

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76771; File No. SR-BX-2015-082)

December 24, 2015

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

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 December 14, 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 and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend BX Rule 7039 (BX Last Sale and NASDAQ Last Sale Plus Data Feeds) with language regarding NASDAQ Last Sale (“NLS”) Plus (“NLS Plus”), a comprehensive data feed offered by NASDAQ OMX Information LLC<sup>3</sup> that allows data distributors to access the three last sale products offered by each of Nasdaq, Inc.’s three U.S.

---

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

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

<sup>3</sup> NASDAQ OMX Information LLC is a subsidiary of Nasdaq, Inc. (formerly, The NASDAQ OMX Group, Inc.), separate and apart from The NASDAQ Stock Market LLC. The primary purpose of NASDAQ OMX Information LLC is to combine publicly available data from the three filed last sale products of the exchange subsidiaries of Nasdaq, Inc. 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 performs precisely the same functions as Bloomberg, Thomson Reuters, and other market data vendors.

equity markets.<sup>4</sup> Specifically, this proposal would allow NLS Plus to reflect cumulative consolidated volume (“consolidated volume”) of real-time trading activity for Tape A securities and Tape B securities. Currently, consolidated volume on NLS Plus is real-time only for Tape C securities and is 15 minute delayed for Tape A securities and Tape B securities.<sup>5</sup> The Exchange also proposes to remove two duplicative terms in the rule.

The text of the proposed rule change is available on the Exchange’s website 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

---

<sup>4</sup> The Nasdaq, Inc. U.S. equity markets include the Exchange, The NASDAQ Stock Market LLC (“NASDAQ”), and NASDAQ OMX PSX (“PSX”) (together known as the “Nasdaq, Inc. equity markets”). PSX and NASDAQ are filing companion proposals similar to this one. 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).

<sup>5</sup> Tape A and Tape B securities are disseminated pursuant to the Security Industry Automation Corporation’s (“SIAC”) Consolidated Tape Association Plan/Consolidated Quotation System, or CTA/CQS (“CTA”). Tape C securities are disseminated pursuant to the NASDAQ Unlisted Trading Privileges (“UTP”) Plan.

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 Rule 7039(b). Specifically, this proposal would allow NLS Plus to reflect consolidated volume of real-time trading activity for Tape A securities and Tape B securities. Now, consolidated volume on NLS Plus is real-time only for Tape C securities. The Exchange also proposes to remove two duplicative terms in the rule.

NLS Plus, which is reflected in Rule 7039(b),<sup>6</sup> allows data distributors to access last sale products offered by each of Nasdaq, Inc.'s three equity exchanges. Thus, NLS Plus includes all transactions from all of Nasdaq, Inc.'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 from the securities information processors ("SIPs") for Tape A, B, and C securities, currently real-time for Tape C securities and 15-minute delayed for Tape A and Tape B

---

<sup>6</sup> See Securities Exchange Act Release Nos. 75709 (August 14, 2015), 80 FR 50671 (August 20, 2015) (SR-BX-2015-047) (notice of filing and immediate effectiveness regarding NLS Plus on BX); and 75830 (September 3, 2015), 80 FR 54640 (September 10, 2015) (SR-BX-2015-054) (notice of filing and immediate effectiveness regarding fees for NLS Plus on BX).

Other exchanges have data feeds that are similar to NLS Plus. See Securities Exchange Act Release Nos. 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); and 74726 (April 14, 2015), 80 FR 21776 (April 20, 2015) (SR-BATS-2015-29) (notice of filing and immediate effectiveness to include consolidated volume in BATS One). 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).

securities. 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).

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 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. 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 provision of multiple options for investors to receive market data was a primary goal of the market data amendments adopted by Regulation NMS. Finally, NLS Plus provides investors with options for receiving market data that parallel products currently offered by BATS and BATS Y, EDGA, and EDGX and NYSE equity exchanges.<sup>7</sup>

Consolidated volume reflects the consolidated volume at the time that the NLS Plus trade message is generated, and includes the volume for the issue symbol as reported on the consolidated market data feed. The consolidated volume is based on the real-time trades reported via the UTP Trade Data Feed (“UTDF”) and delayed trades reported via CTA. NASDAQ calculates the real-time trading volume for its trading venues, and then adds the real-time trading volume for the other (non-NASDAQ) trading venues as reported via the UTDF data feed. For non-NASDAQ-listed issues, the consolidated volume is based on trades reported via SIAC’s Consolidated Tape System (“CTS”) for the issue symbol. The Exchange calculates the

---

<sup>7</sup> Id.

real-time trading volume for its trading venues, and then adds the 15-minute delayed trading volume for the other (non-NASDAQ) trading venues as reported via the CTS data feed.

