Section 19(b)(2) of the Act[9] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on February 22, 2013. August 21, 2013 is 180 days from that date, and October 20, 2013 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change, the issues raised in the comment letters that have been submitted in connection with the proposed rule change, and the NYSE's responses to such issues. Specifically, as the Commission noted in more detail in the Order Instituting Proceedings, the proposal raises significant questions as to whether the Exchange has provided adequate justification for material aspects of its proposal such that the Commission can determine that the proposal is consistent with the Act. Extending the time within which to approve or disapprove the proposed rule change will enable the Commission to more fully consider this issue and the other issues raised in the comment letters.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates October 20, 2013, as the date by which the Commission should either approve or disapprove the proposed rule change.

Municipal Employees, dated July 3, 2013; Brandon Rees, Acting Director, American Federation of Labor and Congress of Industrial Organizations Office of Investment, dated July 5, 2013; Charles V. Rossi, President, The Securities Transfer Association, Inc., dated July 5, 2013; James J. Angel, dated July 5, 2013; and Michael J. Hogan, Chief Executive Officer, FOLIO*fn* Investments, Inc., dated July 12, 2013; *see also* letters to the Honorable Mary Jo White, Chair, Commission from Ann Yerger, Executive Director, Council of Institutional Investors, dated May 17, 2013; and Charles E. Schumer, United States Senator, dated May 23, 2013. *See also* response letter from Janet McGinnis, EVP & Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated July 9, 2013.

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

[10] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–20345 Filed 8–20–13; 8:45 am]

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[11] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70211; File No. SR–NYSE–2013–58]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fees for Display Use of the NYSE BBO and NYSE Trades Market Data Products and Making Certain Technical Changes to the Fee Schedule

August 15, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 1, 2013, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the fees for display use of the NYSE BBO and NYSE Trades market data products and make certain technical changes to the fee schedule. The changes will be operative on August 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

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

[3] 17 CFR 240.19b–4.

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

1. Purpose

The Exchange proposes to amend the fees for display use of the NYSE BBO[4] and NYSE Trades[5] market data products and make certain technical changes to the fee schedule. The changes will be operative on August 1, 2013.

The Exchange currently charges $15 per month for professional users and $5 per month for non-professional users for display use of NYSE BBO.[6] Alternatively, the Exchange charges $0.005 per quote for display use of NYSE BBO for non-professional users, capped at $5 per month per non-professional user.[7] The Exchange currently charges $15 per month for professional users for display use of NYSE Trades. The Exchange currently does not offer NYSE Trades for non-professional users under a per-user fee structure.[8]

[4] NYSE BBO is an NYSE-only market data feed that allows a vendor to redistribute on a real-time basis the same best-bid-and-offer information that the Exchange reports under the Consolidated Quotation (''CQ'') Plan for inclusion in the CQ Plan's consolidated quotation information data stream. The data feed includes the best bids and offers for all securities that are traded on the Exchange and for which NYSE reports quotes under the CQ Plan.

[5] NYSE Trades is an NYSE-only market data feed that allows a vendor to redistribute on a real-time basis the same last sale information that the Exchange reports under the Consolidated Tape Association (''CTA'') Plan for inclusion in the CTA Plan's consolidated data streams and certain other related data elements. Specifically, NYSE Trades includes the real-time last sale price, time, size, and bid-ask quotations for each security traded on the Exchange and a stock summary message. The stock summary message updates every minute and includes NYSE's opening price, high price, low price, closing price, and cumulative volume for the security.

[6] The Exchange applies the same criteria for qualification as a ''non-professional subscriber'' as the CTA and CQ Plan participants use. *See* Securities Exchange Act Release No. 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR–NYSE–2010–30).

[7] *Id.* The cap is referenced in this filing, although it does not currently appear in the fee schedule.

[8] *See* Securities Exchange Act Release No. 59309 (Jan. 28, 2009), 74 FR 6073 (Feb. 4, 2009) (SR–NYSE–2009–04). When NYSE Trades was initially offered, the Exchange had not observed a demand for non-professional use. *See id.* The Exchange

Continued

The Exchange also charges an access fee of $1,500 per month for NYSE BBO and an access fee of $1,500 for NYSE Trades. However, a single access fee applies for clients receiving both NYSE BBO and NYSE Trades.

Vendors that redistribute NYSE Trades data pay a redistribution fee of $1,000 per month.

