

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="33"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2015"/> - * <input type="text" value="33"/> Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by International Securities Exchange
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

The Exchange proposes to amend its Schedule of Fees to increase the fees charged to subscribers of the ISE Order Feed and to standardize the managed data fees charged for the ISE Order Feed, ISE Top Quote Feed, and ISE Spread Feed.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Last Name *
 Title *
 E-mail *
 Telephone * Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date Secretary & General Counsel
 By (Name *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Persona Not Validated - 1434392700842,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The International Securities Exchange (“ISE” or the “Exchange”) proposes to amend its Schedule of Fees as described below. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of the Exchange approved this proposed rule change on September 17, 2015. This action constitutes the requisite approval under the Exchange’s Certificate of Formation, Operating Agreement, and Constitution.

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

(a) Purpose – The Exchange proposes to amend its Schedule of Fees to increase the fees charged to subscribers of the ISE Order Feed and to standardize the managed data fees charged for the ISE Order Feed, ISE Top Quote Feed, and ISE Spread Feed¹ with a modest increase to the fees charged.

Order Feed

The Order Feed provides real-time updates to subscribers every time a new limit order that is not immediately executable at the BBO is placed on the ISE order book. The Order Feed also announces the commencement of auctions including Flash, Facilitation, Solicitation, Block Order and Price Improvement Mechanisms, as well as Directed Orders, but does not include Immediate or Cancel (“IOC”) or Fill or Kill (“FOK”) orders, quotes, or any non-displayed interest. The information included on the Order Feed includes auction type, order side (i.e., buy/sell), order price, order size, and a market participant (e.g., priority customer) indicator, as well as details for each instrument series, including the symbols (series and underlying security), put or call indicator, the expiration date, and the strike price of the series. The Order Feed provides each individual limit order, not including quote traffic, resulting in lower bandwidth usage and less data for subscribers to process.

Currently, the Exchange charges distributors \$2,000 per month for subscriptions to the Order Feed and will not charge distributors a monthly fee per controlled device as

¹ With the exception that the ISE Spread Feed will continue to be subject to a higher controlled device fee than the ISE Order Feed and ISE Top Quote Feed. Additionally, nothing in this rule filing affects subscription fee discounts offered to members who subscribe to two data feeds (10%) or three data feeds (20%).

long the feed is for internal use only.² For subscribers that redistribute the Order Feed externally, or redistribute the Order Feed internally and externally, the Exchange charges each distributor an additional fee of \$10 per month per controlled device with a combined maximum fee capped at \$2,500 per month.

We now propose to increase the fee charged to distributors to \$3,000 per month. The Exchange will not charge distributors a monthly fee per controlled device as long the feed is for internal use only. For subscribers that redistribute the Order Feed externally, or redistribute the Order Feed internally and externally, the Exchange proposes to charge each distributor an additional fee of \$20 per month per controlled device with a combined maximum fee capped at \$5,000 per month. For example, a firm that subscribes to the Order Feed and then redistributes it via a controlled device to 50 clients pays \$4,000 per month (\$3,000 for the feed and \$1000 for the controlled devices (\$20 × 50)). If that same firm redistributes the data via a controlled device to 150 clients, the fee for that firm is capped at \$5,000 per month, resulting in a savings of \$1,000.

Managed Data Fees

On June 6, 2013 ISE implemented a temporary Managed Data Access Service program that established a new pricing and distribution model for the sale of a number of real-time market data products.³ The Exchange recently extended this program until August 31, 2016, so that the Exchange could continue to provide this alternative delivery option for ISE data feeds.⁴

Managed Data Access Service is a pricing and administrative option whereby the ISE assesses fees to Managed Data Access Distributors,⁵ who redistribute market data to Managed Data Access Recipients.⁶ Managed Data Access Distributors are required to monitor the delivery of the data retransmitted to their clients, and must agree to reformat,

² A distributor is any firm that receives one of the market data feeds directly from ISE or indirectly through a redistributor and then distributes it either internally or externally. A redistributor includes market data vendors and connectivity providers such as extranets and private network providers.

³ See Exchange Act Release No. 69806 (June 20, 2013), 78 FR 38424 (June 26, 2013), SR-ISE-2013-39.

⁴ See Exchange Act Release No. 34-75874 (September 10, 2015), 80 FR 55669 (September 16, 2015), SR-ISE-2015-25.

