

Section 19(b)(2) of the Act<sup>5</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is April 22, 2013.

The Commission is extending the 45-day time period for Commission action

Penberthy, Chief Financial Officer, Rand Capital Corporation, dated March 19, 2013; Jeff Andreson, dated March 19, 2013; Gary R. Fairhead, dated March 19, 2013; Roger Hawley, Chief Executive Officer, Zogenix, dated March 20, 2013; Vernon A. LoForti, Vice President and Chief Financial Officer, InfoSonics Corporation, dated March 20, 2013; Howard K. Kaminsky, Chief Financial Officer, Sport Chalet, Inc., dated March 21, 2013; Stanley P. Wirthheim, Chief Financial Officer, Smartpros.Ltd., dated March 25, 2013; Simon J. Parker, Head of Business Assurance, Innospec Inc., dated March 26, 2013; John H. Lowry III, Chief Financial Officer; Perceptron, Inc., dated March 27, 2013; David L. Nunes, President and Chief Executive Officer, Pope Resources, dated March 27, 2013; Don Tracy, Chief Financial Officer, MGP Ingredients, Inc., dated March 27, 2013; Vickie Reed, Sr. Director and Contoller, Zogenix, Inc., dated March 27, 2013; Jay Biskupski, Chief Financial Officer, Peregrine Semiconductor Corporation, dated March 27, 2013; Alan F. Eisenberg, Executive Vice President, Emerging Companies and Business Development, Biotechnology Industry Organization (BIO), dated March 28, 2013; Mary Kay Fenton, Senior Vice President and Chief Financial Officer, Achillion Pharmaceuticals, Inc., dated March 28, 2013; Robert D. Shallish, Jr., Executive Vice President—Finance and Chief Financial Officer, CONMED Corporation, dated March 28, 2013; Dorothy M. Donohue, Deputy General Counsel—Securities Regulation, Investment Company Institute, dated March 28, 2013; Richard F. Chambers, President and Chief Executive Officer, The Institute of Internal Auditors, dated March 28, 2013; Daniel C. Regis, Chairman, Cray Inc. Audit Committee, Cray, Inc., dated March 29, 2013; Kenneth Bertsch, President and Chief Executive Officer, Society of Corporate Secretaries & Governance Professionals, dated March 29, 2013; Paul R. Oldham, Chief Financial Officer and Vice President Finance Administration, Electro Scientific Industries, dated March 29, 2013; Joseph D. Hill, Chief Financial Officer, Metabolix, Inc., dated March 29, 2013; Grant Thornton LLP, dated March 29, 2013; Michael McConnell, Executive Vice President and Chief Financial Officer, Digimarc Corporation, dated March 29, 2013; Elizabeth L. Hougen, Chief Financial Officer, Isis Pharmaceuticals, Inc., dated March 29, 2013; Julia Reigel, Wilson Sonsini Goodrich & Rosati, dated March 29, 2013; Sharon Barbari, Executive Vice President Finance and Chief Financial Officer, Cytokinetics, Inc., dated March 29, 2013; Michael G. Zybala, General Counsel, The InterGroup Corporation, dated April 3, 2013; Ramy R. Taraboulsi, Chairman and Chief Executive Officer, SyncBASE Inc., dated April 6, 2013; Matthew C. Wolfsfeld, Chief Financial Officer, NTIC, dated April 10, 2013; and Barbara Russell, Chief Financial Officer, TOR Minerals International Inc., dated April 17, 2013.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the Exchange's proposal, as described above, and the comments received.

Accordingly, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> the Commission designates June 6, 2013, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File No. SR–NASDAQ–2013–032).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–09630 Filed 4–23–13; 8:45 a.m.]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69391; File No. SR–NASDAQ–2013–064]

### Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

April 18, 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 April 9, 2013, The NASDAQ Stock Market LLC (“NASDAQ” 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 NASDAQ. 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

NASDAQ proposes to amend Chapter XV, entitled “Options Pricing,” at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market (“NOM”), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend its Routing Fees.

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30–3(a)(31).

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

<sup>2</sup> 17 CFR 240.19b–4.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on May 1, 2013.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaq.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. 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

NASDAQ proposes to amend its Routing Fees at Chapter XV, Section 2(3) of the Exchange Rules in order to recoup costs that the Exchange incurs for routing and executing orders in equity options to various away markets.

Today, the Exchange assesses Non-Customers a flat rate of \$0.95 per contract on all Non-Customer orders routed to any away market and the Exchange assesses Customer orders a fixed fee plus the actual transaction fee dependent on the away market. Specifically, the Exchange assesses Customer orders routed to NASDAQ OMX PHLX LLC (“PHLX”) a fixed fee of \$0.05 per contract in addition to the actual transaction fee assessed by the away market. With respect to Customer orders that are routed to NASDAQ OMX BX, Inc. (“BX Options”), the Exchange does not assess a Routing Fee and does not pass rebates paid by the away market.<sup>3</sup> The Exchange does not assess a Routing Fee when routing orders to BX Options because that exchange pays a rebate. Instead of netting the customer rebate paid by BX Options against the

<sup>3</sup> BX Options pays a Customer Rebate to Remove Liquidity as follows: Customers are paid \$0.12 per contract in IWM, SPY and QQQ, \$0.32 per contract in All Other Penny Pilot Options and \$0.70 per contract in Non-Penny Pilot Options. See BX Options Rules at Chapter XV, Section 2(1).

fixed fee,<sup>4</sup> the Exchange simply does not assess a fee. The Exchange assesses Customer orders routed to all other away markets, except PHLX and BX Options, a fixed fee of \$0.11 per contract in addition to the actual transaction fee assessed by the away market, unless the away market pays a rebate, then the Routing Fee is \$0.00.

The fixed fees are based on costs that are incurred by the Exchange when routing to an away market in addition to the away market's transaction fee. For example, the Exchange incurs a fee when it utilizes Nasdaq Options Services LLC ("NOS"), a member of the Exchange and the Exchange's exclusive order router,<sup>5</sup> to route orders in options listed and open for trading to destination markets. Each time NOS routes to away markets NOS incurs a clearing-related cost<sup>6</sup> and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange also incurs administrative and technical costs associated with operating NOS, membership fees at away markets, Options Regulatory Fees ("ORFs") and technical costs associated with routing options. For Customer orders, the transaction fee assessed by the Exchange is based on the away market's actual transaction fee or rebate for a particular market participant at the time that the order was entered into the Exchange's trading system. This transaction fee is calculated on an order-by-order basis for Customer orders, since different away markets charge different amounts. In the event that there is no transaction fee or rebate assessed by the away market, the only fee assessed is the fixed Routing Fee.

The Exchange is proposing to amend the Routing Fees to all other options exchanges, except PHLX and BX Options, to increase the fixed fee from \$0.11 to \$0.15 per contract.<sup>7</sup> The Exchange currently does not recoup all of its costs to route to away markets other than PHLX and BX Options. As mentioned herein, the Exchange incurs costs when routing to away markets including away market transaction fees, ORFs, clearing fees, Section 31 related fees, connectivity and membership fees.

<sup>4</sup> BX Options does not assess a Customer a Fee to Remove Liquidity in any symbols today. See Chapter V, Section 2(1) of the BX Options Rules.

<sup>5</sup> See NASDAQ Rules at Chapter VI, Section 11(e) (Order Routing).

<sup>6</sup> The Options Clearing Corporation ("OCC") assesses a clearing fee of \$0.01 per contract side. See Securities Exchange Act Release No. 68025 (October 10, 2012), 77 FR 63398 (October 16, 2012) (SR-OCC-2012-18).

<sup>7</sup> The Exchange is not proposing to amend Non-Customer Routing Fees or Routing Fees for Customer orders routed to PHLX or BX Options.

The Exchange is not recouping its costs currently with the \$0.11 per contract fixed fee and proposes to increase the fixed fee to \$0.15 per contract.

## 2. Statutory Basis

NASDAQ believes that its proposal to amend its pricing is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>9</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among its Participants.

