

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69273; File No. SR-NYSEMKT-2013-30]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing To Establish the NYSE MKT Trades Digital Media Data Feed and a Schedule of the NYSE MKT Equities Proprietary Market Data Fees

April 2, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on March 21, 2013, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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 establish the NYSE MKT Trades Digital Media data feed and a schedule of the NYSE MKT Equities Proprietary Market Data Fees. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to establish the NYSE MKT Trades Digital Media data feed and a Market Data Fee Schedule.

##### Background

In 2010, the Securities and Exchange Commission (“SEC” or the “Commission”) approved the NYSE MKT Trades data feed and certain fees for it.<sup>4</sup> NYSE MKT Trades is a NYSE MKT-only market data feed that allows a vendor to redistribute on a real-time basis the same last sale information that the Exchange reports under the Consolidated Tape Association (“CTA”) Plan for inclusion in the CTA Plan’s consolidated data streams and certain other related data elements. Specifically, NYSE MKT Trades includes the real-time last sale price, time, size, and bid/ask quotations for each security traded on the Exchange and a stock summary message. The stock summary message updates every minute and includes NYSE MKT’s opening price, high price, low price, closing price, and cumulative volume for the security.

The Exchange currently charges NYSE MKT Trades data feed recipients an access fee of \$750 per month, and a subscriber fee for professional subscribers of \$10 per month per device, which may be counted, at the election of the vendor based on the number of “Subscriber Entitlements”<sup>5</sup> (collectively, these fees are referred to in this filing as “NYSE MKT Trades basic fees”). In July 2012, the Exchange added a fee for distribution by television broadcasters (“Broadcast Fee”), which is \$5,000 per month.<sup>6</sup> The television broadcast distribution method differs from the other distribution methods in that the data is available in a temporary, view-only mode on television screens. NYSE MKT Trades is not offered in a manner to facilitate its distribution via Web sites or mobile devices.

##### Proposed Change

The Exchange proposes to offer a new version of NYSE MKT Trades called “NYSE MKT Trades Digital Media,” which will include, as with NYSE MKT

Trades as currently offered, access to the real-time last sale price, time, and size for each security traded on the Exchange as well as the stock summary message. NYSE MKT Trades Digital Media will not, however, include access to the bid/ask quotation that is included with the current NYSE MKT Trades product under the NYSE MKT Trades basic fees and Broadcast Fee. NYSE MKT Trades will be offered in a new manner that will permit market data vendors, television broadcasters, Web site and mobile device service providers, and others to distribute this data product to their customers for viewing via television, Web site, and mobile devices. Vendors will not be permitted to provide NYSE MKT Trades Digital Media in a context in which a trading or order routing decision can be implemented unless CTA data is available in an equivalent manner, must label the products as NYSE MKT-only data, and must provide a hyperlinked notice similar to the one provided for CTA delayed data.<sup>7</sup>

The Exchange also proposes to establish a Market Data Fee Schedule. The market data fees on the proposed Market Data Fee Schedule for NYSE MKT BBO,<sup>8</sup> NYSE MKT Trades,<sup>9</sup> NYSE MKT RRP,<sup>10</sup> and NYSE MKT Order Imbalances<sup>11</sup> have been previously filed with the Commission. The Exchange is proposing the Market Data Fee Schedule in order to provide greater transparency to its customers.

##### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>12</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>13</sup> of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and

<sup>7</sup> These are requirements that currently apply to NYSE MKT Realtime Reference Prices (“NYSE MKT RRP”), a separate last sale product that also is offered for use in a non-trading environment. See Securities Exchange Act Release Nos. 61144 (Dec. 10, 2009), 74 FR 67275, 67276–77 (Dec. 18, 2009) (SR-NYSEAmex-2009-85); 61403 (Jan. 22, 2010), 75 FR 4598 (Jan. 28, 2010) (SR-NYSEAmex-2009-85). The Exchange also intends to offer NYSE MKT RRP in the future as NYSE MKT RRP Digital Media, but there will be no substantive change to the NYSE MKT RRP product elements, only the permitted distribution channels. The Exchange will propose pricing for NYSE MKT Trades Digital Media and NYSE MKT RRP Digital Media in a separate filing.

<sup>8</sup> See *supra* note 4.

<sup>9</sup> See *supra* notes 4, 6.

<sup>10</sup> See Securities Exchange Act Release No. 61403 (Jan. 22, 2010), 75 FR 4598 (Jan. 28, 2010) (SR-NYSEAmex-2009-85).

<sup>11</sup> See Securities Exchange Act Release No. 60385 (July 24, 2009), 74 FR 38249 (July 31, 2009) (NYSEAmex-2009-26).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>4</sup> See Securities Exchange Act Release No. 62187 (May 27, 2010), 75 FR 31500 (June 3, 2010) (SR-NYSEAmex-2010-35).

