investors and the public interest.[16] The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

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

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2015–40 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–EDGX–2015–40. 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–EDGX–2015–40 and should be submitted on or before October 1, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–22739 Filed 9–9–15; 8:45 am]

BILLING CODE 8011–01–P

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75830; File No. SR–BX–2015–054]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding NASDAQ Last Sale Plus

September 3, 2015.

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 August 24, 2015, 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 BX Rule 7039 (BX Last Sale and NASDAQ Last Sale Plus Data Feeds) with language indicating the fees for NASDAQ Last Sale Plus (''NLS Plus''), a comprehensive data feed offered by NASDAQ OMX Information LLC.[3]

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 proposal is to amend BX Rule 7039 with language indicating the fees for NLS Plus. NLS Plus allows data distributors to access the three last sale products offered by each of NASDAQ OMX's three U.S. equity markets.[4] Thus, in offering NLS Plus, NASDAQ OMX Information LLC is acting as a redistributor of last sale products already offered by NASDAQ, BX, and PSX and volume information provided by the securities information processors for Tape A, B, and C.[5] This

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

[2] 17 CFR 240.19b–4.

[3] NASDAQ OMX Information LLC is a subsidiary of The NASDAQ OMX Group, Inc. (''NASDAQ OMX'').

[4] The NASDAQ OMX U.S. equity markets include The NASDAQ Stock Market (''NASDAQ''), BX, and NASDAQ OMX PSX (''PSX'') (together known as the ''NASDAQ OMX equity markets''). PSX will shortly file companion proposals regarding data feeds similar to NLS Plus. NASDAQ's last sale product, NASDAQ Last Sale, includes last sale information from the FINRA/NASDAQ Trade Reporting Facility (''FINRA/NASDAQ TRF''), which is jointly operated by NASDAQ and the Financial Industry Regulatory Authority (''FINRA''). *See* Securities Exchange Act Release No. 71350 (January 17, 2014), 79 FR 4218 (January 24, 2014) (SR–FINRA–2014–002). For proposed rule changes submitted with respect to NASDAQ Last Sale, BX Last Sale, and PSX Last Sale, *see, e.g.,* Securities Exchange Act Release Nos. 57965 (June 16, 2008), 73 FR 35178, (June 20, 2008) (SR–NASDAQ–2006–060) (order approving NASDAQ Last Sale data feeds pilot); 61112 (December 4, 2009), 74 FR 65569, (December 10, 2009) (SR–BX–2009–077) (notice of filing and immediate effectiveness regarding BX Last Sale data feeds); and 62876 (September 9, 2010), 75 FR 56624, (September 16, 2010) (SR–Phlx–2010–120) (notice of filing and immediate effectiveness regarding PSX Last Sale data feeds).

[5] Tape A and Tape B securities are disseminated pursuant to the Security Industry Automation Corporation's (''SIAC'') Consolidated Tape Association Plan/Consolidated Quotation System,

proposal is being filed by the Exchange to indicate the fees for the NLS Plus data feed offering and in light of the recent approval order regarding NLS Plus.[6]

NLS Plus allows data distributors to access last sale products offered by each of NASDAQ OMX's three equity exchanges. NLS Plus includes all transactions from all of NASDAQ OMX's equity markets, as well as FINRA/NASDAQ TRF data that is included in the current NLS product. In addition, NLS Plus features total cross-market volume information at the issue level, thereby providing redistribution of consolidated volume information (''consolidated volume'') from the securities information processors (''SIPs'') for Tape A, B, and C securities.[7] Thus, NLS Plus covers all securities listed on NASDAQ and New York Stock Exchange (''NYSE'') (now under the Intercontinental Exchange (''ICE'') umbrella), as well as US ''regional'' exchanges such as NYSE MKT, NYSE Arca, and BATS (also known as BATS/Direct Edge).[8] As noted in the NLS Plus Approval Order, the Exchange is filing this separate proposal regarding the NLS Plus fee structure, on BX.

NLS Plus is currently codified in NASDAQ Rule 7039(d) and BX Rule 7039(b),[9] in a manner similar to products of other markets.[10] NLS Plus is offered, as noted, through NASDAQ OMX Information LLC, which is a subsidiary of NASDAQ OMX Group, Inc. that is separate and apart from The NASDAQ Stock Market LLC. NASDAQ OMX Information LLC combines publicly available data from the three filed last sale products of the NASDAQ OMX equity markets and from the network processors for the ease and convenience of market data users and vendors, and ultimately the investing public. In that role, the function of NASDAQ OMX Information LLC is analogous to that of other market data vendors, and it has no competitive advantage over other market data vendors. NASDAQ OMX Information LLC distributes no data that is not equally available to all market data vendors. For example, NASDAQ OMX Information LLC receives data from the exchange that is available to other market data vendors, with the same information distributed to NASDAQ OMX Information LLC at the same time it is distributed to other vendors (that is, NASDAQ OMX Information LLC has neither a speed nor an information differential). Through this structure, NASDAQ OMX Information LLC performs precisely the same functions as Bloomberg, Thomson Reuters, and dozens of other market data vendors; and the contents of the NLS Plus data stream are similar in nature to what is distributed by other exchanges.

The Exchange believes that market data distributors may use the NLS Plus data feed to feed stock tickers, portfolio trackers, trade alert programs, time and sale graphs, and other display systems. The contents of NLS Plus are set forth in BX Rule 7039(b).[11] Specifically, subsection (b) states that NASDAQ Last Sale Plus is a comprehensive data feed produced by NASDAQ OMX Information LLC that provides last sale data as well as consolidated [sic] volume of NASDAQ OMX equity markets (NASDAQ, BX, and PSX) and the NASDAQ/FINRA Trade Reporting Facility (''TRF''). NASDAQ Last Sale Plus also reflects cumulative volume real-time trading activity across all U.S. exchanges for Tape C securities and 15-minute delayed information for Tape A and Tape B securities. NLS Plus also contains the following data elements: Trade Price, Trade Size, Sale Condition Modifiers, Cumulative Consolidated Market Volume, End of Day Trade Summary, Adjusted Closing Price, IPO Information, and Bloomberg ID. Additionally, pertinent regulatory information such as Market Wide Circuit Breaker, Reg SHO Short Sale Price Test Restricted Indicator, Trading Action, Symbol Directory, Adjusted Closing Price, and End of Day Trade Summary are included.[12] NLS Plus may be received by itself or in combination with NASDAQ Basic. The Exchange now proposes to add into BX Rule 7039(b) the fees associated with NLS Plus.

The Fees

Firms that receive an NLS Plus feed today are liable for annual administration fees for applicable NASDAQ equity exchanges: $1,000 for NASDAQ, $1,000 for BX, and $1,000 for PSX.[13] In addition, firms that receive NLS Plus are liable for NLS or NASDAQ Basic fees.[14] Finally, firms will pay a

or CTA/CQS (''CTA''). Tape C securities are disseminated pursuant to the NASDAQ Unlisted Trading Privileges (''UTP'') Plan.

[6] *See* Securities Exchange Act Release Nos. 75257 (June 22, 2015), 80 FR 36862 (June 26, 2015) (SR–NASDAQ–2015–055) (order approving proposed rule change regarding NASDAQ Last Sale Plus in NASDAQ Rule 7039(d)) (the ''NLS Plus Approval Order''); 74972 (May 15, 2015), 80 FR 29370 (May 21, 2015) (SR–NASDAQ–2015–055) (notice of filing of proposed rule change regarding NASDAQ Last Sale Plus) (the ''NLS Plus notice''); and 75600 (August 4, 2015), 80 FR 57968 (August 10, 2015) (SR–NASDAQ–2015–088) (notice of filing and immediate effectiveness regarding NASDAQ Last Sale Plus fees in NASDAQ Rule 7039(d)) (the ''NLS Plus Fees Approval Order'') [sic]. *See also* Securities Exchange Act Release No. 75709 (August 14, 2015), 80 FR 50671 (August 20, 2015) (SR–BX–2015–047) (notice of filing and immediate effectiveness regarding NASDAQ Last Sale Plus in BX Rule 7039(b)) (the ''NLS Plus on BX filing'').

NLS Plus, which is codified in NASDAQ Rule 7039(d) and BX Rule 7039(b), has been offered since 2010 via NASDAQ OMX Information LLC. NLS Plus is described online at *http://nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/NLSPlusSpecification.pdf*; and the annual administrative and other fees for NLS Plus are noted at *http://nasdaqtrader.com/Trader.aspx?id=DPUSdata#ls.*

[7] This reflects real-time trading activity for Tape C securities and 15-minute delayed information for Tape A and Tape B securities.

[8] Registered U.S. exchanges are listed at *http://www.sec.gov/divisions/marketreg/mrexchanges.shtml.*

[9] *See* supra note 6.

[10] *See* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (SR–BATS–2014–055; SR–BYX–2014–030; SR–EDGA–2014–25; SR–EDGX–2014–25) (order approving market data product called BATS One Feed being offered by four affiliated exchanges). *See also* Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR–NYSE–2014–40) (order granting approval to establish the NYSE Best Quote & Trades (''BQT'') Data Feed). These exchanges have likewise instituted fees for their products.

[11] BX Rule 7039(b) is similar to NASDAQ Rule 7039(d). The contents of NLS Plus in large part mimic those of NLS, which is set forth in NASDAQ Rule 7039(a)–(c). Similar to NLS, NLS Plus offers data for all U.S. equities via two separate data channels: The first data channel reflects NASDAQ, BX, and PSX trades with real-time consolidated [sic] volume for NASDAQ-listed securities; and the second data channel reflects NASDAQ, BX, and PSX trades with delayed consolidated volume for NYSE, NYSE MKT, NYSE Arca and BATS-listed securities.

[12] The overwhelming majority of these data elements and messages are exactly the same as, and in fact are sourced from, NLS, BX Last Sale, and PSX Last Sale. Only two data elements (consolidated volume and Bloomberg ID) are sourced from other publicly accessible or obtainable resources. The Reg SHO Short Sale Price Test Restricted Indicator message is disseminated intra-day when a security has a price drop of 10% or more from the adjusted prior day's NASDAQ Official Closing Price. Trading Action indicates the current trading status of a security to the trading community, and indicates when a security is halted, paused, released for quotation, and released for trading. Symbol Directory is disseminated at the start of each trading day for all active NASDAQ and non-NASDAQ-listed security symbols. Adjusted Closing Price is disseminated at the start of each trading day for all active symbols in the NASDAQ system. End of Day Trade Summary is disseminated at the close of each trading day, as a summary for all active NASDAQ- and non-NASDAQ-listed securities. IPO Information reflects IPO general administrative messages from the UTP and CTA Level 1 feeds for Initial Public Offerings for all NASDAQ- and non-NASDAQ-listed securities. For additional information, *see* NLS Plus Approval Order.

[13] For current fees, *see http://nasdaqtrader.com/Trader.aspx?id=DPUSdata#ls.* Annual administrative fees are in BX Rule 7035, NASDAQ Rule 7035, and NASDAQ OMX PSX Fees Chapter VIII.

[14] User fees for NLS and NASDAQ Basic are in NASDAQ Rules 7039 and 7047. User fees for BX

Continued

data consolidation fee of $350 per month.

Accordingly, proposed BX Rule 7039 states the following at sections (b)(1) through (b)(3):

(1) Firms that receive NLS Plus shall pay the annual administration fees for NLS, BX Last Sale, and PSX Last Sale, and a data consolidation fee of $350 per month.

(2) Firms that receive NLS Plus would either be liable for NLS fees or NASDAQ Basic fees.

(3) In the event that NASDAQ OMX BX and/or NASDAQ OMX PHLX adopt user fees for BX Last Sale and/or PSX Last Sale, firms that receive NLS Plus would also be liable for such fees.[15]

The Exchange notes that the proposed fee structure is designed to ensure that vendors could compete with the Exchange by creating a product similar to NLS Plus.[16] The proposed fee structure reflects the current annual administrative cost as well as the incremental cost of the aggregation and consolidation function (generally known as the ''consolidation function'') for NLS Plus, and would not be lower than the cost to a vendor creating a competing product, including the cost of receiving the underlying data feeds. The proposed fee structure for NLS Plus would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange.[17]

The proposed fee structure is reasonable and proper. First, the proposed administration fee is essentially a codification of the current administration fee vis a vis NASDAQ, BX and PSX. Second, NLS Plus recipients would also be liable for fees if the Exchange adopts user fees for BX Last Sale and/or PSX Last Sale. To that end, the Exchange notes that it has filed separate proposals to adopt NLS Plus in the BX Last Sale and PSX Last Sale provisions,[18] and will file separate fee proposals that would, like this filing, be expected to reflect an administrative fee component and a consolidation component. Third, firms receive NLS Plus by itself or in conjunction with NASDAQ Basic.[19] Accordingly, firms would either be liable for NLS fees or NASDAQ Basic fees. Fourth, the Exchange proposes that NLS Plus includes [sic] a specific monthly $350 data consolidation fee. This fee is designed to recoup the monthly consolidation costs emanating from the aggregation and consolidation of the data and data streams that make up the NLS Plus data feed. Such consolidated costs include, for example, the costs of combining the feeds, adding the Bloomberg ID, and combining the consolidated sale info. The Exchange believes that this consolidation fee, while in addition to the current NLS Plus fee in place, would not be material to firms.

The Exchange believes that the proposed NLS Plus fee is a simple codification of the existing NLS PLS [sic] fee into BX Rule 7039, as discussed, with the addition of a monthly data consolidation fee, and as such meets the requirements of the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[20] in general, and with Sections 6(b)(4) and (5) of the Act,[21] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange is codifying the fees regarding the NLS Plus data offering and the consolidation fee, as discussed, into sections (b)(1) through (b)(3) of BX Rule 7039.

The Exchange believes that the proposed fees offered to firms that elect to receive NLS Plus are reasonable, equitable and not unfairly discriminatory. These fees are reasonable because they are, as discussed, simply a codification of the existing fee structure, with an addition of the above-discussed consolidation fee, into existing BX Rule 7039. The proposed fee structure would apply equally to all firms that choose to avail themselves of the NLS Plus data feed, and no firm is required to use NLS Plus. Moreover, the Exchange believes that the consolidation fee, while in addition to the current NLS Plus fee, would not be material to firms. The consolidation fee would, however, enable the Exchange to recoup the monthly consolidation cost emanating from the aggregation and consolidation of the data and data streams that make up the NLS Plus data feed. Such consolidated costs include, for example, the monthly costs of combining the feeds, adding the Bloomberg ID, and creating the consolidated sale info. The proposed fee structure would not be unfairly discriminatory because it would apply equally to all firms that choose to use NLS Plus.

The Exchange believes that the proposed fees are also consistent with the investor protection objectives of Section 6(b)(5) of the Act[22] in that they are designed to promote just and equitable principles of trade, to remove impediments to a free and open market and national market system, and in general to protect investors and the public interest. Specifically, the proposed fee structure will codify the fees regarding the NLS Plus data offering into sections (b)(1) through (b)(3) of BX Rule 7039, which helps to assure proper enforcement of the rule and investor protection. The Exchange believes also that the proposal facilitates transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by codifying into a rule the fee liability for an additional means by which investors may access information about securities transactions, namely NLS Plus, thereby providing investors with additional options for accessing information that may help to inform their trading decisions.

The Exchange notes that the Commission has recently approved data products on several exchanges that are similar to NLS Plus, and specifically determined that the fee-liable approved data products were consistent with the Act.[23] NLS Plus simply provides market participants with an additional option for receiving market data that has already been the subject of a proposed rule change and that is available from myriad market data vendors.

In adopting Regulation NMS, the Commission granted SROs and broker-

Last Sale are in BX Rule 7039 (currently there is no fee liability), and for PSX Last Sale are in NASDAQ OMX PSX Fees Chapter VIII (currently there is no fee liability). As currently described in NASDAQ Rule 7047, NASDAQ Basic provides two sets of data elements: (1) The best bid and offer on the NASDAQ Stock Market for each U.S. equity security; and (2) the last sale information currently provided by NLS.

[15] BX Last Sale and PSX Last Sale currently are not fee liable, as noted in BX Rule 7039 and NASDAQ OMX PSX Fees Chapter VIII, respectively.

[16] For discussion in addition to this proposal, *see* NLS Plus Approval Order.

[17] *See also* footnote 24 in the NLS Plus notice, wherein NASDAQ indicated that it expects that the fee structure for NLS Plus will reflect an amount that is no less than the cost to a market data vendor to obtain all the underlying feeds, plus an amount to be determined that would reflect the value of the aggregation and consolidation function.

[18] BX Rule 7039 and NASDAQ OMX PSX Fees Chapter VIII.

[19] As provided in NASDAQ Rule 7047, NASDAQ Basic provides the information contained in NLS, together with NASDAQ's best bid and best offer.

[20] 15 U.S.C. 78f.

[21] 15 U.S.C. 78f(b)(4) and (5).

[22] 15 U.S.C. 78f(b)(5).

[23] *See* supra note 10 regarding BATS One and NYSE BQT.

dealers (''BDs'') increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the NLS Plus market data product is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. 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.[24]

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 BDs at all, it follows that the price at which such data is sold should be set by the market as well.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010) (''*NetCoalition I*''), 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 I,* at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [25]

The Court in *NetCoalition I,* while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record *in that case* did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSE Arca's data product at issue in that case. As explained below in the Exchange's Statement on Burden on Competition, however, the Exchange believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition I* case, and that the Commission is entitled to rely upon such evidence in concluding fees are the product of competition, and therefore in accordance with the relevant statutory standards.[26] Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing.

