SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66128; File No. SR-NYSEArca-2011-96)

January 10, 2012

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on December 28, 2011, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to establish fees for the NYSE Arca Integrated Data Feed. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and www.nyse.com.

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

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

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

2 17 CFR 240.19b-4.

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

1. Purpose

The Exchange proposes to establish fees for the NYSE Arca Integrated Data Feed.[3] It is a market data product offered to vendors and subscribers that combines three existing market data feeds as well as additional market data from the Exchange into one integrated product. The three existing products are NYSE Arca BBO, NYSE Arca Trades, and ArcaBook. In addition, the NYSE Arca Integrated Data Feed includes order imbalance information prior to the opening and closing of trading and security status information (i.e., delayed openings and trading halts). The order imbalance information included in the NYSE Arca Integrated Data Feed is available pursuant to NYSE Arca Equities Rule 7.35[4] and as part of the NYSE ArcaBook data feed product. Security status information is not currently available through any other NYSE Arca market data products.[5] The NYSE Arca Integrated Data Feed is available through the Exchange's Liquidity Center Network ("LCN") and the Secure Financial Transaction Infrastructure ("SFTI") network.

The proposed fees for the NYSE Arca Integrated Data Feed are as follows:[6]

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3 The proposed rule change establishing the NYSE Arca Integrated Data Feed was immediately effective on October 26, 2011. See Securities Exchange Act Release No. 65669, (Nov. 2, 2011), 76 FR 69311 (Nov. 8, 2011) (SR-NYSEArca-2011-78).

4 See http://datasvr.tradearca.com/arcadataserver/Auction.php.

5 Security status information is available for other NYSE markets. NYSE Alerts and NYSE Amex Alerts are real-time data feed information services from the NYSE and NYSE Amex that provide real-time messages regarding certain conditions related to the trading of NYSE- and NYSE Amex-traded securities, including security trading status data.

6 Customers are separately responsible for the appropriate ArcaBook professional and nonprofessional user fees and NYSE Arca Trades user fees.

Fee Type	Monthly Fee	Description
Direct Access Fee	$3,000	Applies to end users, market data vendors, and extranets
Redistribution Fee	$3,000	Additional fee applied to any end user, market data vendor, or extranet that redistributes the data feed

The Exchange notes that the three existing data feed products (NYSE Arca BBO, NYSE Arca Trades, and ArcaBook) would continue to be available to vendors and subscribers separately at the same prices at which they are currently available.[7] The monthly access fee for each of those feeds on a separate basis is $750.

[7] NYSE Arca expects that data concerning quotations and transaction reports required to be disseminated under Rule 602 and 603 of Regulation NMS will be delivered from the Exchange's matching engine to the Securities Information Processor, to the individual proprietary feeds described above, and to the NYSE Arca Integrated Data Feed at substantially the same time. The Commission notes that under Rule 603 NYSE Arca is required to distribute market data on terms that are fair and reasonable and not unreasonably discriminatory. See 17 CFR 242.603(a). In addition, the Commission notes that, "independently distributed data could not be made available on a more timely basis than core data is made available to a Network processor. Stated another way, . . . Rule 603(a) prohibits an SRO or broker-dealer from transmitting data to a vendor or user any sooner than it transmits the data to a Network processor." Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005), at 37567. Accordingly, the Commission notes that it would be inconsistent with Rule 603 for NYSE Arca to transmit data to the individual proprietary feeds any sooner than it transmits data to the Securities Information Processor.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act")[8] in general and with Section 6(b)(4) and 6(b)(5) of the Act[9] in particular in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers. The NYSE Arca Integrated Data Feed fees are reasonable because they represent not only the value of the three existing data feeds but also the value of the additional market data included (i.e., order imbalance information and security status information) and the value of receiving the data on an integrated basis. Some vendors and subscribers may not have the technology or resources to integrate the separate data feeds in a timely and/or efficient manner, and thus the integration feature of the product may be valuable to them. The redistribution fee also is reasonable because vendors receive value from redistributing the NYSE Arca Integrated Data Feed in their business products for their customers. Moreover, the fees are equitably allocated and not unfairly discriminatory because vendors and subscribers may choose to continue to receive the separate feeds at current prices or can choose to pay more for the NYSE Arca Integrated Data Feed in order to receive additional and integrated data, thereby allowing the vendors and subscribers to choose the best business solution.

The existence of alternatives to the NYSE Arca Integrated Data Feed, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, as well as the continued availability of the Exchange's separate data feeds, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when

8 15 U.S.C. 78f(b).

9 15 U.S.C. 78f(b)(4) and (5).

vendors and subscribers can elect such alternatives. The recent 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), upheld the Commission's reliance upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

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 agreed with the Commission's conclusion that "Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.'"[10]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards.[11] As the NetCoalition decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach, and the Exchange incorporates by reference into this proposed rule change its analysis of this topic in another recent rule filing.[12]

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10 NetCoalition at 16.

11 Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make clear that all exchange fees for market data may be filed by exchanges on an immediately effective basis.

12 See Securities Exchange Act Release No. 63291 (Nov. 9, 2010), 75 FR 70311 (Nov. 17, 2010) (SR-NYSEArca-2010-97).

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its data feed products is constrained by (1) competition among exchanges and other trading platforms that compete with one another in a variety of dimensions, (2) the existence of inexpensive real-time consolidated data and free delayed consolidated data, and (3) the inherent contestability of the market for proprietary data.

