rule change will help TPHs that are also members of FINRA to comply with their obligations regarding options communications by better aligning the Exchange's requirements with those of FINRA. In addition, the Commission believes that the proposed rule change will help protect investors from potentially false or misleading communications with the public distributed by Exchange TPHs.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [9] that the proposed rule change (SR–69535) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

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[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69806; File No. SR–ISE–2013–39]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish a Managed Data Access Service, on a Pilot Basis, for the Sale of a Number of Market Data Products Currently Offered by the Exchange

June 20, 2013.

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 June 6, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III 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 ISE proposes to amend its Schedule of Fees to establish a pricing structure, on a pilot basis, called Managed Data Access Service for the sale of a number of real-time market data products currently offered by the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.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 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.

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

[2] 17 CFR 240.19b–4.

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

1. Purpose

ISE proposes to amend its Schedule of Fees to establish a pricing structure for a new data distribution model called Managed Data Access Service for the sale of a number of real-time market data products currently offered by the Exchange. With this proposed rule change, the Exchange proposes to establish Managed Data Access Service for the following real-time market data feeds, each of which is currently offered by the Exchange on a subscription basis: The ISE Real-time Depth of Market Raw Data Feed,[3] the ISE Order Feed,[4] the ISE Top Quote Feed and the ISE Spread Feed [5] (the ''ISE Data Feeds'').

With this proposed rule change, the Exchange seeks to further the distribution of the ISE Data Feeds.[6] The proposed new pricing and administrative option is in response to industry demand, as well as due to improvements in the contractual administration and the technology used to distribute market data. The Exchange already offers the ISE Data Feeds on a subscription basis and has determined to implement Managed Data Access Service for the ISE Data Feeds on a pilot basis, until November 30, 2013, to gauge the level of interest in this new pricing and distribution model. The Exchange will submit a proposed rule change at the end of the pilot period to either continue this new offering or to terminate it.

Managed Data Access Service provides an alternative delivery option for the ISE Data Feeds. Managed Data Access Service is any retransmission of the ISE Data Feeds by a Managed Data Access Distributor [7] where the Managed Data Access Distributor manages and monitors, but does not necessarily control, the information. Managed Data Access Service is a pricing and administrative option that will assess fees to Managed Data Access Distributors. Under this distribution model, Managed Data Access Distributors are required to monitor the delivery of the data in the Managed Data Access Service to their clients, the Managed Data Access Recipients.[8] The Managed Data Access Distributor must also agree to reformat, redisplay and/or alter the ISE Data Feeds prior to retransmission without affecting the integrity of the ISE Data Feeds and without rendering any of the feeds inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory.

In the past, retransmissions were considered to be an uncontrolled data product if the Managed Data Access Distributor did not control both the entitlements and the display of the information. Over the last several years, Managed Data Access Distributors have improved the technical delivery and monitoring capabilities of data therefore Managed Data Access Service is a response to an industry need to administer new types of technical deliveries and pricing options.

ISE notes that some Managed Data Access Distributors believe that Managed Data Access Service is a better controlled data feed product and as such should not be subject to the same rates as a data feed. However, Managed Data Access Distributors may only have contractual control over the data and may not be able to verify how Managed Data Access Recipients are actually using the data, at least without involvement of the Managed Data Access Recipient. The Exchange's proposal to offer Managed Data Access Service to Managed Data Access Distributors would assist in the management of the uncontrolled data product on behalf of their Managed Data Recipients by contractually restricting the data flow and monitoring the delivery. The Exchange will maintain contracts with Managed Data Access Recipients, who may be liable for any unauthorized use under the Managed Data Access Service. The proposed Managed Data Access Service for the ISE Data Feeds would allow Managed Data Access Distributors to deliver Managed Data Access Service to their clients and would allow Professional and Non-Professional [9] users to use the ISE Data Feeds for their own use.

The Exchange proposes to charge for Managed Data Access Service for the ISE Data Feeds, as follows:

- For the ISE Real-time Depth of Market Raw Data Feed:
  - $2,500 per month per Managed Data Access Distributor.
  - $750 per month per IP address for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient, who may be a Professional or Non-Professional user. This fee is charged per IP address, which covers both primary and back-up IP addresses, at a Managed Data Access Recipient.
  - $50 per month per controlled device for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient who is a Professional user.
  - $5 per month per controlled device for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient who is a Non-Professional use [sic].

A Managed Data Access Distributor for the ISE Real-time Depth of Market Raw Data Feed is subject to a minimum fee of $5,000 per month.

- For the ISE Top Quote Feed:
  - $1,500 per month per Managed Data Access Distributor.
  - $500 per month per IP address for redistribution by a Managed Data Access Distributor to a Managed Data

[3] *See* Securities Exchange Act Release Nos. 59949 (May 20, 2009), 74 FR 25593 (May 28, 2009) (SR–ISE–2007–97); and 63324 (November 17, 2010), 75 FR 71475 (November 23, 2010) (SR–ISE–2010–103).

