POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 30, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 22, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 72 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–70, CP2017–98.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–31674 Filed 12–29–16; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79690; File No. SR–BX–2016–073]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Transaction Fees at Rule 7019 (Market Data Distributor Fees)

December 23, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2016, NASDAQ 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.

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

[2] 17 CFR 240.19b–4.

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

The Exchange proposes to amend the Exchange's transaction fees at Rule 7019 (Market Data Distributor Fees) to (i) increase the Monthly Internal Distributor Fee from $500 to $750 for BX TotalView, and (ii) increase the Monthly External Distributor Fee from $1,250 to $1,500 for BX TotalView, as described further below.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqbx.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 the proposed rule change is to increase the Monthly Internal Distributor Fee from $500 to $750 for BX TotalView, and to increase the Monthly External Distributor Fee from $1,250 to $1,500 for BX TotalView.

TotalView is a proprietary feed that provides subscribers with full depth-of-book data on BX for Nasdaq-listed securities and securities not listed on Nasdaq. TotalView allows customers to view all displayed quotes and orders attributed to specific market participants at every price level on BX, access total displayed anonymous interest at every price level on BX, and to see the total size of all displayed quotes and orders on BX. TotalView also offers trade data for BX executions that occur on BX.

Customers may access TotalView as either a Distributor, or through Direct Access. Rule 7019(b) defines a ''distributor'' of Exchange data as ''any entity that receives a feed or data file of Exchange data directly from the Exchange or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity).'' [3] Rule 7019(c) defines ''Direct Access'' as ''a telecommunications interface with the Exchange for receiving Exchange data, or receiving an Exchange data feed within the Exchange co-location facility, or receiving Exchange data via an Extranet access provider or other such provider that is fee-liable under 7025.'' [4]

The Exchange proposed the TotalView fees, among others, in 2009, following its acquisition by Nasdaq, Inc. and the resumption of its cash equities trading business.[5] The Exchange proposed that Distributors of TotalView would pay a $500 monthly fee to distribute the data feed internally (*i.e.,* to employees) and a $1,250 monthly fee to distribute to external customers.[6]

In support of these fees, the Exchange noted that the TotalView fee structure is similar to the structure for the TotalView data product offered by The NASDAQ Stock Market LLC (''Nasdaq''), but that the overall level of fees is lower than for Nasdaq TotalView. The lower fee levels for BX TotalView reflected the start-up nature of the Exchange's new equities trading platform, and was designed help to attract order flow to the Exchange, since, at its inception, the Exchange had zero market share and therefore set its fees, including data fees, with a view to attracting order flow. Finally, the Exchange noted that the alternatives that exist for market participants to determine market depth—such as other depth of book products that may be associated with markets with more liquidity, or order routing strategies designed to ascertain market depth—provided incentives for the Exchange to ensure that its fees for BX TotalView were set reasonably.[7]

With this proposal, BX proposes to increase the Monthly Internal Distributor Fee from $500 to $750 for BX TotalView, and increase the Monthly External Distributor Fee from

[3] *See* Rule 7019(b). The Rule also provides that all distributors shall execute an Exchange distributor agreement, and states that the Exchange itself is a vendor of its data feed(s) and has executed an Exchange distributor agreement and pays the distributor charge. *Id.*

[4] *See* Rule 7019(c).

[5] *See* Securities Exchange Act Release No. 59307 (January 28, 2009), 74 FR 6069 (February 4, 2009) (Notice of filing of SR–BX–2009–005). BX proposed, for the first year of BX's operation, to make TotalView available free of charge. *Id.*

[6] *Id.* The Exchange also proposed that Distributors pay a $1,000 monthly fee to receive the data directly from the Exchange, since the Exchange incurs costs to support the connection to each direct Distributor; indirect Distributors (*i.e.,* those receiving data from a direct Distributor) would not pay this charge.

[7] *Id.*

$1,250 to $1,500 for BX TotalView. BX is only changing the fee for the Monthly Internal and External Distributor Fees. The terms of access for TotalView, and the definition of ''Direct Access'' and ''Distributor,'' remain the same.