The market for proprietary data products is currently 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.

It is common for broker-dealers to further exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. As a recent Commission Concept Release noted, the "current market structure can be described as dispersed and complex" with "trading volume … dispersed among many highly automated trading centers that compete for order flow in the same stocks" and "trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs."[13]

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13 Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 22, 2010) (File No. S7-02-10). This Concept Release included data from the third quarter of 2009 showing that no market center

Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. The U.S. Department of Justice recently acknowledged the aggressive competition among exchanges. In announcing the abandoned bid for NYSE Euronext by NASDAQ OMX Group Inc. and IntercontinentalExchange Inc., Assistant Attorney General Christine Varney stated that exchanges "compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale."[14]

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 trade executions, exchange data products cannot exist. Moreover, 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 Exchange notes in that respect that the NYSE Arca Integrated Data Feed would provide greater efficiencies and reduce errors for vendors and subscribers, including high-frequency traders, that otherwise would have to integrate the data feeds manually.

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traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. Id. at 3598.

14 Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), available at http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html.

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 broker-dealer 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 importantly, 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.

Similarly, in the case of products that are distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to certain 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.

Other market participants have noted that the liquidity provided by the order book, trade execution, core market data, and non-core market data are joint products of a joint platform and have common costs.[15] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[16]

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15 See Securities Exchange Act Release No. 62887 (Sept. 10, 2010), 75 FR 57092, 57095 (Sept. 17, 2010) (SR-Phlx-2010-121); Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR-NASDAQ-2010-110); and Securities Exchange Act Release No. 62908 (Sept. 14, 2010) (SR-NASDAQ-2010-111), 75 FR 57321, 57324 (Sept. 20, 2010) ("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."); see also August 1, 2008 Comment Letter of Jeffrey S. Davis, Vice President and Deputy General Counsel, NASDAQ OMX Group, Inc., Statement of Janusz Ordover and Gustavo Bamberger ("because market data is both an input to and a byproduct of executing trades on a particular platform, market data and trade execution services are an example of 'joint products' with 'joint costs.'"), attachment at pg. 4, available at www.sec.gov/comments/34-57917/3457917-12.pdf.

16 See generally Mark Hirschey, FUNDAMENTALS OF MANAGERIAL ECONOMICS, at 600 (2009) ("It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis.… Any allocation of common costs is wrong and arbitrary."). This is not new economic theory. See, e.g., F. W. Taussig, "A Contribution to the Theory of Railway Rates," Quarterly Journal of Economics V(4) 438, 465 (July 1891) ("Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry

That large market participants, including internalizers handling retail order flow, use proprietary exchange feeds (rather than CTS and CQS feeds) to make trade and routing decisions further demonstrates the joint nature of market data and order flow.[17] So does the fact that some exchanges use certain market data quote revenue as a form of a direct market-maker and/or liquidity provider rebate to drive more liquidity to their books in less active stocks. This fact highlights that market data and trade executions are joint products that are linked on a platform basis.[18]

The Exchange believes that 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. Moreover, the Exchange believes that products can enhance order flow to the Exchange by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the Internet or television. Conversely, the value of such products to distributors and investors decreases if order flow falls because the products contain less content.

C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.").

17 See Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues — Findings Regarding the Market Events of May 6, 2010 at 76-79 (Sept. 30, 2010). That report again recognized that retail order flow is generally handled by internalizers. See id. at 77.

18 See Exhibit 3B to Securities Exchange Act Release No. 63291 (Nov. 9, 2010), 75 FR 70311 (Nov. 17, 2010) (SR-NYSEArca-2010-97).

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

Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market 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 level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 12 equities self-regulatory organization ("SRO") markets, as well as 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.

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 but not limited to the Exchange, NYSE, NYSE Amex, NASDAQ OMX, BATS, and Direct Edge.

The fact that proprietary data from ATSs, BDs, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. Because investors can thus find suitable substitutes for most proprietary market data products, a market that overprices its market data products stands a high risk that investors may substitute another source of market information for its own because securities and investment methodologies are fungible.

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, TrackECN, BATS Trading and Direct Edge. Today, BATS has represented that it publishes its market data at no charge on its

website in order to attract more order flow, and it uses market data revenue rebates that it can provide from resulting additional executions to maintain low execution charges for its users.[19] A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. 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. If a platform increases its market data fees, the change may affect the overall cost of doing business with the platform, and affected market participants will assess whether they can lower their trading costs by directing orders elsewhere, thereby lessening the need for the more expensive data, or simply not purchase the data.

In establishing the price for the NYSE Arca Integrated Data Feed, the Exchange considered the competitiveness of the market for data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of alternatives to the Exchange's product, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, as well as the continued availability of the Exchange's separate data feeds at a lower price, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers

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[19] This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; the BATS example is additional evidence that market data is an inherent part of a market's joint platform.

can elect these alternatives. Accordingly, the Exchange believes that the acceptance of data feed products in the marketplace demonstrates the consistency of these fees with applicable statutory standards.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[20] of the Act and subparagraph (f)(2) of Rule 19b-4[21] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

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.

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 Number SR-NYSEArca-2011-96 on the subject line.

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[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b-4(f)(2).

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-NYSEArca-2011-96. 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 Commission's Internet website (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 website 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-NYSEArca-2011-96 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill
Deputy Secretary

[22] 17 CFR 200.30-3(a)(12).