[4] *See* Securities Exchange Act Release No. 62399 (June 28, 2010), 75 FR 38587 (July 2, 2010) (SR–ISE–2010–34).

[5] *See* Securities Exchange Act Release No. 65002 (August 1, 2011), 76 FR 47630 (August 5, 2011) (SR–ISE–2011–50).

[6] The Exchange notes that a managed data solution is not a novel distribution model. ISE currently offers Managed Data Access Service for the ISE Implied Volatility and Greeks Feed, a real-time market data offering. *See* Securities Exchange Act Release No. 65678 (November 3, 2011), 76 FR 70178 (November 10, 2011) (SR–ISE–2011–67). A number of other exchanges have adopted Managed Data Access Service to distribute their proprietary market data. *See e.g.* Securities Exchange Act Release Nos. 63276 (November 8, 2010), 75 FR 69717 (November 15, 2010) (SR–NASDAQ–2010–138); and 69182 (March 19, 2013), 78 FR 18378 (March 26, 2013) (SR–PHLX–2013–28).

[7] A Managed Data Access Distributor redistributes the ISE Data Feeds that permits [sic] access to the information in the ISE Data Feeds through a controlled device. A Managed Data Access Distributor can also redistribute a data feed solution to specific IP addresses, including an Application Programming Interface (API) or similar automated delivery solutions, with only limited entitlement controls (*e.g.,* usernames and/or passwords) to a recipient of the information.

[8] A Managed Data Access Recipient is a subscriber to the Managed Data Access Distributor who receives a reformatted data feed in a controlled device or at a specific IP address.

[9] In differentiating between Professional and Non-Professional subscribers, the Exchange proposes to apply the same criteria for qualification as a Non-Professional subscriber as the Consolidated Tape Association (''CTA'') Plan and Consolidated Quotation System Plan Participants use. Accordingly, a ''Non-Professional Subscriber'' is an authorized end-user of the ISE Data Feeds who is a natural person and who is neither: (a) Registered or qualified with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (b) engaged as an ''investment advisor'' as that term is defined Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that act); nor (c) employed by a bank or other organization exempt from registration under Federal and/or state securities laws to perform functions that would require him/her to be so registered or qualified if he/she were to perform such functions for an organization not so exempt. A ''Professional Subscriber'' is an authorized end-user of the ISE Data Feeds that has not qualified as a Non-Professional Subscriber.

Access Recipient, who may be a Professional or Non-Professional user. This fee is charged per IP address, which covers both primary and back-up IP addresses, at a Managed Data Access Recipient.

◦ $20 per month per controlled device for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient who is a Professional user. There is no controlled device fee for Non-Professional users.

A Managed Data Access Distributor for the ISE Top Quote Feed is subject to a minimum fee of $3,000 per month.

• For the ISE Spread Feed:

◦ $1,500 per month per Managed Data Access Distributor.

◦ $500 per month per IP address for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient, who may be a Professional or Non-Professional user. This fee is charged per IP address, which covers both primary and back-up IP addresses, at a Managed Data Access Recipient.

◦ $25 per month per controlled device for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient who is a Professional user. There is no controlled device fee for Non-Professional users.

A Managed Data Access Distributor for the ISE Spread Feed is subject to a minimum fee of $3,000 per month.

• For the ISE Order Feed:

◦ $1,000 per month per Managed Data Access Distributor.

◦ $350 per month per IP address for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient, who may be a Professional or Non-Professional user. This fee is charged per IP address, which covers both primary and back-up IP addresses, at a Managed Data Access Recipient.

◦ $10 per month per controlled device for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient who is a Professional user. There is no controlled device fee for Non-Professional users.

A Managed Data Access Distributor for the ISE Order Feed is subject to a minimum fee of $2,000 per month.

The Exchange also proposes to adopt a multi-product discount for subscriptions to more than one data feed, much like what the Exchange currently offers to subscribers of the ISE Data Feeds. Specifically, subscription fees will be discounted by 10% for customers who subscribe to two data feeds and by 20% for customers who subscribe to three data feeds. Customers who subscribe to the ISE Real-time Depth of Market Raw Data Feed and ISE Top Quote Feed only pay for the ISE Real-time Depth of Market Raw Data Feed (because the ISE Top Quote Feed is embedded in the ISE Real-time Depth of Market Raw Data Feed) and such subscription thus counts as one feed for the purpose of the discount.

The Exchange notes that while the proposed Managed Data Access Service will produce inherent latency for customers, this proposed rule change will also lower the fee for current and potential future recipients of the ISE Data Feeds. Accordingly, the Exchange believes that the proposed rule change establishes a program that allows all Exchange members and Managed Data Access Distributors a practicable methodology to assess and receive Managed Data Access Service for the ISE Data Feeds, similar to services offered by other exchanges.

The Exchange has designated this proposed rule change to be operative on June 6, 2013.[10]

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Sections 6(b)(4) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which ISE operates or controls.

