

the Substitution is necessary and in the best interests of Contract Owners in light of the impending liquidation of the Existing Fund and the importance of offering a money market fund investment option for the Contracts. Applicants state that the board of directors of PVC concluded that converting the Existing Fund to a government money market fund would not be a feasible option and voted to terminate the Existing Fund and liquidate its assets effective April 8, 2016. The Insurance Companies submit that the Replacement Fund should be substituted for the Existing Fund to serve as the money market investment option for all of the Contracts, as well as for the Contract-related purposes for which the Existing Fund is currently used, so that Contract Owner-initiated decisions and the Insurance Companies' obligations under the Contracts are less likely to be prevented.

4. Applicants also assert that the Substitution does not entail any of the abuses that Section 26(c) was designed to prevent. Each Affected Contract Owner has been advised of his right, any time prior to the Substitution Date, and for at least 30 days after the Substitution Date, to reallocate account value under the affected Contract without any cost or limitation, or otherwise withdraw or terminate his interest in accordance with the terms and conditions of his Contract. Furthermore, Contract Owners will not incur any additional tax liability or any additional fees or expenses as a result of the Substitution.

Applicants' Conditions:

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Substitution will not be effected unless the Insurance Companies determine that: (a) The Contracts allow the substitution of shares of registered open-end investment companies in the manner contemplated by the application; (b) the Substitution can be consummated as described in the application under applicable insurance laws; and (c) any regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the Substitution.

2. The Insurance Companies or their affiliates will pay all expenses and transaction costs of the Substitution, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses. No fees or charges will be assessed to

the Affected Contract Owners to effect the Substitution.

3. The Substitution will be effected at the relative net asset values of the respective shares in conformity with Section 22(c) of the Act and Rule 22c-1 thereunder without the imposition of any transfer or similar charges by applicants. The Substitution will be effected without change in the amount or value of any Contracts held by Affected Contract Owners.

4. The Substitution will in no way alter the tax treatment of Affected Contract Owners in connection with their Contracts, and no tax liability will arise for Affected Contract Owners as a result of the Substitution.

5. The rights or obligations of the Insurance Companies under the Contracts of Affected Contract Owners will not be altered in any way. The Substitution will not adversely affect any riders under the Contracts.

6. Affected Contract Owners will be permitted to make at least one transfer of Contract value from the subaccount investing in the Existing Fund (before the Substitution Date) or the Replacement Fund (after the Substitution Date) to any other available investment option under the Contract without charge for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date. Except as described in any market timing/short-term trading provisions of the relevant prospectus, the Insurance Companies will not exercise any right they may have under the Contracts to impose restrictions on transfers between the subaccounts under the Contracts, including limitations on the future number of transfers, for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date.

7. All Affected Contract Owners will be notified, at least 30 days before the Substitution Date about: (a) The intended substitution of the Existing Fund with the Replacement Fund; (b) the intended Substitution Date; and (c) information with respect to transfers as set forth in Condition 6 above. In addition, the Insurance Companies will deliver to all Affected Contract Owners, at least thirty (30) days before the Substitution Date, a prospectus for the Replacement Fund.

8. The Insurance Companies will deliver to each Affected Contract Owner within five (5) business days of the Substitution Date a written confirmation which will include: (a) A confirmation that the Substitution was carried out as previously notified; (b) a restatement of the information set forth in the Pre-

Substitution Notice; and (c) before and after account values.

9. Applicants will not receive, for three years from the Substitution Date, any direct or indirect benefits from the Replacement Fund, its adviser or underwriter (or their affiliates), in connection with assets attributable to Contracts affected by the Substitution, at a higher rate than they had received from the Existing Fund, its adviser or underwriter (or their affiliates), including without limitation 12b-1 fees, shareholder service, administrative or other service fees, revenue sharing, or other arrangements.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77388; File No. SR-NYSE-2016-21]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting a Decommission Extension Fee for Receipt of the NYSE BBO and NYSE Trades Market Data Products

March 17, 2016.

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 March 8, 2016, 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 adopt a Decommission Extension Fee for receipt of the NYSE BBO and NYSE Trades market data products. The proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange,

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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.

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 adopt a Decommission Extension Fee for receipt of the NYSE BBO and NYSE Trades market data products,⁴ as set forth on the NYSE Proprietary Market Data Fee Schedule ("Fee Schedule"). Recipients of NYSE BBO and NYSE Trades would continue to be subject to the already existing subscription fees currently set forth in the Fee Schedule. The proposed Decommission Extension Fee would apply only to those subscribers who decide to continue to receive the NYSE BBO and NYSE Trades feeds in their legacy format for up to two months after those feeds otherwise will be distributed exclusively in the new format explained below.