Moreover, fee liable data products such as NLS Plus are a means by which exchanges compete to attract order flow, and this proposal simply codifies the relevant fee structure into an Exchange rule. To the extent that exchanges are successful in such competition, they earn trading revenues and also enhance the value of their data products by increasing the amount of data they are able to provide. Conversely, to the extent that exchanges are unsuccessful, the inputs needed to add value to data products are diminished. Accordingly, the need to compete for order flow places substantial pressure upon exchanges to keep their fees for both executions and data reasonable.

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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee structure is designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup costs while continuing to offer its data products at competitive rates to firms.

The market for data products is extremely competitive and firms may freely choose alternative venues and data vendors based on the aggregate fees assessed, the data offered, and the value provided. This rule proposal does not burden competition, which continues to offer alternative data products and, like the Exchange, set fees,[27] but rather reflects the competition between data feed vendors and will further enhance such competition. As described, NLS Plus competes directly with existing similar products and potential products of market data vendors. NASDAQ OMX Information LLC was constructed specifically to establish a level playing field with market data vendors and to preserve fair competition between them. Therefore, NASDAQ OMX Information LLC receives NLS, BX Last Sale, and PSX Last Sale from each NASDAQ-operated exchange in the same manner, at the same speed, and reflecting the same fees as for all market data vendors. Therefore, NASDAQ Information LLC has no competitive advantage with respect to these last sale products and NASDAQ commits to maintaining this level playing field in the future. In other words, NASDAQ will continue to disseminate separately the underlying last sale products to avoid creating a latency differential between NASDAQ OMX Information LLC and other market data vendors, and to avoid creating a pricing advantage for NASDAQ OMX Information LLC.

NLS Plus joins the existing market for proprietary last sale data products that is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market. Similarly, with respect to the FINRA/NASDAQ TRF data that is a component of NLS and NLS Plus, allowing exchanges to operate TRFs has permitted them to earn revenues by providing technology and data in support of the non-exchange segment of the market. This revenue opportunity has also resulted in fierce competition between the two current TRF operators,

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

[25] *NetCoalition I,* at 535.

[26] It should also be noted that Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. *See also NetCoalition* v. *SEC,* 715 F.3d 342 (D.C. Cir. 2013) (''*NetCoalition II*'') (finding no jurisdiction to review Commission's non-suspension of immediately effective fee changes).

[27] *See, e.g.,* supra note 10.

with both TRFs charging extremely low trade reporting fees and rebating the majority of the revenues they receive from core market data to the parties reporting trades.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (*e.g.,* if the software can be downloaded over the internet after being purchased).[28] It is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are the source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, an exchange would be unable to defray its platform costs of providing the joint products. Similarly, data products cannot make use of TRF trade reports without the raw material of the trade reports themselves, and therefore necessitate the costs of operating, regulating,[29] and maintaining a trade reporting system, costs that must be covered through the fees charged for use of the facility and sales of associated data.

An exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD 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 BD 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 BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Similarly, in the case of products such as NLS Plus that are distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail BDs, 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. Exchanges, TRFs, and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, the Exchange believes that products such as NLS Plus can enhance order flow by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the internet or television. Conversely, the value of such products to distributors and investors decreases if order flow falls, because the products contain less content.

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. The Exchange pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

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. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

[28] *See* William J. Baumol and Daniel G. Swanson, ''The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power,'' *Antitrust Law Journal,* Vol. 70, No. 3 (2003).

[29] It should be noted that the costs of operating the FINRA/NASDAQ TRF borne by NASDAQ include regulatory charges paid by NASDAQ to FINRA.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including eleven SRO markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs 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. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE MKT, NYSE Arca, and BATS/Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless. Notably, the potential sources of data include the BDs that submit trade reports to TRFs and that have the ability to consolidate and distribute their data without the involvement of FINRA or an exchange-operated TRF.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and NYSE Arca did before registering as exchanges by publishing proprietary book data on the internet. Second, because a single order or transaction report can appear in a core data product, an SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Indeed, in the case of NLS Plus, the data provided through that product appears both in (i) real-time core data products offered by the SIPs for a fee, (ii) free SIP data products with a 15-minute time delay, and (iii) individual exchange data products, and finds a close substitute in last-sale products of competing venues.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and BATS/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 BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs 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. In Europe, Cinnober aggregates and disseminates data from over 40 brokers and multilateral trading facilities.[30]

