SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69821; File No. SR–BX–2013–040]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section 4 of Chapter XV of the BX Options Rules

June 21, 2013.

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 June 11, 2013, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 amend Section 4 of Chapter XV of the BX Options Rules setting forth the fees for options market data known as BX Top of Market Options (''BX Top'') and BX Depth of Market Options (''BX Depth''). The text of the proposed rule change is also available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.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 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 aspects of such statements.

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

[2] 17 CFR 240.19b–4.

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

1. Purpose

The Exchange proposes to amend Section 4 of Chapter XV to set forth the fees for options market data already distributed as BX Top and BX Depth. The Exchange has been offering the BX Top and BX Depth options market data free of charge for almost a year since the launch of the BX Options Market. The Exchange now proposes to institute fees for recipients of BX Top and BX Depth data, with a free trial offer for certain data recipients.

BX Depth is currently described in the Exchange's option rules at subsection (a)(3)(A) of Chapter VI, Section 1 as a data package that includes quotation information for individual orders on the BX book, last sale information for trades executed on BX, and Order Imbalance Information as set forth in BX Rules Chapter VI, Section 8. Members use BX Depth to ''build'' their view of the BX book by adding individual orders that appear in the data, and subtracting individual orders that are executed.

BX Top is currently described in subsection (a)(3)(B) of Chapter VI, Section 1 as a data package that includes the BX Best Bid and Offer (''BX BBO'') and last sale information for trades executed on BX. The BX BBO and last sale information are identical to the information that BX sends the Options Price Regulatory Authority (''OPRA'') and which OPRA disseminates via the consolidated data feed for options.

BX proposes to set fees for BX Top and BX Depth data that use elements of the current fee structure for recipients of BX TotalView and BX BBO,[3] which are equities market data products similar to BX Top and BX Depth. First, the Exchange proposes to charge monthly fees for firms that are Distributors of BX Top and BX Depth data. Proposed Section 4(b) of Chapter XV states that a ''Distributor'' of BX options market data is any entity that receives a feed or data file of BX data directly from BX or indirectly through another entity and then distributes the data either internally (within that entity) or externally (outside that entity). Proposed subsection 4(b) also states that all Distributors would be required to execute a Distributor agreement with the Exchange. The amount of the monthly fees would depend on whether a Distributor is an ''Internal Distributor'' or ''External Distributor.'' [4]

[3] *See* BX Rules 7023 and 7047.

An Internal Distributor is a firm that is permitted by agreement with the Exchange to provide BX Top and BX Depth data to internal Subscribers (i.e., users within their own organization). Under the proposal, Distributors that only use the BX data internally would be charged monthly fee of $1,500 per firm.

An External Distributor is a firm that is permitted by agreement with the Exchange to provide BX Top and BX Depth data to both internal Subscribers and to external Subscribers (i.e., users outside of their own organization). Distributors provide BX data externally would be charged a monthly fee of $2,000 per firm. The fee paid by an External Distributor includes the Internal Distributor Fee. The fee paid by an Internal Distributor or an External Distributor would allow access to both the BX Top and BX Depth data feeds.

The Exchange also proposes to assess Subscriber fees for BX Top and BX Depth data on a Per Subscriber basis.[5] These fees would vary based on whether they are for Professional Subscribers or Non-Professional Subscribers. Proposed Section 4(f) states that the term ''Non-Professional'' shall have the same meaning as in BX Rule 7023(b)(2). Rule 7023(b)(2) defines a ''Non-Professional'' as a natural person who is neither: (A) Registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (B) engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (C) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.[6] A Professional Subscriber is any recipient that is not a Non-Professional.

[4] Thus, a Distributor may pay either ''Internal Distributor'' or ''External Distributor'' fees.

[5] While the Subscriber fees would be paid by firms (Internal Distributors and External Distributors), some portion of the fees may be passed through to Subscribers inside or outside the firms (that is, to internal or external Subscribers).

[6] The Exchange believes that Non-Professional Subscribers of market data, in contrast to Professional data Subscribers and Distributors, often tend to be individual consumers, smaller retail investors, and public customers.