⁵ A Managed Data Access Distributor redistributes ISE data feeds and permits access to the information in those data feeds through a controlled device. A Managed Data Access Distributor can also redistribute a data feed solution to specific IP addresses, including an Application Programming Interface (“API”) or similar automated delivery solutions, with only limited entitlement controls (*e.g.*, usernames and/or passwords) to a recipient of the information.

⁶ A Managed Data Access Recipient is a subscriber to the Managed Data Access Distributor who receives a reformatted data feed in a controlled device or at a specific IP address. Market Data Access Recipients may be Professional or Non-Professional users.

redisplay and/or alter the data feeds prior to retransmission without affecting the integrity of the data feeds and without rendering any of the feeds inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory.

Currently, the Exchange charges a fee to each Managed Data Access Distributor of \$1,500 for each of the Top Quote Feed and the Spread Feed, and \$1,000 per month for the Order Feed. The Exchange also charges a fee for each IP address at Managed Data Access Recipients that receive market data redistributed by a Managed Data Access Distributor, which is \$500 per month for each of the Top Quote Feed and the Spread Feed, and \$350 per month for the Order Feed.⁷ In addition, the Exchange charges a controlled device fee for each controlled device permitted to access market data redistributed by a Managed Data Access Distributor to a Market Data Access Recipient that is a Professional user,⁸ which is \$20 per month for the Top Quote Feed, \$25 per month for the Spread Feed, and \$10 per month for the Order Feed.⁹ For each of the above ISE data feeds, Market Data Access Distributors are subject to a minimum fee, which is \$3,000 per month for each of the Top Quote Feed and the Spread Feed, and \$2,000 per month for the Order Feed.

The Exchange now proposes to charge each Managed Data Access Distributor a monthly fee of \$2,000 for the Order Feed, Top Quote Feed, and Spread Feed. The Exchange also proposes to charge each IP address at Managed Data Access Recipients that received market data redistributed by a Managed Data Access Distributor a monthly fee of \$500 for the Order Feed.¹⁰ In addition, for each controlled device permitted to access market data redistributed by a Managed Data Access Distributor to a Market Data Access Recipient that is a Professional user the Exchange proposes a fee of \$20 per month for the Order Feed.¹¹ Finally, for the Order Feed, Top Quote Feed, and Spread Feed, Market Data Access Distributors are subject to a minimum fee, which the Exchange now proposes to change to \$4,000 per month.

(b) Basis – The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(4) of the Act,¹³ in particular, in that it provides for an equitable allocation of reasonable fees and other charges among Exchange Members and other persons using its facilities.

⁷ This fee is charged per IP address, which covers both primary and back-up IP addresses at a Managed Data Access Recipient.

⁸ A “Professional user” is an authorized end-user of the ISE data feeds that has not qualified as a Non-Professional user.

⁹ A controlled device is any device that a distributor of an ISE data feed permits to access the information in that data feed.

¹⁰ The fee for the Top Quote Feed and the Spread Feed are not being changed.

¹¹ The fee for the Top Quote Feed and the Spread Feed are not being changed.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

The Exchange believes that the proposed rule change is also consistent with Section 6(b)(8) of the Act,¹⁴ in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed fees are the same for all similarly-situated market participants, and therefore do not unreasonably discriminate among market participants. Moreover, the Exchange notes that the proposed fees are similar to the fees charged by other exchanges. For example, similar to the ISE Order Feed, NASDAQ OMX PHLX (“PHLX”) charges a monthly fee of \$3,000 for internal distributors and \$3,500 for external distributors plus a monthly fee of \$1 for non-professional subscribers and \$40 for professional subscribers.¹⁵ Additionally, similar to ISE’s Managed Data Order Feed, PHLX charges \$2,000 per month per distributor and \$500 per month per subscriber.¹⁶ Further, the market data fees will be easier to understand because the proposed rule standardizes them.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act’s goals of facilitating efficiency and competition:

[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.¹⁷

By removing “unnecessary regulatory restrictions” on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

¹⁴ 15 U.S.C. 78f(b)(8).

¹⁵ See IX. Proprietary Data Feed Fees, PHLX Orders, available at <http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing>.

¹⁶ See IX. Proprietary Data Feed Fees, Fee Schedule for Managed Data Solutions for Non-Display Usage, available at <http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing>.