In the case of TRFs, the rapid entry of several exchanges into this space in 2006–2007 following the development and Commission approval of the TRF structure demonstrates the contestability of this aspect of the market.[31] Given the demand for trade reporting services that is itself a by-product of the fierce competition for transaction executions—characterized notably by a proliferation of ATSs and BDs offering internalization—any supra-competitive increase in the fees associated with trade reporting or TRF data would shift trade report volumes from one of the existing TRFs to the other[32] and create incentives for other TRF operators to enter the space. Alternatively, because BDs reporting to TRFs are themselves free to consolidate the market data that they report, the market for over-the-counter data itself, separate and apart from the markets for execution and trade reporting services—is fully contestable.

Moreover, consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available at no cost with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition I* at 539. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data. Similarly, increases in the cost of NLS Plus would impair the willingness of distributors to take a product for which there are numerous alternatives, impacting NLS Plus data revenues, the value of NLS Plus as a tool for attracting order flow, and ultimately, the volume of orders routed and the value of other data products.

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.

[30] *See http://www.cinnober.com/boat-trade-reporting.*

[31] The low cost exit of two TRFs from the market is also evidence of a contestable market, because new entrants are reluctant to enter a market where exit may involve substantial shut-down costs.

[32] It should be noted that the FINRA/NYSE TRF has, in recent weeks, received reports for almost 10% of all over-the-counter volume in NMS stocks.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[33] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2015–054 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–BX–2015–054. 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–BX–2015–054 and should be submitted on or before October 1, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–22744 Filed 9–9–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75846; File No. SR–NYSEArca–2015–78]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 3 of NYSE Arca Equities Rule 8 To Extend the Effectiveness of the ETP Incentive Program for Additional One-Year Pilot Period, Ending September 4, 2016

September 4, 2015.

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 September 3, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I 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 Section 3 of NYSE Arca Equities Rule 8 (Trading of Certain Equity Derivatives) to extend the effectiveness of the ETP Incentive Program for additional one-year pilot period, ending September 4, 2016. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 3 of NYSE Arca Equities Rule 8 (Trading of Certain Equity Derivatives) to extend the effectiveness of the ETP Incentive Program[4] for an additional one-year pilot period, ending September 4, 2016.[5]

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[33] 15 U.S.C. 78s(b)(3)(A)(ii).

[34] 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] The Commission approved the ETP Incentive Program on a pilot basis in Securities Exchange Act Release No. 69706 (June 6, 2013), 78 FR 35340 (June 12, 2013) (SR–NYSEArca–2013–34) (''ETP Incentive Program Release''). The Exchange subsequently filed to extend the original pilot program for the ETP Incentive Program until September 4, 2015. *See* Securities Exchange Act Release No. 72963 (September 3, 2014), 79 FR 53492 (September 9, 2014) (SR–NYSEArca–2014–99) (notice of filing and immediate effectiveness of proposed rule change extending effectiveness of the ETP Incentive Program until September 4, 2015). In addition, the Exchange recently filed a proposed rule change to amend Rules 7.25(c) and 8.800(b) to provide that exchange-traded products (''ETPs'') already listed on the Exchange can be admitted to the ETP Incentive Program on a monthly basis rather than at the beginning of each quarter. *See* Securities Exchange Act Release No. 75282 (June 24, 2015), 80 FR 37340 (June 30, 2015) (SR–NYSEArca–2015–52) (notice of filing and immediate effectiveness of proposed rule change amending NYSE Arca Equities Rules 7.25 and 8.800 to allow an issuer to elect for its ETP to participate in the Crowd Participant Program or the ETP Incentive Program monthly rather than quarterly and to extend the effectiveness of the Crowd Participant Program until June 23, 2016). In SR–NYSEArca–2015–52, the Exchange stated that the Exchange anticipates that expanding the opportunity for issuers to enter the ETP Incentive Program will facilitate the provision of extra liquidity to lower-volume ETPs by incentivizing more Market Makers to take Lead Market Maker (''LMM'') assignments in certain lower-volume ETPs.

[5] The ETP Incentive Program is scheduled to end on September 4, 2015. For purposes of the ETP Incentive Program, ETPs include securities listed on