The Exchange believes that amending the Customer Routing Fee to other away markets, other than NOM and BX Options, from a fixed fee of \$0.11 to \$0.15 per contract, in addition to the actual transaction fee, is reasonable because the proposed fixed fee for Customer orders is an approximation of the costs the Exchange will be charged for routing orders to away markets. For example, today, NYSE MKT LLC ("Amex") does not assess a Customer transaction fee.<sup>10</sup> Today, the Exchange would therefore assess a Customer order that was routed to Amex an \$0.11 per contract Routing Fee. The Exchange's effective per contract expenses to route to Amex which includes the ORF, OCC clearing charges, Section 31 related fees, connectivity and membership fees, are not covered by the \$0.11 per contract and are slightly higher than the \$0.15 per contract. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing optional routing services for Customer orders because it better approximates the costs incurred by the Exchange for routing such orders. While, each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets, including OCC clearing costs, administrative and technical costs associated with operating NOS, membership fees at away markets, ORFs and technical costs associated with routing options, the Exchange believes that the proposed Routing Fees will enable it to recover the costs it incurs to route Customer orders to away markets. Today, the Exchange is paying a higher average cost per contract fee to route Customer orders to away markets, other than PHLX and BX Options.

The Exchange believes that the proposed pricing for Customer Routing Fees to all other away markets, except PHLX and BX Options, is equitable and not unfairly discriminatory because the

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> See Amex's Fee Schedule.

Exchange would assess the same fixed fee when routing orders to an away market in addition to the away market transaction fee. The proposal would apply uniformly to all market participants when routing to an away market that pays a rebate. Market participants may submit orders to the Exchange as ineligible for routing or "DNR" to avoid Routing Fees.<sup>11</sup> It is important to note that when orders are routed to an away market they are routed based on price first.<sup>12</sup>

Further, the Exchange believes that it is reasonable to continue to not assess a Customer Routing Fee when routing to all other options exchanges, except PHLX and BX Options, if the away market pays a rebate. The Exchange will continue to assess a fixed fee, which fee is being increased with this proposal, plus the actual transaction charge assessed by the away market when routing to all other options exchanges, except PHLX and BX Options, unless the away market pays a rebate. The Exchange would continue to not assess a Routing Fee if the away market pays a rebate because the Exchange believes it is reasonable to retain the rebate to offset the Routing Fee. The Exchange believes that market participants will have more certainty as to the Customer Routing Fee that will be assessed by the Exchange by simply not assessing a Routing Fee for Customer orders routed to away markets, other than PHLX, that pay a rebate.<sup>13</sup> The Exchange believes that not assessing a fee for routing orders to BX Options, instead of netting the customer rebate paid by BX Options against the Fixed Fee<sup>14</sup> is reasonable because although market participants routing orders to BX Options will not receive a credit, the Routing Fee is transparent. Market participants will not pay a Customer Routing Fee when routing orders to BX Options with this proposal instead of the \$0.05 per contract fee netted against the rebate, as is the case today. The Exchange believes that the proposed Customer Routing Fee to BX Options is equitable and not unfairly discriminatory because the proposal would apply uniformly to all market participants.

The Exchange believes that it is reasonable, equitable and not unfairly

<sup>11</sup> See NASDAQ Rules at Chapter VI, Section 11(e) (Order Routing).

<sup>12</sup> *Id.*

<sup>13</sup> BX Options pays a Customer Rebate to Remove Liquidity as follows: Customers are paid \$0.12 per contract in IWM, SPY and QQQ, \$0.32 per contract in All Other Penny Pilot Options and \$0.70 per contract in Non-Penny Pilot Options. See BX Options Rules at Chapter XV, Section 2(1).