The Exchange believes that the proposed rule change is also consistent with Section 6(b)(8) of the Act[13] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The fees charged would be the same for all similarly-situated market participants, and therefore do not unreasonably discriminate among market participants.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility of 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 Commission concluded that Regulation NMS—by deregulating 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.[14]

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.

On July 21, 2010, President Barak 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 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

[10] The same fees were operative on June 1, 2013 under SR–ISE–2013–35 which the Exchange withdrew and replaced with SR–ISE–2013–39 on June 6, 2013.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78f(b)(8).

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

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 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), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for 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.' '' [15]

ISE believes that the proposed fees are fair and equitable, and not unreasonably discriminatory. The proposed fees are based on pricing conventions and distinctions that currently exist at ISE. These distinctions (e.g. Professional versus Non-Professional, internal versus external distribution, controlled versus uncontrolled datafeed) are each based on principles of fairness and equity that have helped for many years to maintain fair, equitable, and not unreasonably discriminatory fees, and that apply with equal or greater force to the current proposal. ISE believes that the Managed Data Access Service promotes broader distribution of controlled data, although with some potential added latency while offering a fee reduction in the form of a pricing option which should result in lower fees for Subscribers. The Managed Data Access Service proposal is reasonable in that it offers a methodology to get Managed Data Access Service for the ISE Data Feeds for less. It is equitable in that it provides an opportunity for all distributors and subscribers, Professional and Non-Professional, to get Managed Data Access Service for the ISE Data Feeds without unfairly discriminating against any. ISE is constrained in pricing the Managed Data Access Service for the ISE Data Feeds by the availability to market participants of alternatives to purchasing ISE products. ISE must consider the extent to which market participants would choose one or more alternatives instead of purchasing the Exchange's data. Thus, if ISE has calculated improperly and the market deems the proposed fees to be unfair, inequitable, or unreasonably discriminatory, firms can diminish or discontinue the use of their data because the proposed fees are entirely optional to all parties. Firms are not required to choose to purchase Managed Data Access Service for the ISE Data Feeds or to utilize any specific pricing alternative. ISE is not required to make Managed Data Access Service for the ISE Data Feeds available or to offer specific pricing alternatives for potential purchases. ISE continues to establish and revise pricing policies aimed at increasing fairness and equitable allocation of fees among Subscribers. Finally, as noted above, the Exchange proposes to adopt this new offering on a pilot basis, until November 30, 2013, at which time the Exchange will determine whether or not to continue this offering.

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

ISE 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. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the NetCoaltion [sic] court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. ISE believes that a record may readily be established to demonstrate the competitive nature of the market in question.

The proposed rule change is, as described below, pro-competitive. The proposed rule change offers an overall fee reduction, which is, by its nature, pro-competitive. Moreover, there is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. 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 execution are a paradigmatic example [sic] of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without orders entered and trades executed, exchange data products cannot exist. Data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

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 customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it.

Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decrease [sic], for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable. Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products.

''No one disputes that competition for order flow is 'fierce'.'' [16] However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A

[15] *NetCoalition,* at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323).

[16] *NetCoalition,* at 24 [sic].

broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, 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.

Competition among trading platforms can be expected to constrain the aggregate return 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 platform may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information 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 information, 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.

The market for market data products is 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, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including numerous 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''). 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 or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex (now NYSE MKT), NYSEArca, DirectEdge and BATS.

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.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. 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. ISE 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, inexpensive, and profitable. 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, TracECN, BATS Trading and Direct Edge. 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.

Competition among platforms has driven ISE continually to improve its market data offerings and to cater to customers' data needs. For example, ISE has developed and maintained multiple delivery mechanisms that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. ISE offers front end applications such as its PrecISE Trade application which helps customers utilize data. ISE offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. Despite these enhancements and a dramatic increase in message traffic, ISE's fees for market data have, for the most part, remained flat. Moreover, platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

The vigor of competition for market data is significant and the Exchange believes that this proposal clearly evidences such competition. ISE is offering a new pricing model in order to keep pace with changes in the industry and evolving customer needs. This pricing option 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. ISE continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. 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 ISE or other exchanges. Of course, 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 the proposed data is highly competitive and continually evolves as products develop and change.

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. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [17] and Rule 19b–4(f)(2) thereunder,[18] because it establishes a due, fee, or other charge imposed by ISE.

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–ISE–2013–39 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISE–2013–39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of ISE. 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–ISE–2013–39 and should be submitted on or before July 17, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

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[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 8360]

60-Day Notice of Proposed Information Collection: Recording, Reporting, and Data Collection Requirements—Student and Exchange Visitor Information System (SEVIS)

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATE(S): The Department will accept comments from the public up to August 26, 2013.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov*. You can search for the document by entering ''Public Notice 8360'' in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.
- *Email: JExchanges@State.gov*.
- *Mail (paper, disk, or CD–ROM submissions):* U.S. Department of State, ECA/EC, SA–5, Floor 5, 2200 C Street NW., Washington, DC 20522–0505, ATTN: Federal Register Notice Response.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection