Dated: March 4, 2016.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2016–05280 Filed 3–8–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Mathematical and Physical Sciences (#66).

Date/Time: April 7, 2016: 8:30 a.m. to 5:00 p.m.; April 8, 2016: 8:30 a.m. to 1:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 375, Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Eduardo Misawa, National Science Foundation, 4201 Wilson Boulevard, Suite 505, Arlington, Virginia 22230; Telephone: 703/292–8300.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to mathematical and physical sciences programs and activities.

Agenda

Thursday, April 7, 2016; 8:30 a.m.–5:00 p.m.

- Registration and refreshments
- Meeting opening, FACA briefing and approval of February meeting minutes
- Update on MPS FY17 Budget Request
- MPS recent activities
- Update on partnerships
- Meeting with the NSF Director and COO
- Adjourn

Friday, April 8, 2016; 8:30 a.m.–1:00 p.m.

- Meeting opening
- Update on selected education and training programs
- Updates on NSF-wide advisory committees
- Adjourn

Dated: March 3, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–05158 Filed 3–8–16; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77289; File No. SR–NYSEArca–2016–31]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Fees for the NYSE Arca Order Imbalances Data Feed

March 3, 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 February 22, 2016, 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 the Substance of the Proposed Rule Change

The Exchange proposes to establish fees for the NYSE Arca Order Imbalances data feed (''Order Imbalances Data Feed''). 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish the fees for the Order Imbalances Data Feed in the NYSE Arca Equities Proprietary Market Data Fee Schedule (''Fee Schedule'').[4] The Exchange proposes to establish the following fees for the Order Imbalances Data Feed:

1. *Access Fee.* For the receipt of access to the Order Imbalances Data Feed, the Exchange proposes to charge $500 per month. Although the Exchange charges professional and non-professional user fees for other proprietary market data products, the Exchange does not intend to charge such fees for the Order Imbalances Data Feed.

2. *Non-Display Fees.* The Exchange proposes to establish non-display fees for the Order Imbalances Data Feed using the same non-display use fee structure established for the Exchange's other market data products.[5] Non-display use would mean accessing, processing, or consuming the Order Imbalances Data Feed delivered via direct and/or Redistributor [6] data feeds for a purpose other than in support of a data recipient's display or further internal or external redistribution (''Non-Display Use''). Non-Display Use would include any trading use, such as high frequency or algorithmic trading, and would also include any trading in any asset class, automated order or quote generation and/or order pegging, price referencing for algorithmic trading or smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management.

Under the proposal, for Non-Display Use of the Order Imbalances Data Feed, there would be three categories of, and fees applicable to, data recipients. One, two or three categories of Non-Display Use may apply to a data recipient.

- Under the proposal, the Category 1 Fee would be $500 per month and

[4] The proposed rule change establishing the Order Imbalances Data Feed was immediately effective on January 13, 2016. *See* Securities Exchange Act Release No. 76968 (January 22, 2016), 81 FR 4689 (January 27, 2016) (SR–NYSEArca–2016–10).

[5] *See* Securities Exchange Act Release Nos. 73011 (September 5, 2014), 79 FR 54315 (September 11, 2014) (SR–NYSEArca–2014–93) and 73619 (November 18, 2014), 79 FR 69902 (November 24, 2014) (SR–NYSEArca–2014–132).

[6] ''Redistributor'' means a vendor or any person that provides a real-time NYSE Arca data product to a data recipient or to any system that a data recipient uses, irrespective of the means of transmission or access.

would apply when a data recipient's Non-Display Use of the Order Imbalances Data Feed is on its own behalf, not on behalf of its clients.

• Under the proposal, Category 2 Fees would be $500 per month and would apply to a data recipient's Non-Display Use of the Order Imbalances Data Feed on behalf of its clients.

• Under the proposal, Category 3 Fees would be $500 per month and would apply to a data recipient's Non-Display Use of the Order Imbalances Data Feed for the purpose of internally matching buy and sell orders within an organization, including matching customer orders for data recipient's own behalf and/or on behalf of its clients. This category would apply to Non-Display Use in trading platforms, such as, but not restricted to, alternative trading systems (''ATSs''), broker crossing networks, broker crossing systems not filed as ATSs, dark pools, multilateral trading facilities, exchanges and systematic internalization systems. Category 3 Fees would be capped at $1,500 per month for each data recipient for the Order Imbalances Data Feed.