¹⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

On July 21, 2010, President Barak Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase “on any person, whether or not the person is a member of the self-regulatory organization” after “due, fee or other charge imposed by the self-regulatory organization.” As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Act to read, in pertinent part, “At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.”

The decision of the United States Court of Appeals for the District of Columbia Circuit in NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission’s reliance upon competitive markets to set reasonable and equitably allocated fees for market data. “In fact, the legislative history indicates that the Congress intended that the market system ‘evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed’ and that the SEC wield its regulatory power ‘in those situations where competition may not be sufficient,’ such as in the creation of a ‘consolidated transactional reporting system.’”¹⁸

The court’s conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

The Exchange believes that the proposed fees for the ISE market data offering is consistent with the requirements of the Act because competition provides an effective constraint on the market data fees that the Exchange has the ability and the incentive to charge. ISE has a compelling need to attract order flow from market participants in order to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on the Exchange to act reasonably in setting the fees for its market data offerings, particularly given that the market participants that will pay such fees often will be the same market participants from whom the Exchange must attract order flow. These market participants include broker-dealers that control the handling of

¹⁸ NetCoalition, at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 321, 323).

a large volume of customer and proprietary order flow. Given the portability of order flow from one exchange to another, any exchange that sought to charge unreasonably high market data fees would risk alienating many of the same customers on whose orders it depends for competitive survival. ISE currently competes with 11 other options exchanges for order flow.

The Exchange is constrained in pricing its market data offerings by the availability to market participants of alternatives to purchasing these products. The Exchange must consider the extent to which market participants would choose one or more alternatives instead of purchasing the Exchange's data.

For the reasons cited above, the Exchange believes that the proposed fees for the ISE data feeds are equitable, fair, reasonable and not unreasonably discriminatory. The Exchange further believes that the continued availability of each of the ISE data feeds enhances transparency, fosters competition among orders and markets, and enables buyers and sellers to obtain better prices. In addition, the Exchange believes that no substantial countervailing basis exists to support a finding that the proposed terms and fees for these products fail to meet the requirements of the Act.

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

In accordance with Section 6(b)(8) of the Act,¹⁹ the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the NetCoalition court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. The Exchange believes that a record may readily be established to demonstrate the competitive nature of the market in question.

For the reasons discussed above, the Exchange believes that the Dodd-Frank Act amendments to Section 19 materially alter the scope of the Commission's review of future market data filings, by creating a presumption that all fees may take effect immediately, without prior analysis by the Commission of the competitive environment. Even in the absence of this important statutory change, however, the Exchange believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution

¹⁹ 15 U.S.C. 78f(b)(8).

of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without trade executions, exchange data products cannot exist. Data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it.

Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decrease, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable. Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. "No one disputes that competition for order flow is 'fierce'."²⁰ However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

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

²⁰ NetCoalition, at 24.

the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platform may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including numerous self-regulatory organization ("SRO") markets, as well as internalizing broker-dealers ("BDs") and various forms of alternative trading systems ("ATSS"), including dark pools and electronic communication networks ("ECNs"). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities ("TRFs") compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs, TRFs, BDs, and ATSS that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATSS, and BD is currently permitted to produce proprietary data products, and many currently do.

Any ATSS or BD can combine with any other ATSS, BD, or multiple ATSSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is

exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract “eyeballs” that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors’ pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. The Exchange and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,²¹ the Exchange has designated this proposal as establishing or changing a due, fee or other charge imposed on any person, whether or not the person is a member of a self-regulatory organization, which renders the proposed rule change effective upon filing.

8. Proposed Rule change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

10. Advanced Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Publication in the Federal Register.

Exhibit 5 – Text of the Proposed Rule Change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-ISE-2015-33)

[Date]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Schedule of Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 1, 2015, the International Securities Exchange, LLC (the "Exchange" or "ISE") filed with the Securities and Exchange 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

ISE proposes to amend the Schedule of Fees as described in more detail below. The text of the proposed rule change is available on the Exchange's Internet website at <http://www.ise.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at

¹ 15 U.S.C. 78s(b)(1).

the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend its Schedule of Fees to increase the fees charged to subscribers of the ISE Order Feed and to standardize the managed data fees charged for the ISE Order Feed, ISE Top Quote Feed, and ISE Spread Feed³ with a modest increase to the fees charged.