NYSE Trades is an NYSE-only last sale market data feed. NYSE Trades currently allows vendors, broker-dealers and others to make available 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. Specifically, the NYSE Trades feed includes, for each security traded on the Exchange, the real-time last sale price, time and size information and bid/ask quotations at the time of each sale 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.⁵

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.

As part of the Exchange's efforts to regularly upgrade systems to support more modern data distribution formats and protocols as technology evolves, beginning March 1, 2016, NYSE BBO and NYSE Trades will both be transmitted in a new format, Exchange Data Protocol (XDP). Beginning March 1, 2016, the Exchange will transmit NYSE BBO and NYSE Trades in both the legacy format and in XDP without any additional fee being charged for providing these data feeds in both formats. The dual dissemination will remain in place until July 1, 2016, the planned decommission date of the legacy format. Beginning July 1, 2016, recipients of NYSE BBO and NYSE Trades who wish to continue to receive NYSE BBO and NYSE Trades in the legacy format will each be subject to the proposed Decommission Extension Fee of \$5,000 per month. During the extension period, recipients of NYSE BBO and NYSE Trades would continue to be subject to the subscription fees currently noted in the Fee Schedule. The extension period for receiving these data feeds in the legacy format will expire on September 1, 2016, on which date distribution of NYSE BBO and NYSE Trades in the legacy format will be permanently discontinued.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and Sections 6(b)(4) and 6(b)(5) of the Act,⁷ in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Exchange believes that adopting an extension fee for subscribers of NYSE BBO and NYSE Trades who wish to

receive these data feeds in the legacy format for a period of time beyond the built-in overlap period is reasonable, equitable and not unfairly discriminatory because the proposed fee would apply equally to all data recipients that currently subscribe to NYSE BBO and NYSE Trades. The Exchange believes that it is reasonable to require data recipients to pay an additional fee for taking the data feeds in the legacy format beyond the period of time specifically allotted by the Exchange for data feed customers to adapt to the new XDP format at no extra cost. To that end, the extension fee is designed to encourage data recipients to migrate to the XDP format in order to continue to receive NYSE BBO and NYSE Trades in XDP as the legacy format would no longer be available after that date. The Exchange does not intend to support the legacy format at all after September 1, 2016.

The Exchange notes that NYSE BBO and NYSE Trades are entirely optional. The Exchange is not required to make NYSE BBO and NYSE Trades available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase NYSE BBO and NYSE Trades, nor is the Exchange required to offer any feed (NYSE BBO, NYSE Trades, or otherwise) in a particular format, and it is a benefit to the markets generally that NYSE update its distribution technology to make it more efficient (and at the same time eliminate less efficient forms of dissemination). Firms that do purchase NYSE BBO and NYSE Trades do so for the primary goals of using them to increase revenues, reduce expenses, and in some instances compete directly with the Exchange (including for order flow); those firms are able to determine for themselves whether NYSE BBO and NYSE Trades or any other similar products are attractively priced or not.⁸

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission ("Commission") upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

In fact, the legislative history indicates that the Congress intended that the market system

⁴ See Securities Exchange Act Release Nos. 61914 (Apr. 14, 2010), 74 FR 21077 (Apr. 22, 2010) (SR-NYSE-2010-30) (notice—NYSE BBO); 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR-NYSE-2010-30) (approval order—NYSE BBO); 59309 (Jan. 28, 2009), 74 FR 6073 (Feb. 4, 2009) (SR-NYSE-2009-04) (notice—NYSE Trades); and 59309 (Mar. 19, 2009), 74 FR 13293 (Mar. 26, 2009) (approval order—NYSE Trades) (SR-NYSE-2009-04) and 62038 (May 5, 2010), 75 FR 26825 (May 12, 2010) (SR-NYSE-2010-22).

⁵ *Id.*

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4), (5).

⁸ See, e.g., Proposing Release on Regulation of NMS Stock Alternative Trading Systems, Securities Exchange Act Release No. 76474 (Nov. 18, 2015) (File No. S7-23-15). See also, "Brokers Warned Not to Steer Clients' Stock Trades Into Slow Lane," Bloomberg Business, December 14, 2015 (Sigma X dark pool to use direct exchange feeds as the primary source of price data).