The description of the three non-display use categories is set forth in the Fee Schedule in endnote 1 and that endnote would be referenced in the Order Imbalances Data Feed fees on the Fee Schedule.

Data recipients that receive the Order Imbalances Data Feed for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before they would be authorized to receive the feed.[7] A firm subject to Category 3 Fees would be required to identify each platform that uses the Order Imbalances Data Feed on a Non-Display Use basis, such as ATSs and broker crossing systems not registered as ATSs, as part of the Non-Display Use Declaration.

3. *Non-Display Declaration Late Fee.* Data recipients that receive the Order Imbalances Data Feed for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before they would be authorized to receive the feed. Beginning in 2017, the Order Imbalances Data Feed data recipients would be required to submit, by January 31st of each year, the Non-Display Use Declaration that applies to all real-time NYSE Arca market data products that include Non-Display Use fees.[8] The Exchange proposes to charge a Non-Display Declaration Late Fee of $1,000 per month to any data recipient that pays an Access Fee for the Order Imbalances Data Feed that has failed to complete and submit a Non-Display Use Declaration. Specifically, with respect to the Non-Display Use Declaration due by January 31st of each year beginning in 2017, the Non-Display Declaration Late Fee would apply to data recipients that fail to complete and submit the Non-Display Use Declaration by the January 31st due date, and would apply beginning February 1st and for each month thereafter until the data recipient has completed and submitted the annual Non-Display Use Declaration. The Exchange also proposes to apply current endnote 2 on the Fee Schedule to the Non-Display Declaration Late Fee for the Order Imbalances Data Feed. Endnote 2 to the Fee Schedule also makes it clear that the Non-Display Declaration Late Fee applies to the Order Imbalances Data Feed beginning February 1st of 2017 and each year with respect to the Non-Display Use Declaration due by January 31st each year.[9]

In addition, if a data recipient's use of the Order Imbalances Data Feed changes at any time after the data recipient submits a Non-Display Use Declaration, the data recipient must inform the Exchange of the change by completing and submitting at the time of the change an updated declaration reflecting the change of use.

4. *Multiple Data Feed Fee.* The Exchange proposes to establish a monthly fee, the ''Multiple Data Feed Fee,'' that would apply to data recipients that take a data feed for a market data product in more than two locations. Data recipients taking the Order Imbalance Data Feed in more than two locations would be charged $200 per additional location per month. No new reporting would be required.[10]

Other Changes to the Fee Schedule

Non-Display Use fees for NYSE ArcaBook include the Non-Display Use of NYSE Arca BBO and NYSE Arca Order Imbalances for customers paying NYSE ArcaBook non-display fees that also pay access fees for NYSE Arca BBO and NYSE Arca Order Imbalances. The Exchange proposes to describe this application of the Non-Display Use fees in note 1 to the Fee Schedule.[11] Additionally, Non-Display Use fees for NYSE Arca Integrated Feed include the Non-Display Use of NYSE ArcaBook, NYSE Arca BBO, NYSE Arca Trades and NYSE Arca Order Imbalances for customer paying NYSE Arca Integrated Feed non-display fees that also pay access fees for NYSE ArcaBook, NYSE Arca BBO, NYSE Arca Trades and NYSE Arca Order Imbalances. The Exchange proposes to describe this application of the Non-Display Use fees with an amendment to note 1 to the Fee Schedule.

The Exchange notes that the proposed fees are otherwise consistent with the fee structures for other market data products offered by the Exchange,[12] as well as the fees for similar market data products offered by the Exchange's affiliates.[13] Other than the Exchange's affiliates, the Exchange has not identified any other exchanges that offer

[7] Data recipients are required to complete and submit the Non-Display Declaration with respect to each market data product on the Fee Schedule that includes Non-Display Fees. *See* Securities Exchange Act Release Nos. 74865 (May 4, 2015), 80 FR 26593 (May 8, 2015) (SR–NYSEArca–2015–34) (NYSE Arca Integrated Feed) and 74901 (May 7, 2015), 80 FR 27371 (May 13, 2015) (SR–NYSEArca–2015–36) (NYSE Arca BBO and NYSE Arca Trades).