Order Feed

The Order Feed provides real-time updates to subscribers every time a new limit order that is not immediately executable at the BBO is placed on the ISE order book. The Order Feed also announces the commencement of auctions including Flash, Facilitation, Solicitation, Block Order and Price Improvement Mechanisms, as well as Directed Orders, but does not include Immediate or Cancel (“IOC”) or Fill or Kill (“FOK”) orders, quotes, or any non-displayed interest. The information included on the Order Feed includes auction type, order side (i.e., buy/sell), order price, order size, and a market participant (e.g., priority customer) indicator, as well as details for each instrument series, including the symbols (series and underlying security), put or call indicator, the expiration date, and the strike price of the series. The Order Feed provides each

² 17 CFR 240.19b-4.

³ With the exception that the ISE Spread Feed will continue to be subject to a higher controlled device fee than the ISE Order Feed and ISE Top Quote Feed. Additionally, nothing in this rule filing affects subscription fee discounts offered to members who subscribe to two data feeds (10%) or three data feeds (20%).

individual limit order, not including quote traffic, resulting in lower bandwidth usage and less data for subscribers to process.

Currently, the Exchange charges distributors \$2,000 per month for subscriptions to the Order Feed and will not charge distributors a monthly fee per controlled device as long the feed is for internal use only.⁴ For subscribers that redistribute the Order Feed externally, or redistribute the Order Feed internally and externally, the Exchange charges each distributor an additional fee of \$10 per month per controlled device with a combined maximum fee capped at \$2,500 per month.

We now propose to increase the fee charged to distributors to \$3,000 per month. The Exchange will not charge distributors a monthly fee per controlled device as long the feed is for internal use only. For subscribers that redistribute the Order Feed externally, or redistribute the Order Feed internally and externally, the Exchange proposes to charge each distributor an additional fee of \$20 per month per controlled device with a combined maximum fee capped at \$5,000 per month. For example, a firm that subscribes to the Order Feed and then redistributes it via a controlled device to 50 clients pays \$4,000 per month (\$3,000 for the feed and \$1000 for the controlled devices ($\$20 \times 50$)). If that same firm redistributes the data via a controlled device to 150 clients, the fee for that firm is capped at \$5,000 per month, resulting in a savings of \$1,000.

Managed Data Fees

On June 6, 2013 ISE implemented a temporary Managed Data Access Service program that established a new pricing and distribution model for the sale of a number of

⁴ A distributor is any firm that receives one of the market data feeds directly from ISE or indirectly through a redistributor and then distributes it either internally or externally. A redistributor includes market data vendors and connectivity providers such as extranets and private network providers.

real-time market data products.⁵ The Exchange recently extended this program until August 31, 2016, so that the Exchange could continue to provide this alternative delivery option for ISE data feeds.⁶

Managed Data Access Service is a pricing and administrative option whereby the ISE assesses fees to Managed Data Access Distributors,⁷ who redistribute market data to Managed Data Access Recipients.⁸ Managed Data Access Distributors are required to monitor the delivery of the data retransmitted to their clients, and must agree to reformat, redisplay and/or alter the data feeds prior to retransmission without affecting the integrity of the data feeds and without rendering any of the feeds inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory.

Currently, the Exchange charges a fee to each Managed Data Access Distributor of \$1,500 for each of the Top Quote Feed and the Spread Feed, and \$1,000 per month for the Order Feed. The Exchange also charges a fee for each IP address at Managed Data Access Recipients that receive market data redistributed by a Managed Data Access Distributor, which is \$500 per month for each of the Top Quote Feed and the Spread

⁵ See Exchange Act Release No. 69806 (June 20, 2013), 78 FR 38424 (June 26, 2013), SR-ISE-2013-39.

⁶ See Exchange Act Release No. 34-75874 (September 10, 2015), 80 FR 55669 (September 16, 2015), SR-ISE-2015-25.

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

⁸ A Managed Data Access Recipient is a subscriber to the Managed Data Access Distributor who receives a reformatted data feed in a controlled device or at a specific IP address. Market Data Access Recipients may be Professional or Non-Professional users.

Feed, and \$350 per month for the Order Feed.⁹ In addition, the Exchange charges a controlled device fee for each controlled device permitted to access market data redistributed by a Managed Data Access Distributor to a Market Data Access Recipient that is a Professional user,¹⁰ which is \$20 per month for the Top Quote Feed, \$25 per month for the Spread Feed, and \$10 per month for the Order Feed.¹¹ For each of the above ISE data feeds, Market Data Access Distributors are subject to a minimum fee, which is \$3,000 per month for each of the Top Quote Feed and the Spread Feed, and \$2,000 per month for the Order Feed.

