SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Port Fees

July 30, 2012.


Kevin M. O’Neill,
Deputy Secretary.

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1. Purpose

NASDAQ proposes to modify the port fees charged to members and non-members for ports used to enter orders into NASDAQ systems, in connection with the use of other trading telecommunication protocols.

The text of the proposed rule change is below. Proposed new language is in italics.3

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

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

NASDAQ is proposing to amend NASDAQ Rule 7015 (Access Services) to modify the monthly fee it charges for ports used to enter orders in NASDAQ trading systems, such as the NASDAQ Market Center and the NASDAQ Options Market [sic], in connection with the use of other trading telecommunication protocols.

Specifically, the fee change is to establish an optional new $2,500 per month port fee for those customers that elect to take the hardware-based TotalView-ITCH equities depth feed that uses field-programmable gate array ("FPGA") technology, in addition to the software-based TotalView-ITCH version, to receive delivery of NASDAQ Depth-of-Book data, defined in NASDAQ Rule 7023 to include TotalView, OpenView, and NASDAQ Level 2 (collectively, "NASDAQ Depth data"). In offering this new optional port fee using a hardware-delivery mechanism, NASDAQ is serving those customers requiring a predictable latency profile throughout the trading day. By taking advantage of hardware parallelism, FPGA technology is capable of processing more data packets during peak market conditions without the introduction of variable queuing latency.

Currently, in accordance with NASDAQ Rule 7015(g), customers receiving TotalView-ITCH pay $1,000 per multicast ITCH data feed port pair for the software-version of the depth feed. This optional new port fee enables a customer to opt to receive both the software- and hardware-based versions for a total of $2,500, meaning that for an additional $1,500 per month a customer can receive the hardware-based version. This new pricing option is available to all members and non-members and is in response to industry demand, as well as due to changes in the technology to distribute and consume market data.

Competition for depth data is considerable and the Exchange believes that this proposal clearly evidences such competition. The Exchange is offering a new port fee in order to keep pace with changes in the industry and evolving customer needs as new technologies emerge and products continue to develop and change. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The proposed port fee is based on pricing conventions and distinctions that exist in NASDAQ’s current fee schedule, and the fee schedules of other exchanges. These distinctions for the proposed port fee for hardware-based delivery of NASDAQ Depth data are based on a careful analysis of empirical data and the application of time-tested pricing principles already accepted by the Commission and discussed in greater depth in the Statutory Basis section below. Also, the costs associated with the port fee using the hardware-based delivery system for NASDAQ Depth data are higher than a software-based solution due to increased operating expenditures associated with creating, shipping, installing and maintaining the new equipment and codebase. Because it uses a distinct technology, the overall costs of creation and maintenance of the hardware-based version of TotalView-ITCH are higher than the software-based version.

The proposed port fee for the hardware-based delivery of NASDAQ Depth data is completely optional. Accordingly, NASDAQ is offering its new port fee for the hardware-based delivery of NASDAQ Depth data so that customers may elect to receive NASDAQ direct data content in a predictable manner throughout the trading day.

7015. Access Services

(a)–(f) No change.

(g) Other Port Fees.

The following port fees shall apply in connection with the use of other trading telecommunication protocols:

$500 per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is $1,000 per month for software-based TotalView-ITCH or $2,500 per month for combined software- and hardware-based TotalView-ITCH.

An additional $200 per month for each port used for entering orders or quotes over the Internet.

An additional $600 per month for each port used for market data delivery over the Internet.

* * * * *

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act, in general, and with Section 6(b)(4) of the Act. According to it that it provides an equitable allocation of reasonable fees among users and recipients of Nasdaq data. 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:

Efficiency 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. 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. Nasdaq Depth data is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

On July 21, 2010, President Barack 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 Exchange 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 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.”

Nasdaq believes that these amendments to Section 19 of the Act reflect Congress’ intent to allow the Commission to rely upon the forces of competition to ensure that fees for market data are reasonable and equitably allocated. Although Section 19(b) had formerly authorized immediate effectiveness for a “due, fee or other charge imposed by the self-regulatory organization,” the Commission adopted a policy and subsequently a rule stipulating that fees for data and other products available to persons that are not members of the self-regulatory organization must be approved by the Commission after first being published for comment. At the time, the Commission supported the adoption of the policy and the rule by pointing out that unlike members, whose representation in self-regulatory organization governance was mandated by the Act, non-members should be given the opportunity to comment on fees before being required to pay them, and that the Commission should specifically approve all such fees.

Nasdaq believes that the amendment to Section 19 reflects Congress’ conclusion that the evolution of self-regulatory organization governance and competitive market structure have rendered the Commission’s prior policy on non-member fees obsolete. Specifically, many exchanges have evolved from member-owned not-for-profit corporations into for-profit investor-owned corporations (or subsidiaries of investor-owned corporations). Accordingly, exchanges no longer have narrow incentives to manage their affairs for the exclusive benefit of their members, but rather have incentives to maximize the appeal of their products to all customers, whether members or non-members, so as to broaden distribution and grow revenues. Moreover, we believe that the change also reflects an endorsement of the Commission’s determinations that reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices. Simply put, the change reflects a presumption that all fees should be permitted to take effect immediately, since the level of all fees are constrained by competitive forces.

The decision of the United States Court of Appeals for the District of Columbia Circuit in NetCoalition v. SEC, No. 09–1042 (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.’” NetCoalition, at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 321, 323). 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.