The Exchange proposes to lower the professional user fees for display use of NYSE BBO from $15 per month to $4 per month, lower the non-professional user fees for display use of NYSE BBO from $5 per month to $0.20 per month, and eliminate the per quote option for display use of NYSE BBO for non-professional users. The Exchange also proposes to lower the professional user fee for display use of NYSE Trades from $15 per month to $4 per month and introduce a fee for display use of NYSE Trades by non-professional users of $0.20 per month.

The Exchange also proposes to establish a $190,000 per month enterprise fee for an unlimited number of professional and non-professional users for NYSE BBO and a $190,000 per month enterprise fee for an unlimited number of professional and non-professional users for NYSE Trades. A single enterprise fee will apply for vendors receiving both NYSE BBO and NYSE Trades.

As an example, under the current fee structure, if a firm had 7,000 professional users who each received NYSE Trades at $15 per month and NYSE BBO at $15 per month, then the firm currently pays $210,000 per month in professional user fees. Under the proposed enterprise fee, the firm will pay a flat fee of $190,000 for an unlimited number of professional and non-professional users for both products.

A vendor that pays the enterprise fee would not have to report the number of such users on a monthly basis.[9] However, every six months, a vendor 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.

Lastly, the Exchange proposes to make certain technical corrections to clarify its fee schedule and to delete operative dates that are no longer needed.

The purpose of the foregoing changes is to encourage greater use of NYSE BBO and NYSE Trades by making them more affordable, to compete more effectively with similar products in the marketplace, and to clarify the fee schedule. The Exchange is eliminating the per quote option for display use of NYSE BBO for non-professional users because non-professional users are not electing to use it. The Exchange is not aware of any significant problems that persons affected are likely to have in complying with the proposed rule change.

The Exchange further believes that the proposed rule change is consistent with the market-based approach of the Securities and Exchange Commission (''Commission''). 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 Commission upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [10]

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.[11] In addition, the existence of alternatives to NYSE BBO and NYSE Trades, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach, and the Exchange incorporates by reference into this proposed rule change its affiliate's analysis of this topic in another rule filing.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[13] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[14] in particular, in that it provides an equitable allocation of reasonable fees among its members, issuers, and other persons using its facilities and is not designed to permit unfair discrimination among customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [15] in that it is consistent with (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,[16] 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.

The Exchange believes that lowering the professional and non-professional user fees for NYSE BBO and lowering the professional user fee for NYSE Trades is reasonable because it will make the products more affordable and result in their greater availability to professional and non-professional users.

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offers two last sale market data products for distribution to non-professional users, NYSE Trades Digital Media and NYSE Realtime Reference Prices Digital Media. *See* Securities Exchange Act Release No. 69298 (Apr. 4, 2013), 78 FR 21464 (Apr. 10, 2013) (SR–NYSE–2013–24).

[9] Most professional users currently are subject to a per display device count, except for a small number of professional users that have qualified for the Exchange's Unit-of-Count Policy. *See* SR–NYSE–2010–30, *supra* n.6; Securities Exchange Act Release No. 59606 (Mar. 19, 2009), 74 FR 13293 (Mar. 26, 2009) (SR–NYSE–2009–04); Securities Exchange Act Release No. 59544 (Mar. 9, 2009), 74 FR 11162 (Mar. 16, 2009) (SR–NYSE–2008–131) (establishing Unit-of-Count Policy). That policy continues to apply to such professional users for display use only if the proposed enterprise fee does not apply. *See* Securities Exchange Act Release No. 69278 (April 2, 2013) 78 FR 20973 (April 8, 2013) (SR–NYSE–2013–25).

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

[11] 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.

[12] *See* Securities Exchange Act Release No. 63291 (Nov. 9, 2010), 75 FR 70311 (Nov. 17, 2010) (SR–NYSEArca–2010–97).

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

[14] 15 U.S.C. 78f(b)(4), (5).

[15] 15 U.S.C. 78k–1.

[16] *See* 17 CFR 242.603.

The Exchange believes that introducing a non-professional fee for NYSE Trades is reasonable because it provides an additional method for retail investors to access NYSE last sale data and provides the same last sale data that is available to professional users, an option heretofore unavailable.[17] The Exchange believes it is reasonable to eliminate the per quote option for non-professional users of NYSE BBO because non-professional users have not elected this option.

