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, as modified by Amendment No. 1, 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–MIAX–2014–56 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–MIAX–2014–56. 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–MIAX–2014–56 and should be submitted on or before December 10, 2014.

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

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27311 Filed 11–18–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73588; File No. SR–NYSEARCA–2014–129]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Fees for the NYSE ArcaBook for Arca Options Complex Feed and Changing the NYSE Arca Options Proprietary Market Data Fee Schedule ("Market Data Fee Schedule") Regarding Non-Display Use Fees

November 13, 2014.

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 October 30, 2014, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") 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 add fees for the NYSE ArcaBook for Arca Options Complex feed, operative on November 1, 2014. 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.

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

1. Purpose

NYSE ArcaBook for Arca Options—Complex—Fee Changes

The Exchange offers six NYSE Arca Options real-time options market data products: ArcaBook for Arca Options—Trades, ArcaBook for Arca Options—Top of Book, ArcaBook for Arca Options—Depth of Book, ArcaBook for Arca Options—Complex, ArcaBook for Arca Options—Series Status, and ArcaBook for Arca Options—Order Imbalance (collectively, "Arca Options Products").[4] The Exchange currently charges the following fees for receipt of all six Arca Options Products:[5] an Access Fee of $3,000 per month; a Redistribution Fee of $2,000 per month; a Professional User Fee of $50 per month for each Professional User; and a Non-Professional User Fee of $1 per month for each Non-Professional User. There is a Non-Professional User Fee Cap of $5,000 per month per Redistributor. The fee for non-display use of all six Arca Options Products is $5,000 per data recipient for each category of organization (*i.e.,* for Category 1, Category 2 and Category 3).[6]

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[19] 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.

[4] *See* Securities Exchange Act Release No. 67720 (August 23, 2012), 77 FR 52769 (August 30, 2012) (SR–NYSEArca–2012–89) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing To Offer Certain Proprietary Options Data Products).

[5] *See* Securities Exchange Act Release No. 68005 (October 9, 2012), 77 FR 63362 (October 16, 2012) (SR–NYSEArca–2012–106) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Fees for Certain Proprietary Options Market Data Products). *See also* Securities Exchange Act Release No. 69554 (May 10, 2013), 78 FR 28917 (May 16, 2013) (SR–NYSEArca–2013–47) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Non-Display Usage Fees and Amending the Professional End-User Fees for NYSE Arca Options Market Data). *See also* Securities and Exchange Act Release No. 71933 (April 11, 2014), 79 FR 21821 (April 17, 2014) (SR–NYSEArca–2014–34)(Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Professional User Fees for NYSE Arca Options Market Data, Operative on April 1, 2014).

[6] *See* Securities Exchange Act Release No. 73010 (September 5, 2014), 79 FR 54307 (September 11, 2014) (SR–NYSEArca–2014–94) (Notice of Filing and Immediate Effectiveness of Proposed Rule

The Exchange does not currently have separate pricing for each of the individual products.

Starting on May 1, 2014, the Exchange began offering one of the six feeds, ArcaBook for Arca Options—Complex, on a standalone basis without charge from May 1, 2014 to October 31, 2014.[7] The Exchange proposes to charge fees for ArcaBook for Arca Options—Complex, beginning November 1, 2014, as follows: An Access Fee of $1,500 per month; a Redistribution Fee of $1,000 per month for ArcaBook for Arca Options—Complex; and fees of $20 per month for each Professional User and $1 per month for each Non-Professional User. The Exchange is not proposing a Non-Professional User Fee Cap. In addition, the Exchange proposes to charge a Non-Display Fee for non-display use of ArcaBook for Arca Options—Complex of $1,000 per data recipient for each category of organization (*i.e.,* for Category 1, Category 2 and Category 3).[8] As with the fees for Arca Options Products, data recipients would not be liable for Category 2 Non-Display fees for which they are also paying Category 1 Non-Display fees; and similarly, Category 3 fees would be capped at $3,000.

The Exchange does not propose to make any other changes to the fees for Arca Options Products.

Changes to Fee Schedule Regarding Non-Display Use

The Exchange proposes a change to the Market Data Fee Schedule regarding non-display use fees. Specifically, with respect to the three categories of, and fees applicable to, market data recipients for non-display use, the Exchange proposes to describe the three categories in the Market Data Fee Schedule.