The Exchange now proposes to charge each Managed Data Access Distributor a monthly fee of \$2,000 for the Order Feed, Top Quote Feed, and Spread Feed. The Exchange also proposes to charge each IP address at Managed Data Access Recipients that received market data redistributed by a Managed Data Access Distributor a monthly fee of \$500 for the Order Feed.¹² In addition, for each controlled device permitted to access market data redistributed by a Managed Data Access Distributor to a Market Data Access Recipient that is a Professional user the Exchange proposes a fee of \$20 per month for the Order Feed.¹³ Finally, for the Order Feed, Top Quote Feed, and Spread Feed, Market Data Access Distributors are subject to a minimum fee, which the Exchange now proposes to change to \$4,000 per month.

⁹ This fee is charged per IP address, which covers both primary and back-up IP addresses at a Managed Data Access Recipient.

¹⁰ A “Professional user” is an authorized end-user of the ISE data feeds that has not qualified as a Non-Professional user.

¹¹ A controlled device is any device that a distributor of an ISE data feed permits to access the information in that data feed.

¹² The fee for the Top Quote Feed and the Spread Feed are not being changed.

¹³ The fee for the Top Quote Feed and the Spread Feed are not being changed.

2. Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁵ in particular, in that it provides for an equitable allocation of reasonable fees and other charges among Exchange Members and other persons using its facilities.

The Exchange believes that the proposed rule change is also consistent with Section 6(b)(8) of the Act,¹⁶ in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed fees are the same for all similarly-situated market participants, and therefore do not unreasonably discriminate among market participants. Moreover, the Exchange notes that the proposed fees are similar to the fees charged by other exchanges. For example, similar to the ISE Order Feed, NASDAQ OMX PHLX (“PHLX”) charges a monthly fee of \$3,000 for internal distributors and \$3,500 for external distributors plus a monthly fee of \$1 for non-professional subscribers and \$40 for professional subscribers.¹⁷ Additionally, similar to ISE’s Managed Data Order Feed, PHLX charges \$2,000 per month per distributor and \$500 per month per subscriber.¹⁸ Further, the market data fees will be easier to understand because the proposed rule standardizes them.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ 15 U.S.C. 78f(b)(8).

¹⁷ See IX. Proprietary Data Feed Fees, PHLX Orders, available at <http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing>.

unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act’s goals of facilitating efficiency and competition:

[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.¹⁹

By removing “unnecessary regulatory restrictions” on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

On July 21, 2010, President Barak Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase “on any person, whether or not the person is a member of the self-regulatory organization” after “due, fee or other charge imposed by the self-regulatory

¹⁸ See IX. Proprietary Data Feed Fees, Fee Schedule for Managed Data Solutions for Non-Display Usage, available at <http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing>.

¹⁹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

organization.” As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Act to read, in pertinent part, “At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.”

The decision of the United States Court of Appeals for the District of Columbia Circuit in NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission’s reliance upon competitive markets to set reasonable and equitably allocated fees for market data. “In fact, the legislative history indicates that the Congress intended that the market system ‘evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed’ and that the SEC wield its regulatory power ‘in those situations where competition may not be sufficient,’ such as in the creation of a ‘consolidated transactional reporting system.’”²⁰

The court’s conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including

market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

The Exchange believes that the proposed fees for the ISE market data offering is consistent with the requirements of the Act because competition provides an effective constraint on the market data fees that the Exchange has the ability and the incentive to charge. ISE has a compelling need to attract order flow from market participants in order to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on the Exchange to act reasonably in setting the fees for its market data offerings, particularly given that the market participants that will pay such fees often will be the same market participants from whom the Exchange must attract order flow. These market participants include broker-dealers that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one exchange to another, any exchange that sought to charge unreasonably high market data fees would risk alienating many of the same customers on whose orders it depends for competitive survival. ISE currently competes with 11 other options exchanges for order flow.

The Exchange is constrained in pricing its market data offerings by the availability to market participants of alternatives to purchasing these products. The Exchange must consider the extent to which market participants would choose one or more alternatives instead of purchasing the Exchange's data.