In addition, the Exchange believes that the proposed fees are reasonable when compared to fees for comparable products offered by at least one other exchange and under the CTA and CQ Plans. Specifically, The NASDAQ Stock Market LLC (''NASDAQ'') offers NASDAQ Basic, which includes best bid and offer and last sale data, for a monthly fee of $10 per professional subscriber and $0.50 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 subscribers only.[18] The Exchange's proposed per-user fees are lower than NASDAQ's fees. While the Exchange's enterprise fee is higher, the Exchange will permit broader distribution of its data for this fee, *i.e.,* to both professional and non-professional users. Under the current CTA and CQ Plans, Tape A consolidated last sale and bid-ask data are offered together for a monthly fee of $18.75–$127.25 per device, depending on the number of professional subscribers, and $0.50–$1.00 per non-professional subscriber, depending on the number of non-professional subscribers.[19] A monthly enterprise fee of $660,000 is available under which a U.S. registered broker-dealer may distribute data to an unlimited number of its own employees and its nonprofessional subscriber brokerage account customers. Participants in the CTA and CQ Plans recently submitted an immediately effective filing with rate changes that are expected to be implemented September 1, 2013.[20] The Exchange is proposing professional and non-professional user fees and enterprise fees that are less than the fees currently charged or proposed by the CTA and CQ Plans, in most cases less than half of the CTA fee. In contrast to NASDAQ and the CTA and CQ Plans, the Exchange also will permit enterprise distribution by a non-broker-dealer.

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

The Exchange further believes that the proposed enterprise fees are reasonable because they will simplify billing for certain recipients that have large numbers of professional and non-professional users. Firms that pay the proposed enterprise fees 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; this is a significant reduction in administrative burdens and is a significant value. The Exchange believes that it is reasonable to charge a single enterprise fee for clients receiving both NYSE BBO and NYSE Trades because the Exchange has charged a single access fee for both products since 2010,[21] and the products will continue to be offered separately for vendors and users that so choose.

The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to vendors and users that select these products. The Exchange notes that the fee structure of differentiated professional and non-professional fees has long been used by the Exchange for other products, by other exchanges for their products, and by the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.[22] The Exchange further believes that offering NYSE Trades to non-professional users with the same data available to professional users results in greater equity among data recipients. The Exchange believes that eliminating the per quote non-professional user fee for NYSE BBO is equitable and not unfairly discriminatory because non-professional users have not elected this option and the Exchange will continue offering other methods by which non-professional users can access this data. 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 administrative burdens in tracking and auditing large numbers of users.

The proposed technical corrections to the fee schedule will benefit vendors and users by making the fee schedule clearer and easier to understand.

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

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

In accordance with Section 6(b)(8) of the Act,[23] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary data feed products is constrained by (1) The inherent contestability of the market for proprietary data and actual competition for the sale of such data, (2) the joint product nature of exchange platforms, and (3) the existence of alternatives to proprietary data.

The Existence of Actual Competition. The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary 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 producing and distributing their own market data. Proprietary data products are produced and distributed by each

[17] *See supra* n.8.

[18] *See* NASDAQ Rule 7047.

[19] *See* CTA Plan dated July 25, 2012 and CQ Plan dated August 23, 2010, *available at https://cta.nyxdata.com/CTA.*

[20] *See* Securities Exchange Act Release No. 70010 (July 19, 2013) (File No. SR–CTA/CQ–2013–04). Monthly fees will be $20–50 for professional subscribers and $1 for non-professional subscribers for Tape A last sale and bid-ask data, and the monthly enterprise fee described above will be increased to $686,400.

[21] *See* SR–NYSE–2010–30, *supra* n.6.

[22] *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.

[23] 15 U.S.C. 78f(b)(8).

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 IntercontinentalExchange 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.'' [24]

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.'' [25]

In addition, in the case of products that are distributed through market data vendors, the market data 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 offer NYSE BBO or NYSE Trades unless those products will help them maintain current users or attract new ones. For example, a broker-dealer will not choose to offer NYSE BBO or NYSE Trades to its retail customers unless the broker-dealer believes that the retail customers will use and value the data and the provision of such data will help the broker-dealer maintain the customer relationship, which allows the broker-dealer to generate profits for itself. Professional users will not request NYSE BBO or NYSE Trades from market data vendors unless they can use the data for profit-generating purposes in their businesses. 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.[26] 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.[27]

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 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

[24] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), available at *http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html.*

[25] 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.