For BX Top data, the proposed Subscriber fees are $5 per Professional Subscriber; and $1 per Non-Professional Subscriber. For BX Depth data, the proposed fees are $10 per Professional Subscriber; and $1 per Non-Professional Subscriber.

The Exchange notes that for many years, exchanges have engaged in and the Commission has accepted the practice of price differentiation, both in the context of market data as well as in the context of executions. With respect to market data, NASDAQ and NYSE Euronext (''NYSE'') in their capacities as network processors and exchanges have differentiated in pricing between Professional and Non-Professional market data Subscriber, often charging Professionals many times more than Non-Professionals for using the same data. For example, NASDAQ currently charges Non-Professionals $15 per terminal for its NASDAQ Depth Data via a standalone terminal, while Professional Subscribers pay roughly five times the Non-Professional rate.[7] This reflects the value of the service to various constituencies (i.e., lower prices are charged to consumers with more elastic demand) and allows both types of investors to contribute to the high fixed costs of operating an exchange platform. The Exchange believes that this differentiation for Professional and Non-Professional data usage, as the differentiation for Professional and Non-Professional Subscribers proposed in this filing, is completely consistent with past Commission precedent and economic theory.[8]

The Exchange also proposes to assess a monthly non-display enterprise license fee. Proposed Section 4(c) of Chapter XV states that an ''Enterprise License'' entitles a Distributor to provide BX Top and BX Depth market data pursuant to this rule to an unlimited number of non-display devices[9] internally (within the firm) without any additional Subscriber fees associated with these non-display devices. Under the proposal, Distributors of BX Top and BX Depth data, if they choose to subscribe to a non-display enterprise license, would be charged a monthly enterprise license fee or $2,500.

The non-display enterprise license is in addition to the Internal or External Distributor fees. Thus, a firm that has a non-display enterprise license could pay an Internal Distributor fee and the Enterprise License fee and distribute data to limitless number of non-display devices (devices within the firm) pursuant to the license without incurring further fees for each internal device. However, the enterprise license does not allow external distribution without incurring an External Distributor fee and external Subscriber fees, if applicable under the circumstances.

Finally, the Exchange proposes a 30-Day Free Trial Offer in proposed subsection (g) of Section 4.[10] In particular, the 30-day waiver of the Subscriber fees for BX options market data pursuant to the rule extends to all new individual (non-firm) Subscribers. This fee waiver period will be applied on a rolling basis, determined by the date on which a new individual (non-distributor or firm) is first entitled by a Distributor to receive access to BX options market data. Subsection (g) provides that a Distributor may only provide this waiver to a specific Subscriber at one time.

The Exchange notes that the categories of BX Top and BX Depth market data and fees compare favorably with similar products offered by other markets such as International Stock Exchange (''ISE''), NYSE, NASDAQ OMX PHLX (''Phlx''), and Chicago Board Options Exchange (''CBOE''). For example, ISE offers market data products that are similar to BX Top: a data feed that shows the top of the market entitled TOP Quote Feed,[11] and a data feed that shows the top five price levels entitled Depth of Market.[12] NYSE offers a market data product for Arca and Amex that is similar to BX Top and BX Depth: a feed that shows top of book, last sale, and depth of quote and is entitled NYSE Arca Book for Options.[13] Phlx offers a market data feed entitled TOPO that is similar to BX Top and shows orders and quotes at the top of the market, as well as trades; and a Phlx Depth feed that is similar to BX Depth and shows the data in the TOPO data feed as well as the depth of orders.[14] A subsidiary of CBOE for which CBOE charges fees offers a market data feed that is similar to BX Top and shows BBO, last sale, and top of book data.[15] And BATS offers Multicast PITCH, which is their depth of market and last sale feed similar to BX Depth.[16]

The Exchange believes that the continued availability of BX Top and BX Depth data feeds enhances transparency, fosters competition among orders and markets, and enables buyers and sellers to obtain better prices.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[17] in general, and with Section 6(b)(4) of the Act,[18] in particular, in that it provides an equitable allocation of reasonable fees among recipients of BX 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

[7] *See* BX [sic] Rule 7023.