In September 2014, the Exchange revised the fees for non-display use of and added fees for non-display use of NYSE ArcaBook for Arca Options.[9] In the 2014 Non-Display Filing, the Exchange proposed certain changes to the categories of, and fees applicable to, data recipients for non-display use. As set forth in the 2014 Non-Display Filing: (i) Category 1 Fees apply when a data recipient's non-display use of real-time market data is on its own behalf as opposed to use on behalf of its clients; (ii) Category 2 Fees apply when a data recipient's non-display use of real-time market data is on behalf of its clients as opposed to use on its own behalf; and (iii) Category 3 Fees apply when a data recipient's non-display use of real-time market data is for the purpose of internally matching buy and sell orders within an organization, including matching customer orders on a data recipient's own behalf and/or on behalf of its clients. The Market Data Fee Schedule currently lists each category as Category 1, Category 2, and Category 3, without further description.

The Exchange is proposing to amend the Market Data Fee Schedule to add the descriptions of the three categories, as set forth above, as a footnote to the Market Data Fee Schedule. Because there will now be multiple footnotes to the Market Data Fee Schedule, the Exchange proposes non-substantive edits to change the existing footnote references from asterisks to numbers.

The Exchange does not propose to make any other changes to the fees for Arca Options Products.

Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it would provide 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 the proposed change is reasonable because it would allow vendors and subscribers to pay the standalone fees associated with the one product rather than payment of the higher fees associated with all six Arca Options Products. In this regard, the Exchange notes that some vendors of, and subscribers, to the Arca Options Products currently utilize only ArcaBook for Arca Options—Complex. The proposed change is also equitable and not unfairly discriminatory because the same levels of fees would be charged to similar types of users of the same market data products.

The Exchange believes that the proposed change is reasonable because the proposed fees would be comparable to the fees that other option markets charge for comparable market data products. For example, CBOE charges, for its ''Complex Order Book Feed,'' a Distributor Fee of $3,000 per month, a Professional User Fee of $25 per month and a Non-Professional User Fee of $1 per month.[12] Similarly, the International Securities Exchange, LLC (''ISE'') offers a ''Spread Feed,'' which includes order and quote data for complex strategies, and charges related fees, including $3,000 per month for distributors and a monthly controlled device fee of $25 per controlled device for Professionals.[13] NASDAQ OMX PHLX LLC (''PHLX'') also offers a market data product entitled ''PHLX Orders,'' which similarly includes order and last sale information for complex strategies and other market data, and charges a $3,000 internal monthly fee ($3,500 for external), $2,000 per Distributor and $500 per subscriber.[14]

The Exchange believes that it is reasonable for the proposed Non-Display Fee for ArcaBook for Arca Options—Complex to be lower than the fee for non-display use for all six Arca Options Products (*i.e.,* $5,000 per month). Specifically, some vendors of, and subscribers to, the Arca Options Products currently utilize only ArcaBook for Arca Options—Complex and the proposed rate reflects this use of only one of the six Arca Options Products. This proposal would also be equitable and not unfairly discriminatory because it would establish an overall monthly fee that reflects the value of the data to the data recipients in their profit-generating activities.

The Exchange also believes that it is reasonable for the proposed Non-Professional User Fee to be the same as the existing fee for all six Arca Options Products (*i.e.,* $1 per User per month) because the current fee is already set at a very reasonable and competitive level. This is also equitable and not unfairly discriminatory because the current fee of $1 per Non-Professional User is charged if the Non-Professional User receives the six Arca Options Products, and not on the basis of how many of the six Arca Options Products a Non-

Change Amending Its Fees for Non-Display Use of NYSE Arca Options Market Data) (''2014 Non-Display Filing'').

[7] *See* Securities Exchange Act Release No. 72074 (May 1, 2014), 79 FR 26277 (May 7, 2014) (SR–NYSEArca–2014–51) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Offering ArcaBook for Arca Options—Complex on a Standalone Basis Without Charge from May 1, 2014 Through October 31, 2014).

[8] *See* 2014 Non-Display Filing, supra n.6.

[9] *See* 2014 Non-Display Filing, supra n.6.

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

[11] 15 U.S.C. 78f(b)(4), (5).

[12] *See* the Chicago Board Options Exchange, Inc. (''CBOE'') ''Complex Order Book Feed'' product and pricing information, available at *https://www.cboe.org/MDX/CSM/OBOOKMain.aspx.* CBOE also applies a User Fee Cap of $2,000. The Exchange is not proposing a Non-Professional Fee Cap at this time.

[13] *See* ISE ''Spread Feed'' market data product and pricing information, available at *http://www.ise.com/market-data/products/data-feeds/.*

[14] *See* PHLX ''PHLX Orders'' market data product and pricing information, *available at http://www.nasdaqtrader.com/Micro.aspx?id=PHLXOrders* and *http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#PHLX,* respectively.

Professional User utilizes. Therefore, currently, a Non-Professional User that is receiving all six Arca Options Products but using only one feed would pay the $1 per User fee, and similarly, as proposed, a Non-Professsional User that is only subscribing to the ArcaBook for Arca Options—Complex feed would pay the same $1 per User fee.