²⁰ NetCoalition, at 535 (quoting H.R. Rep. No. 94-229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323).

For the reasons cited above, the Exchange believes that the proposed fees for the ISE data feeds are equitable, fair, reasonable and not unreasonably discriminatory. The Exchange further believes that the continued availability of each of the ISE data feeds enhances transparency, fosters competition among orders and markets, and enables buyers and sellers to obtain better prices. In addition, the Exchange believes that no substantial countervailing basis exists to support a finding that the proposed terms and fees for these products fail to meet the requirements of the Act.

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

In accordance with Section 6(b)(8) of the Act,²¹ the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the NetCoalition court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. The Exchange believes that a record may readily be established to demonstrate the competitive nature of the market in question.

For the reasons discussed above, the Exchange believes that the Dodd-Frank Act amendments to Section 19 materially alter the scope of the Commission's review of future market data filings, by creating a presumption that all fees may take effect immediately, without prior analysis by the Commission of the competitive environment. Even in the absence of this important statutory change, however, the Exchange believes

²¹ 15 U.S.C. 78f(b)(8).

that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without trade executions, exchange data products cannot exist. Data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The

choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it.

Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decrease, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable. Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. "No one disputes that competition for order flow is 'fierce'."²² However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

²² NetCoalition, at 24.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platform may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous

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

Broker-dealers currently have numerous alternative venues for their order flow, including numerous self-regulatory organization (“SRO”) markets, as well as internalizing broker-dealers (“BDs”) and various forms of alternative trading systems (“ATs”), including dark pools and electronic communication networks (“ECNs”). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (“TRFs”) compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs, TRFs, BDs, and ATs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, AT, and BD is currently permitted to produce proprietary data products, and many currently do.

Any AT or BD can combine with any other AT, BD, or multiple ATs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers’ production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second,

because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract “eyeballs” that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors’ pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. The Exchange and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,²³ and subparagraph (f)(2) of Rule 19b-4 thereunder,²⁴ because it establishes a due, fee, or other charge imposed by ISE.

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 to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an E-mail to rule-comments@sec.gov. Please include File No. SR-ISE-2015-33 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.

²³ 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-ISE-2015-33. This file number should be included on the subject line if e-mail 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 Commissions 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 inspection and copying in the Commission's Public Reference Room. 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-ISE-2015-33 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Secretary

²⁴ 17 CFR 240.19b-4(f)(2).

²⁵ 17 CFR 200.30-3(a)(12).

Exhibit 5 - Text of the Proposed Rule Change
Underlining indicates additions; [Brackets] indicate deletion

* * *

VIII. Market Data

* * *

G. ISE Order Feed¹

Internal Use Only.

\$[2]3,000 per month per distributor.* There are no controlled device fees for internal use.

External Redistribution.

\$[2]3,000 per month per distributor. \$[1]20 per month per external controlled device.** Each [Each] distributor’s combined maximum fee for external redistribution is capped at \$[2,500]5,000 per month.

Internal and External Redistribution.

\$[2]3,000 per month per distributor. \$[1]20 per month per external controlled device. Each distributor’s combined maximum fee for both internal and external redistribution is capped at \$[2,500]5,000 per month.

Managed Data Access Service is any retransmission of the ISE Order Feed offered by a Managed Data Access Distributor*** where the Managed Data Access Distributor must first agree to reformat and/or redisplay the ISE Order Feed prior to retransmission, but not to affect the integrity of the ISE Order Feed and not to render it inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory. **(Temporary Program ending August 31, 2016)**

\$[1]2,000 per month per Managed Data Access Distributor. \$[3]500 per month per IP address for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient,**** who may be a Professional or Non-Professional user. \$[1]20 per month per controlled device for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient who is a Professional user. There is no controlled device fee for Non-Professional users. The minimum monthly fee for each Managed Data Access Distributor for the ISE Order Feed is \$[2]4,000.

* A distributor is any firm that receives the ISE Order Feed directly from ISE or indirectly through a redistributor and then distributes it either internally or externally. A redistributor includes market data vendors and connectivity providers such as extranets and private network providers.

** An external controlled device is any device that a distributor of the ISE Order Feed permits an external user to access the information in the ISE Order Feed.