[8] *Id.*

[9] The second sentence of endnote 2 to the Fee Schedule refers to a late fee for the Non-Display Use Declarations due September 1, 2014 that have not been submitted by June 30, 2015. This sentence is not applicable to the Order Imbalances Data Feed because the Order Imbalances Data Feed was not available as of the September 1, 2014 due date and because data recipients of the Order Imbalances Data Feed will have to complete and submit a Non-Display Declaration before they can receive the feed. The Exchange proposes to modify the second sentence so that it applies only to NYSE ArcaBook, NYSE Arca BBO, NYSE Arca Trades and NYSE Arca Integrated Feed and not to the Order Imbalances Data Feed. The Exchange proposes to add a fourth sentence so that it is clear that it applies to all market data products, including the Order Imbalances Data Feed, to which Non-Display Use fees apply.

[10] Data vendors currently report a unique Vendor Account Number for each location at which they provide a data feed to a data recipient. The Exchange considers each Vendor Account Number a location. For example, if a data recipient has five Vendor Account Numbers, representing five locations, for the receipt of the Order Imbalance Data Feed product, that data recipient will pay the Multiple Data Feed fee with respect to three of the five locations.

[11] The Exchange added a similar note, Note 1(b), to the Fee Schedule in connection with the addition of fees for the NYSE Arca Integrated Feed. *See* Securities Exchange Act Release No. 76914 (January 14, 2016), 81 FR 3484 (January 21, 2016) (SR–NYSEArca–2016–03).

[12] For example, for NYSE ArcaBook, which includes depth of book, the Order Imbalances Data Feed, and other data, the Exchange charges an access fee of $2,000 per month, a professional user fee of $40 per month, and a non-professional user fee that ranges between $3 and $10 per month (capped at $40,000 per month). NYSE ArcaBook will continue to include the Order Imbalances Data Feed at no additional charge to NYSE ArcaBook customers.

[13] NYSE MKT LLC (''NYSE MKT'') also currently charges a $500 per month non-display fee for categories 1, 2 and 3. See Securities Exchange Act Release No. 72020 (September 9, 2014), 79 FR 55040 (September 15, 2014) (SR–NYSEMKT–2014–72); NYSE MKT also currently charges a $1,000 per month non-display late fee and $200 per month multiple data feed fee. *See* Securities Exchange Act Release Nos. 74884 (May 6, 2015), 80 FR 27212 (May 12, 2015) (SR–NYSEMKT–2015–35) and 76911 (January 14, 2016), 81 FR 3496 (January 21, 2016) (SR–NYSEMKT–2016–05), respectively.

a standalone order imbalance market data product.[14] The proposed fees reflect the value of this proprietary data to investors in making informed trading and order routing decisions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[15] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[16] 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 [17] 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,[18] 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 further believes that the proposed rule change is consistent with the market-based approach of the 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.' '' [19]

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.[20] In addition, the existence of alternatives to the Order Imbalances Data Feed, including 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.[21] 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.[22]

The Exchange believes that the proposed fees are reasonable because they replicate the fee structure of other market data products offered by the Exchange by including not only an access fee but also non-display, late declaration, and multiple data feed fees.[23] The Exchange believes that these fees are relatively low in light of the high value of this proprietary data to users in making informed order routing and trading decisions for all securities traded on the Exchange, particularly in the Exchange's opening and closing auctions where a high percentage of daily trading volume occurs.[24]

The proposed fees are equitable and not unfairly discriminatory because they are consistent with the structure of other market data fees that charge for access, non-display use and receipt of data in multiple locations.[25]

The existence of alternatives to the Order Imbalances Data Feed, including proprietary data from other sources, reasonably ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives.

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.