The Exchange also believes that it is reasonable not to propose a Non-Professional User Fee Cap at this time because such a cap is not anticipated to encourage greater subscription to or distribution of ArcaBook for Arca Options—Complex. The absence of a Non-Professional User Fee Cap is equitable and not unfairly discriminatory because each Redistributor would be charged the same amount for each additional Non-Professional User that subscribes to ArcaBook for Arca Options—Complex, regardless of how many Non-Professional Users to which the Redistributor makes ArcaBook for Arca Options—Complex available.

The Exchange also notes that purchasing Arca Options Products is entirely optional. Firms are not required to purchase them and have a wide variety of alternative options market data products from which to choose. Moreover, the Exchange is not required to make these proprietary data products available or to offer any specific pricing alternatives to any customers.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of 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.' '' [15] The Exchange believes that this is also true with respect to options markets.

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 proposed in this filing are the product of competition and therefore satisfy the relevant statutory standards.[16] In addition, the existence of alternatives to these data products, such as options 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.[17] The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.[18]

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

The Exchange believes that adding the description of the three categories of data recipients for non-display use to the Market Data Fee Schedule would remove impediments to and help perfect a free and open market by providing greater transparency for the Exchange's customers regarding the category descriptions that have been previously filed with the Commission and are applicable to the existing Market Data Fee Schedule.[19]

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 data products is constrained by actual competition for the sale of proprietary data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary data.

The Existence of Actual Competition. The market for proprietary options 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 to the proprietary products themselves. Numerous exchanges compete with each other for options trades and sales of options 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 options market data. Proprietary options 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 itself. 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.'' [20] Similarly, the options markets vigorously compete with respect to options data products.[21]

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

[16] 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.

[17] *NetCoalition,* 615 F.3d at 536.

[18] The Exchange believes that cost-based pricing would be impractical because it would create enormous administrative burdens for all parties, including 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 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.*

[19] *See* 2014 Non-Display Filing, supra n.6.

[20] 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.*

[21] *See, e.g.,* Securities Exchange Act Release No. 67466 (July 19, 2012), 77 FR 43629 (July 25, 2012)

Moreover, competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary options data products and therefore constrain markets from overpricing proprietary options market data. Broker-dealers send their order flow to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. Options markets, similar to the equities markets, are highly fragmented.[22]

If an exchange succeeds in its competition for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary options 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 options market data products may be less desirable to customers using them in support of order routing and trading decisions in light of the diminished content; data products offered by competing venues may become correspondingly more attractive. Thus, competition for quotations, order flow, and trade 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 distributed 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 Arca Options Products described herein unless their customers request them, and customers will not elect to pay the proposed fees unless this data product can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors operate as constraints on pricing proprietary data products.

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, proprietary 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 availability and quality, and price and distribution of their data products. Without a platform to post quotations, receive orders, and execute trades, exchange data products would not exist.

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 platform for posting quotes, accepting orders, and executing transactions 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 generally view the costs of transaction executions and market data as a unified cost of doing business with the exchange. A broker-dealer will only choose to direct orders to an exchange if the revenue from the transaction exceeds its cost, including the cost of any market data that the broker-dealer chooses to buy in support of its order routing and trading decisions. If the costs of the transaction are not offset by its value, then the broker-dealer may choose instead not to purchase the product and trade away from that exchange. There is substantial evidence of the strong correlation between order flow and market data purchases. For example, in July 2014 more than 80% of the options transaction volume on each of NYSE Arca and NYSE MKT LLC (''NYSE MKT'') was executed by market participants that purchased one or more proprietary market data products. A super-competitive increase in the fees for either executions or market data would create a risk of reducing an exchange's revenues from both products.

Other market participants have noted that proprietary market data and trade executions are joint products of a joint platform and have common costs.[23] 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.[24]

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 because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, and system 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 exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

(SR–Phlx–2012–93), which describes a variety of options market data products and their pricing.

[22] *See, e.g.,* Press Release, TABB Says US Equity Options Market Makers Need Scalable Technology to Compete in Today's Complex Market Structure (February 25, 2013), available at *http://www.tabbgroup.com/PageDetail.aspx?PageID=16&ItemID=1231;* Fragmentation Vexes Options Markets (April 21, 2014), available at *http://marketsmedia.com/fragmentation-vexes-options-market/.*

[23] *See* Securities Exchange Act Release No. 72153 (May 12, 2014), 79 FR 28575, 28578 n.15 (May 16, 2014) (SR–NASDAQ–2014–045) (''[A]ll 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* Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314, 57317 (September 20, 2010) (SR–NASDAQ–2010–110), and Securities Exchange Act Release No. 62908 (September 14, 2010), 75 FR 57321, 57324 (September 20, 2010) (SR–NASDAQ–2010–111).

[24] *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.'').