For the reasons stated above, Nasdaq believes that the proposed fee is fair and equitable, and not unreasonably discriminatory. As described above, the proposed fee is based on pricing conventions and distinctions that exist in Nasdaq’s current fee schedule, and the fee schedules of other exchanges. These distinctions (e.g., internal versus external distribution and hardware-based versus software-based system for delivering Nasdaq Depth data) are based on principles of fairness and equity that have helped for many years to maintain fair, equitable, and not unreasonably
discriminatory fees, and that apply with equal or greater force to the current proposal. The optional port fee for the hardware-based delivery of Nasdaq Depth data is based on careful analysis of empirical data and the application of time-tested pricing principles already accepted by the Commission for many years. As described in greater detail below, if Nasdaq has calculated improperly and the market deems the proposed fees to be unfair, inequitable, or unreasonably discriminatory, firms can diminish or discontinue the use of their data because the proposed fee is entirely optional to all parties. Firms are not required to purchase Nasdaq Depth data or to utilize any specific pricing alternative if they do choose to purchase Nasdaq Depth data. Nasdaq is not required to make depth data available or to offer specific pricing alternatives for potential purchases. Nasdaq can discontinue offering a pricing alternative (as it has in the past) and firms can discontinue their use at any time and for any reason (as they often do), including due to their assessment of the reasonableness of fees charged. Nasdaq continues to create new pricing policies aimed at increasing fairness and equitable allocation of fees among users, and Nasdaq believes this is another useful step in that direction.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitable allocation of fees across users, Nasdaq believes this is another useful step in that direction. Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitable allocation of fees across users, Nasdaq believes this is another useful step in that direction.

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 to 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 decreases, 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.’” NetCoalition at 24. 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 venue. 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 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 to attract orders, setting relatively high prices for market information, and
The potential sources of proprietary
single or multiple broker-dealers’
and market data vendors can facilitate
products. Additionally, order routers
other ATS, BD, or multiple ATSs or BDs
do so, including Nasdaq, NYSE, NYSE
proprietary data products, and many
produce proprietary data products, and
produce proprietary data products, and
Broker-dealers currently have
numerous alternative venues for their
order flow, including ten 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, ATS, and BD is currently permitted to produce
proprietary data products, and many
currently do or have announced plans to
do so, including Nasdaq, NYSE, NYSE
MKT, NYSEArca, and BATS.

Any ATS or BD can combine with any
other ATS, BD, or multiple ATSs 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
ATSs, 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 Thomson 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. Nasdaq 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.

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, inexpensive, and
profitable. 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, TracECN,
BATS Trading and Direct Edge. A
proliferation of dark pools and other
ATSs operate profitably with
fragmentary shares of consolidated
market volume. Regulation NMS, by
deregulating the market for proprietary
data, has increased the contestability of
that market. While broker-dealers have
previously published their proprietary
data individually, Regulation NMS
encourages market data vendors and
broker-dealers to produce proprietary
products cooperatively in a manner
never before possible. Multiple market
data vendors already have the capability
to aggregate data and disseminate it on
a profitable scale, including Bloomberg,
and Thomson Reuters.

The court in NetCoalition concluded
that the Commission had failed to
demonstrate that the market for market
data was competitive based on the
reasoning of the Commission’s NetCoalition order because, in
the court’s view, the Commission had not
adequately demonstrated that the depth-
of-book data at issue in the case is used
to attract order flow. Nasdaq believes,
however, that evidence not before the
court clearly demonstrates that
availability of data attracts order flow.
For example, as of July 2010, 92 of the
top 100 broker-dealers by shares
executed on Nasdaq consumed Level 2
/ NQDS and 80 of the top 100 broker-
dealers consumed TotalView. During
that month, the Level 2/NQDS-users
were responsible for 94.44% of the
orders entered into Nasdaq and
TotalView users were responsible for
92.98%.

Competition among platforms has
driven Nasdaq continually to improve
its platform data offerings and to cater
to customers’ data needs. For example,
Nasdaq has developed and maintained
multiple delivery mechanisms (IP,
multi-cast, and compression) that enable
customers to receive data in the form
and manner they prefer and at the
lowest cost to them. Nasdaq offers front
end applications such as its
“Bookviewer” to help customers utilize
data. Nasdaq has created new products
like TotalView Aggregate to
to complement TotalView-ITCH and Level
2/NQDS, because offering data in
multiple formatting allows Nasdaq to
better fit customer needs. Nasdaq offers
data via multiple extranet providers,
thereby helping to reduce network and
total cost for its data products. Nasdaq
has developed an online administrative
system to provide customers
transparency into their data feed
requests and streamline data usage
reporting. Nasdaq has also expanded its
Enterprise License options that reduce
the administrative burden and costs to
firms that purchase market data.

Despite these enhancements and a
dramatic increase in message traffic,
Nasdaq’s fees for market data have
remained flat. In fact, as a percent of
total customer costs, Nasdaq data fees
have fallen relative to other data usage
costs—including bandwidth,
programming, and infrastructure—that have risen. The same holds true for execution services; despite numerous enhancements to Nasdaq’s trading platform, absolute and relative trading costs have declined. Platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

The vigor of competition for depth information is significant and the Exchange believes that this proposal clearly evidences such competition. Nasdaq is offering a new port fee in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. Nasdaq continues to see firms challenge its pricing on the basis of the Exchange’s explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with Nasdaq or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this depth information is highly competitive and continually evolves as products develop and change.

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

No written comments were either solicited or received.

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. At any time within 60 days of the filing of the 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 email to rule-comments@sec.gov. Please include File Number SR–NASDAQ–2012–088 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2012–088. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–088 and should be submitted on or before August 24, 2012.

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

Kevin M. O’Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67540; File No. SR–
NYSEArca–2012–77]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services

July 30, 2012.

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 July 18, 2012, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (“Fee Schedule”). The text of the proposed rule change is available on the Exchange’s Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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