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

****Managed Data Access Recipient is a subscriber of the Managed Data Access Distributor who receives a reformatted ISE Order Feed in a controlled device or at a specific IP address. A Managed Data Access Recipient who receives the data feed outside of a controlled device is charged the fee per IP address, which covers both primary and back-up IP addresses.

H. ISE Top Quote Feed¹

Professional (internal use only).

\$3,000 per month per distributor.* \$20 per month per controlled device.** Each distributor's combined maximum fee for internal redistribution is capped at \$4,000 per month.

Professional (external redistribution).

\$3,000 per month per distributor. \$20 per month per controlled device. Each distributor's combined maximum fee for external redistribution is capped at \$5,000 per month.

Professional (internal and external redistribution).

\$3,000 per month per distributor. \$20 per month per controlled device. Each distributor's combined maximum fee for both internal and external redistribution is capped at \$5,000 per month.

Non-Professional (external redistribution through a controlled device).

\$3,000 per month per distributor. There are no monthly controlled device fees.

Managed Data Access Service is any retransmission of the ISE Top Quote Feed offered by a Managed Data Access Distributor**** where the Managed Data Access Distributor must first agree to reformat and/or redisplay the ISE Top Quote Feed prior to retransmission, but not to affect the integrity of the ISE Top Quote Feed and not to render it inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory. **(Temporary Program ending August 31, 2016)**

[\$1,500]2,000 per month per Managed Data Access Distributor. \$500 per month per IP address for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient,**** who may be a Professional or Non-Professional user. \$20 per month per controlled device for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient who is a Professional user. There is no controlled device fee for Non-Professional users. The minimum monthly fee for each Managed Data Access Distributor for the ISE Top Quote Feed is \$[3]4,000.

* A distributor is any firm that receives the ISE Top Quote Feed directly from ISE or indirectly through a redistributor and then distributes it either internally or externally. A redistributor includes market data vendors and connectivity providers such as extranets and private network providers.

** A controlled device is any device that a distributor of the ISE Top Quote Feed permits to access the information in the ISE Top Quote Feed.

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

****Managed Data Access Recipient is a subscriber of the Managed Data Access Distributor who receives a reformatted ISE Top Quote Feed in a controlled device or at a specific IP address. A Managed Data Access Recipient who receives the data feed outside of a controlled device is charged the fee per IP address, which covers both primary and back-up IP addresses.

I. ISE Spread Feed¹

Professional (internal use only).

\$3,000 per month per distributor.* \$25 per month per controlled device.** Each distributor's combined maximum fee for internal redistribution is capped at \$4,250 per month.

Professional (external distribution).

\$3,000 per month per distributor. \$25 per month per controlled device. Each distributor's combined maximum fee for external redistribution is capped at \$5,500 per month.

Professional (internal and external redistribution).

\$3,000 per month per distributor. \$25 per month per controlled device. Each distributor's combined maximum fee for both internal and external redistribution is capped at \$5,500 per month.

Non-Professional (external redistribution through a controlled device).

\$3,000 per month per distributor. There are no monthly controlled device fees.

Managed Data Access Service is any retransmission of the ISE Spread Feed offered by a Managed Data Access Distributor*** where the Managed Data Access Distributor must first agree to reformat and/or redisplay the ISE Spread Feed prior to retransmission, but not to affect the integrity of the ISE Spread Feed and not to render it inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory. **(Temporary Program ending August 31, 2016)**

\$[1,500]2,000 per month per Managed Data Access Distributor. \$500 per month per IP address for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient,**** who may be a Professional or Non-Professional user. \$25 per month per controlled device for redistribution by a Managed Data Access Distributor to a Managed Data Access Recipient who is a Professional user. There is no controlled device fee for Non-Professional users. The minimum monthly fee for each Managed Data Access Distributor for the ISE Spread Feed is \$[3]4,000.

* A distributor is any firm that receives the ISE Spread Feed directly from ISE or indirectly through a redistributor and then distributes it either internally or externally. A redistributor includes market data vendors and connectivity providers such as extranets and private network providers.

** A controlled device is any device that a distributor of the ISE Spread Feed permits to access the information in the ISE Spread Feed.

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

****Managed Data Access Recipient is a subscriber of the Managed Data Access Distributor who receives a reformatted ISE Spread Feed in a controlled device or at a specific IP address. A Managed Data Access Recipient who receives the data feed outside of a controlled device is charged the fee per IP address, which covers both primary and back-up IP addresses.

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