As noted above, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 12 self-regulatory organization (''SRO'') options markets. Two of the 12 have launched operations since December 2012.[25] The Exchange believes that these new entrants demonstrate that competition is robust.

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 trading 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. For example, BATS Exchange, Inc. (''BATS''), which previously operated as an ATS and obtained exchange status in 2008, has provided certain market data at no charge on its Web site in order to attract more order flow, and uses revenue rebates from resulting additional executions to maintain low execution charges for its users.[26] 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 that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO is currently permitted to produce and sell proprietary data products, and many currently do or have announced plans to do so, including but not limited to the Exchange, NYSE Arca; CBOE; C2 Options Exchange, Incorporated; ISE; ISE Gemini; NASDAQ; Phlx; BX; BATS; and Miami Exchange.

The fact that proprietary data from 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. By way of example, BATS and NYSE Arca both published proprietary data on the Internet before registering as exchanges. 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 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 one or more other sources of market data information for its own.

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, and BATS. As noted above, BATS launched as an ATS in 2006 and became an exchange in 2008. Two new options exchanges have launched operations since December 2012.[27]

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary options market data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors, and has not considered irrelevant factors, in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if the attendant fees are not justified by the returns that any particular vendor or data recipient would achieve through the purchase.

The Exchange does not believe that the proposed rule change to describe the three categories of data recipients for non-display use in the Market Data Fee Schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange is merely adding to the Market Data Fee Schedule information that has been previously filed with the Commission.[28]

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)[29] of the Act and subparagraph (f)(2) of Rule 19b–4[30] 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)[31] 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

[25] *See* Securities Exchange Act Release Nos. 70050 (July 26, 2013), 78 FR (August 1, 2013) (approving exchange registration for Topaz Exchange, LLC) (known as ISE Gemini); and 68341 (December 3, 2012), 77 FR 73065 (December 7, 2012) (approving exchange registration for Miami International Securities Exchange LLC (''Miami Exchange'')).

[26] *See* description of free market data from BATS Options, available at *http://www.batsoptions.com/market_data/products/.* 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.

[27] *See supra* note 25.

[28] *See* 2014 Non-Display Filing, supra n.6.

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f)(2).

[31] 15 U.S.C. 78s(b)(2)(B).

Number SR–NYSEARCA–2014–129 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–NYSEARCA–2014–129. 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 will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–NYSEARCA–2014–129 and should be submitted on or before December 10, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–27314 Filed 11–18–14; 8:45 am]

BILLING CODE 8011–01–P

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73585; File No. SR–NYSEArca–2014–116]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule To Add a Service Fee for Certain Post-Trade Adjustments Performed by the Exchange To Be Effective December 1, 2014

November 13, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 4, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') a 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 Exchange proposes to amend the NYSE Arca Options Fee Schedule to add a service fee for certain post-trade adjustments performed by the Exchange. The Exchange proposes to implement the fee change effective December 1, 2014.

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] 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 Fee Schedule to add a service fee for certain post-trade adjustments performed by the Exchange (the ''Service Fee''). The Exchange proposes to implement the Service Fee effective December 1, 2014. As described below, the proposed Service Fee would apply to certain post-trade adjustments performed by Exchange staff. The purpose of the proposed Service Fee is to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup for valuable employee time and resources expended on these post-trade adjustments that may also be self-executed by OTP Holders or OTP Firms (collectively, ''OTPs''). In addition, the Exchange believes that the proposed Service Fee would incentivize OTPs to process their own post-trade adjustments going forward.

In an effort to conserve Exchange resources, the Exchange has provided OTPs with the functionality to perform certain of their own post-trade adjustments. Specifically, OTPs may perform post-trade adjustments on their side of the trade that do not affect the contractual terms of a transaction. For example, OTPs may currently make the following non-contractual post-trade adjustments without Exchange interaction: changing the position indicator (*e.g.,* from Open to Close or Close to Open); adding or removing Clearing Member Trade Agreement (''CMTA'') information; allocating trades (*e.g.,* adding multiple executing domains or ''give-ups''); changing the clearing account type (*e.g.,* Customer, Firm, Market Maker) and modifying the optional data field, which may be used by OTPs for their own internal back-office processing (collectively, the ''Post-Trade Adjustments'').

Notwithstanding the availability of functionality for OTPs to perform this function themselves, OTPs still send the Exchange a significant number of requests, on a daily basis, to perform these straightforward Post-Trade Adjustments on the OTPs' behalf. The Exchange uses its best efforts to respond to these requests by OTPs in a timely manner. While the Exchange is committed to delivering a certain level of customer service to its OTPs, it believes that performing the Post-Trade Adjustments free of charge results in the diversion of valuable Exchange time and resources in a manner that is not a [sic]