[8] In economic terms, charging lower fees to non-professional consumers increases overall economic welfare by increasing output—in this case, providing more data to more investors—and avoids two equally undesirable alternatives: (i) Requiring the firm to charge uniformly high prices that constrict demand, or (ii) insisting on uniformly low prices at marginal cost (potentially zero or close to zero) that do not allow the firm to cover its fixed costs and thereby lead to bankruptcy.

[9] Non-display devices do not graphically show (display) BX Top and BX Depth market data but instead use the data for performance of analytic or calculative functions (*e.g.* algorithms).

[10] The Exchange also offers a 30-day free trial for BX TotalView. *See* BX Rule 7023.

[11] The ISE TOP Quote Feed has a monthly base access fee of $3,000 applicable to professionals and non-professionals plus a $20 variable device fee for professionals and a no device fee for internal use professionals; or a flat fixed enterprise fee of $5,000 for unlimited internal/external use and a $4,000 fee for unlimited internal use. The Exchange notes that the monthly fees for the ISE TOP Quote Feed are higher than those proposed in this filing.

[12] The ISE Depth of Market Feed has a monthly base access fee of $5,000 applicable to professionals and non-professionals plus a $50 variable device fee for professionals and a $5 per device fee for external distribution non-professionals; or a flat fixed enterprise fee of $7,500 for unlimited internal use, and $10,000 for unlimited internal/external use. The Exchange notes that the monthly fees for ISE Depth of Market are higher than those proposed in this filing for a more robust product.

[13] The fee for NYSE Arca Book for Options is $3,000 per month for direct or indirect access, $2,000 for external redistribution; and a $50 per user professional user fee and $1 per user Non-professional user fee.

[14] TOPO Plus Orders has a monthly fee of $4,000 for internal distributors or $5,000 for external distributors plus a monthly fee of $1 per Non-Professional Subscribers and $20 for Professional Subscribers. The Exchange notes that the monthly fees for TOPO Plus Orders are higher than those proposed in this filing. *See* Securities Exchange Act Release No. 62194 (May 28, 2010), 75 FR 31830 (June 4, 2010) (SR–Phlx–2010–48) (order approving proposal related to TOPO Plus Orders market data fees).

[15] The subsidiary is identified as Market Data Express, LLC (''MDX'') by CBOE, which indicates that the feed will also provide data regarding contingency orders and complex strategies. The monthly fee charged by CBOE for the data is $3,500 plus a $25 per user or device fee. *See* Securities Exchange Act Release No. 63997 (March 1, 2011), 76 FR 12388 (March 7, 2011) (SR–CBOE–2011–014) (notice of filing and immediate effectiveness). In the filing, CBOE specifically references as similar products the Phlx TOPO Plus Orders feed and the ISE Depth of Market Feed.

[16] BATS offers Multicast PITCH without charge ostensibly to attract order flow to that exchange.

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(4).

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 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 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, 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).

BX believes that the proposed fees are fair and equitable, and not unreasonably discriminatory. The proposed fees are based on pricing conventions and distinctions that currently exist in the fee schedules of other exchanges, including NASDAQ and PHLX. These distinctions (e.g. Distributor versus Subscriber, Professional versus Non-Professional, internal versus external distribution, controlled versus uncontrolled datafeed) are each 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. BX believes that the BX Top and BX Depth offerings is equitable in that it provides an opportunity for all Distributors and Subscribers, Professional and Non-Professional, to identical data without unfairly discriminating against any.

Thus, if BX 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 fees are entirely optional to all parties. Firms are not required to choose to purchase BX Top or BX Depth or to utilize any specific pricing alternative. BX is not required to make BX Top or BX Depth available or to offer specific pricing alternatives for potential purchases. BX 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. BX continues to establish and revise pricing policies aimed at increasing fairness and equitable allocation of fees among Subscribers.