'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.'"⁹

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for proprietary market data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards. In addition, the existence of alternatives to the legacy format, such as converting to XDP as soon as possible, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can select such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for proprietary market data would be so complicated that it could not be done practically or offer any significant benefits.¹⁰

⁹ *NetCoalition*, 615 F.3d at 535.

¹⁰ The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties and the Commission to cost-regulate a large number of participants and standardize and analyze extraordinary amounts of information, accounts, and reports. In addition, and as described below, it is impossible to regulate market data prices in isolation from prices charged by markets for other services that are joint products. Cost-based rate regulation would also lead to litigation and may distort incentives, including those to minimize costs and to innovate, leading to further waste. Under cost-based pricing, the Commission would be burdened with determining a fair rate of return, and the industry could experience frequent rate increases based on escalating expense levels. Even in industries historically subject to utility regulation, cost-based ratemaking has been discredited. As such, the Exchange believes that cost-based ratemaking would be inappropriate for proprietary market data and inconsistent with Congress's direction that the Commission use its authority to foster the development of the national market system, and that market forces will continue to provide appropriate pricing discipline. See Appendix C to NYSE's comments to the Commission's 2000 Concept Release on the

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary market data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data (and in this instance, the ability of any firm to switch to the new distribution format in a time frame that eliminates the need to pay these fees entirely).

The Existence of Actual Competition

The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for listings and order flow and sales of market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice ("DOJ") (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges "compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale."¹¹

Regulation of Market Information Fees and Revenues, which can be found on the Commission's Web site at <http://www.sec.gov/rules/concept/s72899/buck1.htm>. Finally, the prices set herein are prices for continuing to support distribution formats the Exchange has elected to retire in favor of new and more efficient distribution formats, making cost-based analyses even less relevant.

¹¹ 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/>

Moreover, competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. Broker-dealers send their order flow and transaction reports to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. As a 2010 Commission Concept Release noted, the "current market structure can be described as dispersed and complex" with "trading volume . . . dispersed among many highly automated trading centers that compete for order flow in the same stocks" and "trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs."¹² More recently, SEC Chair Mary Jo White has noted that competition for order flow in exchange-listed equities is "intense" and divided among many trading venues, including exchanges, more than 40 alternative trading systems, and more than 250 broker-dealers.¹³

If an exchange succeeds in competing for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade executions, then its market data products may be less desirable to customers in light of the diminished content and data products offered by competing venues may become more attractive. Thus, competition for quotations, order flow, and trade

speeches/2011/at-speech-110516.html; see also Complaint in *U.S. v. Deutsche Borse AG and NYSE Euronext*, Case No. 11-cv-2280 (D.C. Dist.) ¶ 24 ("NYSE and Direct Edge compete head-to-head . . . in the provision of real-time proprietary equity data products.").

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

¹³ Mary Jo White, Enhancing Our Equity Market Structure, Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available on the Commission Web site), citing Tuttle, Laura, 2014, "OTC Trading: Description of Non-ATS OTC Trading in National Market System Stocks," at 7-8.

executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are also redistributed through market data vendors, such as Bloomberg and Thompson Reuters, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Vendors will not elect to make available NYSE BBO or NYSE Trades in the legacy format unless their customers request it, and customers will not elect to pay the proposed fees unless NYSE BBO and NYSE Trades can provide value in the legacy formats by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. The Exchange has provided customers with adequate notice that it intends to discontinue dissemination of the data feeds in the legacy format. Therefore, the proposed Decommission Extension Fee would only be applicable to those customers who have a need or desire to continue to take the data feeds in the legacy format beyond the period provided for migration to the XDP format. Customers who timely migrate to the XDP format to receive the data feeds would not need to receive the data feeds in the legacy format and therefore would not be subject to the Decommission Extension Fee at all. All of these factors operate as constraints on pricing proprietary data products.

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) ¹⁴ of the Act and subparagraph (f)(2) of Rule 19b-4 ¹⁵ 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) ¹⁶ 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-2016-21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSE-2016-22. 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-2016-21 and should be submitted on or before April 12, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77386; File No. SR-NYSEMKT-2016-20]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending and Restating the Fifth Amended and Restated Bylaws of the Exchange's Ultimate Parent Company, Intercontinental Exchange, Inc., To Implement Proxy Access

March 17, 2016.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 ("Act") ² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 2, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") 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 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 and restate the Fifth Amended and Restated Bylaws of the Exchange's ultimate parent company, Intercontinental Exchange, Inc. ("ICE"), to implement proxy access. 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.

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ 15 U.S.C. 78s(b)(2)(B).