This fee increase is justified because BX has not increased the Distributor fees for TotalView since they were initially proposed in 2009, although the value of BX TotalView has increased since that time. Since 2009, BX's market share for quoting and trading of Nasdaq-listed securities and securities not listed on Nasdaq has increased, which has, in turn, increased the content and therefore the value of the TotalView product. In addition, various technical changes have enhanced TotalView by improving the performance and the resiliency of the BX matching engine, which, in turn, has improved outbound messaging through TotalView, especially during peak times of messaging traffic.[8] BX also notes that the proposed new TotalView fees remain consistent with fees for comparable products offered by other exchanges. This fee increase therefore reflects the increased value of the TotalView product and the comparative cost of other similar products.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [11]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [12] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[13] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [14]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [15]

More specifically, the SEC recognized the importance of competition in setting fees for non-core market data products when approving the TotalView fees in 2009.[16] The SEC noted that TotalView related to the distribution of non-core, depth of book market data products, and the SEC was therefore able to use a market-based approach in analyzing the appropriateness of the fees.[17] Accordingly, the SEC recognized both BX's compelling need to attract order flow from market participants; and the availability to market participants of alternatives to purchasing BX's depth-of-book order data.[18] The SEC stated that, given the competitive landscape of trading in cash equities, BX must compete vigorously for order flow to maintain its share of trading volume.[19] This compelling need to attract order flow imposed significant pressure on BX to act reasonably in setting its fees for BX market data, particularly given that the market participants that must pay such fees often will be the same market participants from whom BX must attract order flow. The SEC also noted that, in setting the fees for its TotalView data, BX must consider the extent to which market participants would choose one or more alternatives instead of purchasing the Exchange's data.[20] The Commission stated that the availability of those alternatives, as well as the BX's compelling need to attract order flow, imposed significant competitive pressure on the BX to act equitably, fairly, and reasonably in setting the terms of its proposal.[21]

The same arguments apply with respect to the proposed fee increase here. Although BX is a more mature market than in 2009, competition for order flow remains fierce, and some of the market participants that purchase TotalView are the same market participants from whom BX must attract order flow. Additionally, market participants continue to have a range of other market data products that they could purchase as alternatives to TotalView. As with the initial TotalView fees, the significant competitive pressure with respect to order flow and market data products therefore requires BX to act equitably, fairly, and reasonably in setting the terms of its proposed TotalView fees.

The Exchange also believes that the increase in the Monthly Internal Distributor Fee from $500 to $750 and the increase in the Monthly External Distributor Fee from $1,250 to $1,500 is reasonable because these fee increases reflect the current value of the TotalView product. TotalView provides comprehensive order and trade information for Nasdaq-listed securities and securities not listed on Nasdaq, and the value of a product that offers such information increases as BX's market share increases. As noted above, when TotalView was initially proposed, BX was seeking to resume its cash equities trading business, which was reflected in the initial TotalView fees. Given that BX's market share in those securities

[8] Specifically, in 2016, BX split its matching engine into four matching engines to improve the handling and execution of orders by increasing system resiliency and reduce the impact of peaks in messaging traffic. In anticipation of this change, BX implemented a series of system upgrades in 2015, including upgrading the servers for the BX matching engine, upgrading the matching engine to the newest and most efficient version, and upgrading the necessary tools to effectively monitor the Nasdaq BX marketplace.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[12] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[13] *See NetCoalition,* at 534–535.

[14] *Id.* at 537.

[15] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[16] *See* Securities Exchange Act Release No. 59615 (March 20, 2009), 74 FR 14604 (March 31, 2009) (Order approving SR–BX–2009–005). Core data is the best-priced quotations and comprehensive last-sale reports of all markets that the Commission, pursuant to Rule 603(b), requires a central processor to consolidate and distribute to the public pursuant to joint-SRO plans. In contrast, individual exchanges and other market participants distribute non-core data voluntarily. *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* In approving the TotalView fees, the Commission also did not find a substantial countervailing basis to conclude that the proposal nevertheless failed to meet an applicable requirement of the Act or the rules thereunder.

has increased since 2009, and given the technical enhancements to TotalView since that time, the proposed increase reasonably reflects the increased value of TotalView to market participants. The proposed fees are also fair and reasonable in that they compare favorably to fees charged by other exchanges for comparable products.

The Exchange believes that these fees are an equitable allocation and are not unfairly discriminatory because the proposed fees for subscribers are uniform for all subscribers within a particular category, *e.g.,* external Distributors will all pay the same Monthly External Distributor Fee. The proposal maintains the current distinction between internal and external Distributors in that external Distributors will continue to be charged a higher amount. Although the amount of the fee increase is proportionally greater for internal Distributors than external Distributors, the Exchange believes that this is equitable and not unfairly discriminatory because the fee increase better aligns the value of TotalView for purposes of internal distribution to the value of TotalView for purposes of external distribution. Under the proposal, the Exchange notes that internal Distributors will still pay a fee that is 50% less than external Distributors.