<sup>14</sup> BX Options does not assess a Customer a Fee to Remove Liquidity in any symbols today. See Chapter V, Section 2(1) of the BX Options Rules.

discriminatory to continue to assess Customer orders that are routed to PHLX a fixed fee of \$0.05 per contract and orders that are routed to other away markets, other than PHLX and BX Options, a fixed fee of \$0.15 per contract because the cost, in terms of actual cash outlays, to the Exchange to route to PHLX (and BX Options)<sup>15</sup> is lower. For example, costs related to routing to PHLX are materially lower as compared to other away markets because NOS is utilized by all three exchanges to route orders.<sup>16</sup> NOS and the three NASDAQ OMX options markets have a common data center and staff that are responsible for the day-to-day operations of NOS. Because the three exchanges are in a common data center, Routing Fees are reduced because costly expenses related to, for example, telecommunication lines to obtain connectivity are avoided when routing orders in this instance. The costs related to connectivity to route orders to other NASDAQ OMX exchanges are de minimis. When routing orders to non-NASDAQ OMX exchanges, the Exchange incurs costly connectivity charges related to telecommunication lines and other related costs. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to NOM.

Finally, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess different fees for Customer orders as compared to non-Customer orders because the Exchange has traditionally assessed lower fees to Customers as compared to non-Customers. Customers will continue to receive the lowest fees or no fees when routing orders, as is the case today. Other options exchanges also assess lower Routing Fees for customer orders as compared to non-customer orders.<sup>17</sup>

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

NASDAQ does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the

<sup>15</sup> The Exchange does not assess the \$0.05 per contract Fixed Fee for routing orders to BX Options because that exchange pays Customer rebates, which the Exchange would retain to offset its cost.

<sup>16</sup> See Chapter VI, Section 11 of the NASDAQ and BX Options Rules and PHLX Rule 1080(m)(iii)(A).

<sup>17</sup> BATS assesses lower customer routing fees as compared to non-customer routing fees per the away market. For example BATS assesses ISE customer routing fees of \$0.30 per contract and an ISE non-customer routing fee of \$0.57 per contract. See BATS BZX Exchange Fee Schedule.

purposes of the Act. The Exchange does not believe that the proposal creates a burden on intra-market competition because the Exchange is applying the same Routing Fees and credits to all market participants in the same manner dependent on the routing venue, with the exception of Customers. The Exchange will continue to assess separate Customer Routing Fees. Customers will continue to receive the lowest fees or no fees when routing orders, as is the case today. Other options exchanges also assess lower Routing Fees for customer orders as compared to non-customer orders.<sup>18</sup>

The Exchange's proposal would allow the Exchange to continue to recoup its costs when routing orders to away markets when such orders are designated as available for routing by the market participant. The Exchange continues to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to NOM and is providing those savings to all market participants. Members and member organizations may choose to mark the order as ineligible for routing to avoid incurring these fees.<sup>19</sup> Today, other options exchanges also assess fixed routing fees to recoup costs incurred by the Exchange to route orders to away markets.<sup>20</sup>

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, the fees that are assessed by the Exchange must remain competitive with fees charged by other venues and therefore must continue to be reasonable and equitably allocated to those members organizations that opt to direct orders to the Exchange rather than competing venues.

#### *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

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

<sup>19</sup> See *supra* note 11.

<sup>20</sup> See CBOE's Fees Schedule and ISE's Fee Schedule.

19(b)(3)(A)(ii) of the Act.<sup>21</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### **IV. Solicitation of Comments**

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

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-064 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-NASDAQ-2013-064. 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 such filing also will be available for

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–064, and should be submitted on or before May 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–09624 Filed 4–23–13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69400; File No. SR–C2–2013–016]

### Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for the BBO Data Feed for C2 Listed Options

April 18, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on April 5, 2013, C2 Options Exchange, Incorporated (the “Exchange” or “C2”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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

C2 Options Exchange, Incorporated (the “Exchange” or “C2”) proposes to amend the fee schedule of Market Data Express, LLC (“MDX”), an affiliate of C2, for the BBO Data Feed for C2 listed options (“C2 BBO Data Feed” or “Data”). The text of the proposed rule change is available on the Exchange’s Web site (<http://www.c2exchange.com/Legal/>), at the Exchange’s Office of the Secretary, 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 the proposed rule change is to amend the fees charged by MDX for the C2 BBO Data Feed and to make several clarifying changes to the MDX fee schedule.<sup>3</sup> The C2 BBO Data Feed is a real-time, low latency data feed that includes C2 “BBO data” and last sale data.<sup>4</sup> The BBO and last sale data contained in the C2 BBO Data Feed is identical to the data that C2 sends to the Options Price Reporting Authority (“OPRA”) for redistribution to the public.<sup>5</sup>