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

[14] The NASDAQ Stock Market LLC (''NASDAQ'') offers Net Order Imbalance Indicator data through its NASDAQ Workstation and NASDAQ TotalView datafeed. *See http://www.nasdaqtrader.com/trader.aspx?id=openclose.*

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

[16] 15 U.S.C. 78f(b)(4), (5).

[17] 15 U.S.C. 78k–1.

[18] *See* 17 CFR 242.603.

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

[20] 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.

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

[22] 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.*

[23] *See supra* note 12.

[24] *See* 17 CFR 242.603(c).

[25] *See supra* note 12.

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.'' [26]

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.'' [27] 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.[28]

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 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 the Order Imbalances Data Feed unless their customers request it, and customers will not elect to pay the proposed fees unless the Order Imbalances Data Feed 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 of 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 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 January 2016, more than 80% of the transaction volume on each of NYSE Arca and NYSE Arca's affiliates New York Stock Exchange LLC (''NYSE'') and NYSE MKT was executed by market participants that purchased one or more proprietary market data products. A supra-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.[29] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the

[26] 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; 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.'').

[27] 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.*

[28] 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.

[29] *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 (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).

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.[30]

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.

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 equities self-regulatory organization (''SRO'') markets, as well as various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''), and internalizing broker-dealers. SRO markets compete to attract order flow and produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities compete to attract transaction reports from the non-SRO venues.

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 Global Markets (''BATS'') and Direct Edge, which previously operated as ATSs and obtained exchange status in 2008 and 2010, respectively, provided certain market data at no charge on their Web sites in order to attract more order flow, and used revenue rebates from resulting additional executions to maintain low execution charges for their users.[31] 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, ATSs, and internalizing broker-dealers that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and broker-dealer is currently permitted to produce and sell proprietary data products, and many currently do, including but not limited to the Exchange, NYSE, NYSE MKT, NASDAQ OMX, BATS, and Direct Edge.

The fact that proprietary data from ATSs, internalizing broker-dealers, 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. 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 another source of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing.

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. As noted above, BATS launched as an ATS in 2006 and became an exchange in 2008, while Direct Edge began operations in 2007 and obtained exchange status in 2010.

In determining the proposed fees for the Order Imbalances Data Feed, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, 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.

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.

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[30] *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.'').

[31] 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.

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–NYSEArca–2016–31 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–2016–31. 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 such 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–NYSEArca–2016–31, and should be submitted on or before March 30, 2016.

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

Robert W. Errett,

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. 34–77287; File No. SR–BATS–2015–124]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to BATS Rule 14.11(i), Managed Fund Shares, To List and Trade Shares of the REX VolMAXX Long VIX Weekly Futures Strategy ETF and the REX VolMAXX Inverse VIX Weekly Futures Strategy ETF of the Exchange Traded Concepts Trust

March 3, 2016.

On December 30, 2015, BATS Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the REX VolMAXX Long VIX Weekly Futures Strategy ETF and the REX VolMAXX Inverse VIX Weekly Futures Strategy ETF (each a ''Fund'' and collectively, the ''Funds'') of the Exchange Traded Concepts Trust under BATS Rule 14.11(i). The proposed rule change was published for comment in the **Federal Register** on January 20, 2016.[3] On February 10, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, and on February 12, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act [5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates April 19, 2016 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–BATS–2015–124), as modified by Amendment Nos. 1 and 2.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Robert W. Errett,

Deputy Secretary.

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76884 (January 13, 2016), 81 FR 3195.

[4] In Amendment No. 1, which replaced and superseded the original filing in its entirety, the Exchange provided additional information and representations regarding the Funds' investments, how certain investments would be valued for the net asset value calculation, the availability of price information for certain investments, and provided certain additional clarifications to the proposed rule change. Amendment No. 1 is available at *http://www.sec.gov/comments/sr-bats-2015-124/bats2015124-1.pdf*. In Amendment No. 2, the Exchange added a representation that the Funds will not invest in leveraged (*e.g.*, 2X, −2X, 3X or −3X) investment company securities. Amendment No. 2 is available at *http://www.sec.gov/comments/sr-bats-2015-124/bats2015124-2.pdf*.

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).