The Exchange also believes that it is equitable and not unfairly discriminatory to increase the fee for internal and external distribution, and not for Direct Access. Rule 7019 provides that a distributor may distribute data either internally (within that entity) or externally (outside that entity), whereas a Direct Access subscriber is not permitted to distribute TotalView data. To the extent that the value of TotalView has increased since 2009 as the BX market has grown, the fee increase for internal and external distribution reflects this increased value and the fact that Distributors, by definition, have more ways than Direct Access subscribers to benefit from this increased value, *e.g.,* through distribution.

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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or fee levels available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

Here, the proposed changes to the charges assessed for internal and external Distributors of TotalView do not impose a burden on competition because TotalView is completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. As is discussed in greater detail below, competition for order flow remains fierce, and some of the market participants that purchase TotalView are the same market participants from whom BX must attract order flow. Firms make decisions regarding TotalView and other proprietary data based on the total cost of interacting with the Exchange, and order flow would be harmed by the supracompetitive pricing of any proprietary data product. Additionally, market participants continue to have a range of other proprietary market data products that they could purchase as alternatives to TotalView. Third, competition among Distributors for customers will further constrain the cost of TotalView. There is therefore significant competitive pressure with respect to order flow and market data products that requires BX to act equitably, fairly, and reasonably in setting the terms of its proposed TotalView fees.

Competition for Order Flow

Fees related to TotalView are constrained by competition among exchanges and other entities seeking to attract order flow. Order flow is the ''life blood'' of the exchanges. Broker-dealers currently have numerous alternative venues for their order flow, including self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs, which may readily reduce costs by directing orders toward the lowest-cost trading venues.

The level of competition and contestability in the market for order flow is demonstrated by the numerous 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. For a variety of reasons, competition from new entrants, especially for order execution, has increased dramatically over the last decade.

Each SRO, TRF, ATS, and BD that competes for order flow is permitted to produce proprietary data products. Many currently do or have announced plans to do so, including NYSE, NYSE Amex, NYSE Arca, BATS, and IEX. This is because Regulation NMS deregulated the market for proprietary data. While BDs had 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. Order routers and market data vendors can facilitate production of proprietary data products for single or multiple BDs. The potential sources of proprietary products are virtually limitless.

The markets for order flow and proprietary data are inextricably linked: a trading platform cannot generate market information unless it receives trade orders. As a result, the competition for order flow constrains the prices that platforms can charge for proprietary data products. Firms make decisions on how much and what types of data to consume based on the total cost of interacting with BX and other exchanges. Data fees are but one factor in a total platform analysis. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. A supracompetitive increase in the fees charged for either transactions or proprietary data has the potential to impair revenues from both products. In this manner, the competition for order flow will constrain prices for proprietary data products.

Substitute Products

The price of depth-of-book data is constrained by the existence of competition from other exchanges, such as NYSE and BATS, which sell proprietary depth-of-book data. While a small number of highly sophisticated traders purchase depth-of-book products from multiple exchanges, most customers do not. Because most customers would not pay an excessive price for TotalView when substitute data is available from other proprietary sources, the Exchange is constrained in its pricing decisions.

Competition Among Distributors

Competition among Distributors provides another form of price discipline for proprietary data products. If the price of TotalView were set above competitive levels, Distributors purchasing TotalView would be at a disadvantage relative to their competitors, and would therefore either purchase a substitute or forego the product altogether.

In summary, market forces constrain the price of depth-of-book data such as TotalView through competition for order flow, competition from substitute products, and in the competition among vendors for customers. For these reasons, the Exchange has provided a substantial basis demonstrating that the fee is equitable, fair, reasonable, and not unreasonably discriminatory, and therefore consistent with and in furtherance of the purposes of the Exchange Act.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[22]

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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–2016–073 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–2016–073. 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–2016–073, and should be submitted on or before January 20, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–31681 Filed 12–29–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79682; File No. SR–FINRA–2016–048]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Eliminate Fees for Historical Trade Data Accessed Through the FINRA ADDS Web Site

December 23, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2016, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 FINRA. FINRA has designated the proposed rule change as ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. 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 the Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rules 7510, 7710 and 7730 to eliminate the fees for historical trade data accessed through the FINRA Automated Data Delivery System (''FINRA ADDS'') Web site relating to trades reported to the Alternative Display Facility (''ADF''), OTC Reporting Facility (''ORF'') and Trade Reporting and Compliance Engine (''TRACE'').

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

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[22] 15 U.S.C. 78s(b)(3)(A)(ii).

[23] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(2).