The C2 BBO Data Feed also includes certain data that is not included in the data sent to OPRA, namely, (i) totals of customer versus non-customer contracts at the BBO, (ii) All-or-None contingency orders priced better than or equal to the BBO, (iii) BBO data and last sale data for complex strategies (e.g., spreads, straddles, buy-writes, etc.) (“Spread Data”), and (iv) expected opening price (“EOP”) and expected opening size (“EOS”) information that is disseminated prior to the opening of the

market and during trading rotations (collectively, “EOP/EOS data”).<sup>6</sup>

MDX currently charges Customers a “direct connect fee” of \$1,000 per connection per month and a “per user fee” of \$25 per month per “Authorized User” or “Device” for receipt of the C2 BBO Data Feed by Subscribers.<sup>7</sup> Either a C2 Permit Holder or a non-C2 Permit Holder may be a Customer. All Customers are assessed the same fees.

The Exchange proposes to eliminate both the direct connect fee and the per user fee and replace them with a “data fee”, payable by a Customer, of \$1,000 per month for internal use and external redistribution of the C2 BBO Data Feed. A “Customer” is any entity that receives the C2 BBO Data Feed directly from MDX’s system or through a connection to MDX provided by an approved redistributor (i.e., a market data vendor or an extranet service provider) and then distributes it internally and/or externally. The data fee would entitle a Customer to provide the C2 BBO Data Feed to an unlimited number of internal users and Devices within the Customer. The data fee would also entitle a Customer to distribute externally the C2 BBO Data Feed to other Customers. A Customer receiving the C2 BBO Data Feed from another Customer would be assessed the data fee by MDX and would be entitled to distribute the data internally and/or externally.<sup>8</sup> All Customers would have the same rights to utilize the Data (i.e., distribute the Data internally and/or externally) as long as the Customer has entered into an agreement with MDX for the Data and pays the data fee. Either a C2 Permit Holder or a non-C2 Permit Holder may be a Customer.

The Exchange also proposes to make several clarifying changes to the MDX fee schedule. MDX charges Customers a monthly fee of \$500 for each port connection to MDX to receive the C2

<sup>3</sup> The C2 BBO Data Feed and the fees charged by MDX for the C2 BBO Data Feed were established in March 2011. See Securities Exchange Act Release No. 63996 (March 1, 2011), 76 FR 12386 (March 7, 2011).

<sup>4</sup> The BBO Data Feed includes the “best bid and offer,” or “BBO”, consisting of all outstanding quotes and standing orders at the best available price level on each side of the market, with aggregate size (“BBO data,” sometimes referred to as “top-of-book data”). Data with respect to executed trades is referred to as “last sale” data.

<sup>5</sup> The Exchange notes that MDX makes available to Customers the BBO data and last sale data that is included in the C2 BBO Data Feed no earlier than the time at which the Exchange sends that data to OPRA. A “Customer” is any entity that receives the C2 BBO Data Feed directly from MDX’s system and then distributes it either internally or externally to Subscribers. A “Subscriber” is a person (other than an employee of a Customer) that receives the C2 BBO Data Feed from a Customer for its own internal use.

<sup>6</sup> The Exchange identified the inclusion of EOP/EOS data in the C2 BBO Data Feed in a proposed rule change filed in January 2013. See Securities Exchange Act Release No. 68697 (January 18, 2013), 78 FR 5523 (January 25, 2013).

<sup>7</sup> An “Authorized User” is defined as an individual user (an individual human being) who is uniquely identified (by user ID and confidential password or other unambiguous method reasonably acceptable to MDX) and authorized by a Customer to access the C2 BBO Data Feed supplied by the Customer. A “Device” is defined as any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form.

<sup>8</sup> A Customer may choose to receive the Data from another Customer rather than directly from MDX’s system because it does not want to or is not equipped to manage the technology necessary to establish a direct connection to MDX. In addition, a Customer is not subject to the MDX Port Fee if it does not establish a port connection to an MDX server.

<sup>22</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.