NLS Plus is currently codified in BX Rule 7039(b) as follows:

(b) NASDAQ Last Sale Plus ("NLS Plus"). NLS Plus is a comprehensive data feed produced by NASDAQ OMX Information LLC. It provides last sale data as well as consolidated volume of NASDAQ U.S. equity markets (BX, The NASDAQ Stock Market ("NASDAQ"), and NASDAQ OMX PSX ("PSX")) and the NASDAQ/FINRA Trade Reporting Facility ("TRF"). NLS 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 B securities. NLS Plus also contains: 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. NLS Plus may be received by itself or in combination with NASDAQ Basic.

This proposal essentially reflects one change to NLS Plus as it currently exists.

Whereas now consolidated volume on NLS Plus is real-time only for Tape C securities and is 15 minute delayed for Tape A and Tape B securities, this proposal would allow NLS Plus to reflect

consolidated volume of real-time trading activity as reported to all of the Tapes. As proposed to be amended, BX Rule 7039(b) would state:

(b) NASDAQ Last Sale Plus ("NLS Plus"). NLS Plus is a comprehensive data feed produced by NASDAQ OMX Information LLC. It provides last sale data as well as consolidated volume of NASDAQ U.S. equity markets (BX, The NASDAQ Stock Market ("NASDAQ"), and NASDAQ OMX PSX ("PSX")) and the NASDAQ/FINRA Trade Reporting Facility ("TRF"). NLS Plus also reflects cumulative volume real-time trading activity across all U.S. exchanges for Tape C securities. NLS Plus also contains: 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, and Symbol Directory are included. NLS Plus may be received by itself or in combination with NASDAQ Basic. Additionally, NLS Plus reflects cumulative volume real-time trading activity across all U.S. exchanges for Tape A securities and Tape B securities.

Thus, with this proposal consolidated volume would reflect real-time trading for all Tape A, Tape B, and Tape C securities. Market participants have requested that the Exchange provide NLS Plus consolidated volume that in fact reflects real-time trading for all Tape A, Tape B, and Tape C securities. The Exchange believes that this proposal would be of great benefit to market participants, who could now get similar, real-time data across all U.S. markets that are reported

to Tapes A, B, and C. The Exchange believes that its proposal allowing real-time volume on the NLS Plus feed is similar to the BATS One feed, which transmits real-time data.<sup>8</sup>

The Exchange proposes one housekeeping change. This is a technical change to remove two terms that are indicated twice in Rule 7039(b): “Adjusted Closing Price” and “End of Day Trade Summary”.

With respect to latency, as discussed in previous NLS Plus filings,<sup>9</sup> the path for distribution of NLS Plus is not faster than the path for distribution that would be used by a market data vendor to distribute an independently created NLS Plus-like product. As such, the NLS Plus data feed is a data product that a competing market data vendor could create and sell without being in a disadvantaged position relative to the Exchange. In recognition that the Exchange is the source of its own market data and with NASDAQ and PSX being equity markets owned by Nasdaq, Inc., the Exchange represents that the source of the market data it would use to create proposed NLS Plus is available to other vendors. In fact, the overwhelming majority of the data elements and messages in NLS Plus are exactly the same as, and in fact are sourced from, NLS, BX Last Sale, and PSX Last Sale, each of which is available to other market data vendors. The Exchange, NASDAQ, and PSX will continue to make available these individual

---

<sup>8</sup> See 73918 at 78921: “[T]he BATS One Feed ... disseminates, on a real-time basis, the aggregate best bid and offer...of all displayed orders for securities traded on the Exchanges and for which the Exchanges report quotes under the Consolidated Tape Association ... Plan or the Nasdaq/UTP Plan.” See also [http://cdn.batstrading.com/resources/release\\_notes/2015/SIP-Volume-in-BATS-One.pdf](http://cdn.batstrading.com/resources/release_notes/2015/SIP-Volume-in-BATS-One.pdf): “The BATS One Feed provides affordable, comprehensive and accurate real-time quote and trade data at a fraction of the cost of competitive products. Retail brokers, investment banks, media outlets and other firms will have an opportunity to use the BATS One Feed to build displays that include real-time SIP Consolidated Volume reflecting the total trading volume occurring on all market centers for Tape A, B, and C listed securities [footnote excluded].”