[26] *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); and 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.*

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

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 12 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. The large number of SROs, 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, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including but not limited to the Exchange, NYSE MKT, NYSE Arca, NASDAQ OMX, BATS, and Direct Edge.

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

Moreover, consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at $0.50–$1 per month for non-professional users. Second, consolidated data is also available at no cost with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data that is simply a subset of the consolidated data (such as NYSE Trades and NYSE BBO). The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data by highlighting the optional nature of proprietary products.

Those competitive pressures imposed by available alternatives are clearly evident in the Exchange's proposed pricing. As noted above, the Exchange's proposed per-user fees are lower than NASDAQ's fees. While the Exchange's enterprise fee is higher, the Exchange will permit broader distribution of its data, *i.e.,* to both professional and non-professional users.[28] The Exchange's proposed user and enterprise fees are less (in most cases substantially less) than the fees charged by the CTA and CQ Plans, and the Exchange's enterprise fee also permits distribution by a non-broker-dealer.[29]

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid and inexpensive. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, BATS Trading and Direct Edge. Today, BATS and Direct Edge provide certain market data at no charge on their Web sites in order to attract more order flow, and use revenue rebates from resulting additional executions to maintain low execution charges for their users.[30]

Further, data products are valuable to professional users only if they can be used for profit-generating purposes in their businesses and valuable to non-professional users only insofar as they provide information that such users expect will assist them in tracking prices and market trends and making order routing and trading decisions.[31] The Exchange believes that the proposed lower user fees and the enterprise fees, which may permit wider distribution of last sale and quote information at a lower cost to vendors with a large number of professional and non-professional users, may encourage more users to demand and more vendors to choose to offer NYSE BBO and NYSE Trades, thereby benefitting professional and non-professional users, including public investors. The Exchange also believes that offering NYSE Trades for non-professional users on a per user basis and providing the same information as is provided to professional users will create more choices for vendors that will allow them to offer products with the appropriate level of information at a range of prices, thereby encouraging wider distribution of the data.

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 real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

[28] *See supra* n. 18.

[29] *See supra* nn. 19–20.

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

[31] Rule 603(c) of Regulation NMS requires vendors to make the consolidated core data feeds available to customers when trading and order-routing decisions can be implemented. *See* 17 CFR 242.603(c).

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [32] of the Act and subparagraph (f)(2) of Rule 19b–4 [33] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [34] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2013–58 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–NYSE–2013–58. 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 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–NYSE–2013–58 and should be submitted on or before September 11, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Kevin M. O'Neill,

Deputy Secretary.

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[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(2).

[34] 15 U.S.C. 78s(b)(2)(B).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70207; File No. SR–OCC–2013–12]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Revise Its By-Laws and Rules To Make Structural Changes to OCC's Membership/Risk Committee Regarding Public Directors and the Process for Designating Membership/Risk Committee Members

August 15, 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 August 2, 2013, The Options Clearing Corporation (''OCC'') 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 OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to revise its By-Laws and Rules to make structural changes to OCC's Membership/Risk Committee (''MRC'') regarding Public Directors and the process for designating MRC members.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of this proposed rule change is to revise OCC's By-Laws and Rules to make structural changes to OCC's MRC regarding Public Directors [3] and the process for designating MRC members. The proposed rule change would require that at least one Public Director must serve on the MRC, that the MRC Chairman be a Public Director, and that all MRC members would be designated on an annual basis.

Currently, Article III, Section 9 of OCC's By-Laws specifies that at the first meeting of the Board of Directors that follows each annual meeting the Board must designate the Chairman of the Board, the Vice Chairman of the Board, and at least three other Member Directors to serve on the MRC. The By-Laws would be modified to provide that at least one Public Director must serve on the MRC and that the MRC Chairman must be a Public Director. These modifications would correspond to OCC's existing practice of having at least one Public Director serve on the MRC, and OCC believes that including this requirement in the By-Laws would help ensure that the MRC will continue

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

[2] 17 CFR 240.19b–4.

[3] In relevant part, Article III, Section 6A of OCC's By-Laws defines a Public Director as a person who is ''not affiliated with any national securities exchange or national securities association or with any broker or dealer in securities[.]''