<sup>5</sup> See *id.* at 31501.

<sup>6</sup> See Securities Exchange Act Release No. 67438 (July 13, 2012), 77 FR 42535 (July 19, 2012) (SR-NYSEMKT-2012-19).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

The Exchange is offering the NYSE MKT Trades Digital Media data product in recognition of the demand for a more seamless and easier-to-administer data distribution model that takes into account the expanded variety of media and communication devices that investors utilize today. For example, a television broadcaster could display the NYSE MKT Trades Digital Media data during market-related television programming and on its Web site and allow its viewers to view the data via their mobile devices, creating a more seamless distribution model that will allow investors more choice in how they receive and view market data. Because the product is intended for use in a non-trading environment, the Exchange will not include a bid/ask quotation as a product element. Market participants that still wish to obtain bid/ask quotations can do so by paying the NYSE MKT Trades basic fees. The Exchange believes that establishing the Market Data Fee Schedule will provide greater transparency for the Exchange's customers.

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 consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of 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.<sup>14</sup>

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.

The Exchange further notes that the existence of alternatives to the Exchange's products, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, ensures that the Exchange is not unreasonably discriminatory because vendors and subscribers can elect these alternatives.

The proposed data product will remove impediments to and help perfect a free and open market by permitting the Exchange's last sale data to be more widely distributed, thereby benefiting users of the data. In addition, the proposal would not permit unfair discrimination because the product will be available to all of the Exchange's vendors and customers on an equivalent basis.

#### *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. 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. 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 (such as internalizing broker-dealers and various forms of alternative trading systems, including dark pools and electronic communication networks), in a vigorously competitive market. It is common for market participants to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market.

<sup>14</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

#### *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**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)<sup>15</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>17</sup> However, Rule 19b-4(f)(6)(iii)<sup>18</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange believes that the proposed rule change will make the Exchange's last sale data more widely available through more distribution channels, which will enable investors to better monitor trading activity on the Exchange, and thereby serve the public interest. The Exchange also notes that other exchanges already offer similar products, and thus believes that the Exchange's proposed products will enhance competition. The Exchange believes that expanding distribution channels and offering a new version of the product for use in a non-trading environment will benefit investors. The Commission believes that permitting the Exchange to offer this product without delay is consistent with the protection of investors and the public interest. Accordingly, the Commission

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>18</sup> *Id.*

designates the proposed rule change to be operative upon filing.<sup>19</sup>

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2013-30 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-NYSEMKT-2013-30. 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-NYSEMKT-2013-30 and should be submitted on or before April 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69280; File No. SR-BX-2013-029]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change Relating to Board of Director Qualifications

April 2, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 27, 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 By-Law Article IV, Section 4.3 to amend the calculation of Non-Industry Directors in the Exchange's By-Laws with respect to Qualification of Board Members.

The text of the proposed rule change is 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.

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

###### 1. Purpose

The purpose of this filing is to amend BX By-Law Article IV, Section 4.3 entitled "Qualifications" to amend the number of Public Directors<sup>3</sup> required to be included in the calculation of Non-Industry Directors<sup>4</sup> from three Public Directors to one Public Director for purposes of determining the number of Non-Industry Directors that may serve on the Exchange board. The Exchange recently filed to amend its By-Laws because the Boston Options Exchange LLC ("BOX") ceased to operate as an options trading facility of the Exchange<sup>5</sup> and terminated the Regulatory Services Agreement ("RSA") between BX and BOX effective June 1, 2012.<sup>6</sup> In that filing the Exchange noted that the BOX Trading Rules will no longer be operative to permit options trading on

<sup>3</sup> Pursuant to BX By-Law Article I(gg) a Public Director is a Director who has no material business relationship with a broker or dealer, the Corporation or its affiliates, or FINRA.

<sup>4</sup> Pursuant to BX By-Law Article I(bb) a Non-Industry Director is a Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry Director.

<sup>5</sup> BOX was a facility of the Exchange under Section 39(a)(2) of the Act. See Securities Exchange Act Release Nos. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (SR-BSE-2003-17); 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (SR-BSE-2003-04) ("BOXR Order"); and 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2002-15). See also Release No. 58324; 73 FR 46936 (August 7, 2008) (File Nos. SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01) ("Order Approving the Acquisition of the Boston Stock Exchange, Incorporated by The NASDAQ OMX Group, Inc.").

<sup>6</sup> The RSA specified, among other matters, that BX would terminate its responsibility for fulfilling certain obligations and cease performing certain regulatory functions as of the effective date of June 1, 2012, or sooner if BOX satisfies all of the conditions required for BOX to operate as a national securities exchange ("the facility termination effective date").

<sup>19</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.