Competitive products similar to BX Top or BX Depth are, as previously discussed, offered by other exchanges, albeit sometimes at higher prices. ISE offers two data products similar to BX Top that are called TOP Quote Feed and Depth of Market and have fees higher than those proposed in this filing.[20] NYSE offers a market data product similar to BX Top or BX Depth called NYSE Arca Book of Options that has market data for NYSE Arca and NYSE Amex. Phlx offers a market data product that is similar to ITTO.[21] CBOE offers a market data product that is similar to BX Top.[22] BATS offers a market data product similar to BX Depth. Moreover, the Exchange notes that, as a substitute for exchange data, consolidated market data (e.g. last sale, NBBO, current quotes) are also available from securities information processors such as OPRA.

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

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

The proposal is, as described below, pro-competitive. 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

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

[20] For the fees related to ISE TOP Quote Feed and Depth of Market, *see* supra notes 11 and 12.

[21] For the fees related to NYSE Arca Book of Options and Phlx TOPO Plus Orders, *see supra* notes 13 and 14.

[22] For the fees related to the CBOE market data product, *see supra* note 15.

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 orders entered and trades executed, exchange data products cannot exist. Data products are valuable to many end Subscribers insofar as they provide information that end Subscribers expect will assist them 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 an 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 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.

''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 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 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. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of after-market alternatives to the manufacturer-supplied system.

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 more than ten SRO markets, as well as internalizing broker-dealers 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 Financial Industry Regulatory Authority, Inc. (''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, broker-dealers, 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 broker-dealer is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex (now NYSE MKT), NYSEArca, DirectEdge and BATS.

Any ATS or BD can combine with any other ATS, broker-dealer, or multiple ATSs or broker-dealers 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, broker-dealers, 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, for example, BATS and Arca did before registering as exchanges by publishing Depth-of-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 Subscribers. 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 Subscribers 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. BX 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 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.

Competition among platforms has driven BX continually to improve its platform data offerings and to cater to customers' data needs. For example, BX 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. BX has created new products like BX Depth, because offering data in multiple formatting allows BX to better fit customer needs. BX offers data via multiple extranet and telecommunication providers such as Verizon, BT Radianz, and Savvis, among others, thereby helping to reduce network and total cost for its data products. BX has an online administrative system to provide customers transparency into their datafeed requests and streamline data usage reporting. BX is also implementing an Enterprise License option to reduce the administrative burden and costs to firms that purchase market data.

Despite these enhancements and ever increasing message traffic, BX's fees for market data have remained flat. The same holds true for execution services; despite numerous enhancements to BX'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 options data is significant and the Exchange believes that this proposal itself clearly evidences such competition. The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. BX 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 BX 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 the proposed data 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) of the Act [23] and paragraph (f) of Rule 19b–4 thereunder.[24]

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.

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–BX–2013–040 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–BX–2013–040. 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

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f).

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of BX. 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–SR–BX–2013–040, and should be submitted on or before July 18, 2013.

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

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69814; File No. SR–NYSEMKT–2013–53]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE MKT Rule 500—Equities To Extend the Operation of the Pilot Program That Allows Nasdaq Stock Market Securities To Be Traded on the Exchange Pursuant to a Grant of Unlisted Trading Privileges Until the Earlier of Securities and Exchange Commission Approval To Make Such Pilot Permanent or January 31, 2014

June 20, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 17, 2013, NYSE MKT LLC (''NYSE MKT'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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 proposes to amend NYSE MKT Rule 500—Equities to extend the operation of the pilot program that allows Nasdaq Stock Market (''Nasdaq'') securities to be traded on the Exchange pursuant to a grant of unlisted trading privileges. The pilot is currently scheduled to expire on July 31, 2013; the Exchange proposes to extend it until the earlier of Securities and Exchange Commission (''Commission'') approval to make such pilot permanent or January 31, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

NYSE MKT Rules 500–525—Equities, as a pilot program, govern the trading of any Nasdaq-listed security on the Exchange pursuant to unlisted trading privileges (''UTP Pilot Program'').[4] The Exchange hereby seeks to extend the operation of the UTP Pilot Program, currently scheduled to expire on July 31, 2013, until the earlier of Commission approval to make such pilot permanent or January 31, 2014.

The UTP Pilot Program includes any security listed on Nasdaq that (i) is designated as an ''eligible security'' under the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, as amended (''UTP Plan''),[5] and (ii) has been admitted to dealings on the Exchange pursuant to a grant of unlisted trading privileges in accordance with Section 12(f) of the Securities Exchange Act of 1934, as amended (the ''Act''),[6] (collectively, ''Nasdaq Securities'').[7]

The Exchange notes that its New Market Model Pilot (''NMM Pilot''), which, among other things, eliminated the function of specialists on the Exchange and created a new category of market participant, the Designated Market Maker (''DMM''),[8] is also scheduled to end on July 31, 2013.[9] The timing of the operation of the UTP Pilot Program was designed to correspond to that of the NMM Pilot. In approving the UTP Pilot Program, the Commission acknowledged that the rules relating to DMM benefits and duties in trading Nasdaq Securities on the Exchange pursuant to the UTP Pilot Program are consistent with the Act[10] and noted the similarity to the NMM Pilot, particularly with respect to DMM obligations and benefits.[11] Furthermore, the UTP Pilot Program rules pertaining to the

[25] 17 CFR 200.30–3(a)(12).

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR–NYSEAmex–2010–31). *See also* Securities Exchange Act Release Nos. 62857 (September 7, 2010), 75 FR 55837 (September 14, 2010) (SR–NYSEAmex–2010–89); 63601 (December 22, 2010), 75 FR 82117 (December 29, 2010) (SR–NYSEAmex–2010–124); 64746 (June 24, 2011), 76 FR 38446 (June 30, 2011) (SR–NYSEAmex–2011–45); 66040 (December 23, 2011), 76 FR 82324 (December 30, 2011) (SR–NYSEAmex–2011–104); 67497 (July 25, 2012), 77 FR 45404 (July 31, 2012) (SR–NYSEMKT–2012–25); and 68561 (January 2, 2013), 78 FR 1290 (January 8, 2013) (SR–NYSEMKT–2012–86).

[5] *See* Securities Exchange Act Release No. 58863 (October 27, 2008), 73 FR 65417 (November 3, 2008) (File No. S7–24–89). The Exchange's predecessor, the American Stock Exchange LLC, joined the UTP Plan in 2001. *See* Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 20891 (April 26, 2007) (File No. S7–24–89). In March 2009, the Exchange changed its name to NYSE Amex LLC, and, in May 2012, the Exchange subsequently changed its name to NYSE MKT LLC. *See* Securities Exchange Act Release Nos. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24) and 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR–NYSEAmex–2012–32).

[6] 15 U.S.C. 78l.

[7] ''Nasdaq Securities'' is included within the definition of ''security'' as that term is used in the NYSE MKT Equities Rules. *See* NYSE MKT Rule 3—Equities. In accordance with this definition, Nasdaq Securities are admitted to dealings on the Exchange on an ''issued,'' ''when issued,'' or ''when distributed'' basis. *See* NYSE MKT Rule 501—Equities.

[8] *See* NYSE MKT Rule 103—Equities.

[9] *See* Securities Exchange Act Release No. 60758 (October 1, 2009), 74 FR 51639 (October 7, 2009) (SR–NYSEAmex–2009–65). *See also* Securities Exchange Act Release Nos. 61030 (November 19, 2009), 74 FR 62365 (November 27, 2009) (SR–NYSEAmex–2009–83); 61725 (March 17, 2010), 75 FR 14223 (March 24, 2010) (SR–NYSEAmex–2010–28); 62820 (September 1, 2010), 75 FR 54935 (September 9, 2010) (SR–NYSEAmex–2010–86); 63615 (December 29, 2010), 76 FR 611 (January 5, 2011) (SR–NYSEAmex–2010–123); 64773 (June 29, 2011), 76 FR 39453 (July 6, 2011) (SR–NYSEAmex–2011–43); 66042 (December 23, 2011), 76 FR 82326 (December 30, 2011) (SR–NYSEAmex–2011–102); 67495 (July 25, 2012), 77 FR 45406 (July 31, 2012) (SR–NYSEMKT–2012–21); and 68559 (January 2, 2013), 78 FR 1286 (January 8, 2013) (SR–NYSEMKT–2012–84).

[10] 15 U.S.C. 78.

[11] *See* SR–NYSEAmex–2010–31, *supra* note 4, at 41271.