<sup>9</sup> See Securities Exchange Act Release No. 75763 (August 26, 2015), 80 FR 52817 (September 1, 2015) (SR-Phlx-2015-72) (notice of filing and immediate effectiveness).

underlying data elements, and thus, the source of the market data that would be used to create the proposed NLS Plus is the same as what is available to other market data vendors.<sup>10</sup>

The Exchange believes that its proposal would greatly benefit the public and investors, and is consistent with the Act.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>11</sup> in general, and with Section 6(b)(5) of the Act,<sup>12</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

---

<sup>10</sup> In order to create NLS Plus, the system creating and supporting NLS Plus receives the individual data feeds from each of the Nasdaq, Inc. equity markets and, in turn, aggregates and summarizes that data to create NLS Plus and then distribute it to end users. This is the same process that a competing market data vendor would undergo should it want to create a market data product similar to NLS Plus to distribute to its end users. A competing market data vendor could receive the individual data feeds from each of the Nasdaq, Inc. equity markets at the same time the system creating and supporting NLS Plus would for it to create NLS Plus. Therefore, a competing market data vendor could, as discussed, obtain the underlying data elements from the Nasdaq, Inc. equity markets on the same latency basis as the system that would be performing the aggregation and consolidation of proposed NLS Plus, and provide a similar product to its customers with the same latency they could achieve by purchasing NLS Plus from the Exchange. As such, the Exchange would not have any unfair advantage over competing market data vendors with respect to NLS Plus. Moreover, in terms of NLS itself, the Exchange would access the underlying feed from the same point as would a market data vendor; as discussed, the Exchange would not have a speed advantage.

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(5).

The purpose of the proposed rule change is to add language to section (b) of Rule 7039 regarding real-time data across all U.S. markets that are reported to Tapes A, B, and C and are offered on NLS Plus; and to remove two duplicative terms from the rule. The Exchange believes 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 making available additional means by which investors may access real-time volume information about securities transactions, 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 a data product on several exchanges that is similar to NLS Plus and is real-time, and specifically determined that the approved data product was consistent with the Act.<sup>13</sup> NLS Plus simply provides market participants with an additional option for receiving real-time 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-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 its 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

---

<sup>13</sup> See Securities Exchange Act Release Nos. 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); and 74726 (April 14, 2015), 80 FR 21776 (April 20, 2015) (SR-BATS-2015-29) (notice of filing and immediate effectiveness to include consolidated volume in BATS One).

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.<sup>14</sup>

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. 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.

Moreover, data products such as NLS Plus are a means by which exchanges compete to attract order flow. 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.

The Exchange believes that, for the reasons given, the proposal is consistent with the Act. The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>15</sup> in general, and with Section 6(b)(5) of the Act,<sup>16</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and

---

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

<sup>15</sup> 15 U.S.C. 78f.

<sup>16</sup> 15 U.S.C. 78f(b)(5).

equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The purpose of the proposed rule change is to add language to section (b) of Rule 7039 regarding real-time data across all U.S. markets that are reported to Tapes A, B, and C and are offered on NLS Plus; and to remove two duplicative terms from the rule. The Exchange believes 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 making available additional means by which investors may access real-time information about securities transactions, 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 a data product on several exchanges that is similar to NLS Plus and is real-time, and specifically determined that the approved data product was consistent with the Act.<sup>17</sup> NLS Plus simply provides market participants with an additional option for receiving real-time 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-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

---

<sup>17</sup> See Securities Exchange Act Release Nos. 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); and 74726 (April 14, 2015), 80 FR 21776 (April 20, 2015) (SR-BATS-2015-29) (notice of filing and immediate effectiveness to include consolidated volume in BATS One).

spur innovation and competition for the provision of market data. The Exchange believes that its 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.<sup>18</sup>

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. 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. Moreover, data products such as NLS Plus are a means by which exchanges compete to attract order flow. 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.

The Exchange believes that, for the reasons given, the proposal is consistent with the Act.

---

<sup>18</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. As is true of all NASDAQ's non-core data products, NASDAQ's ability to offer NLS Plus through NASDAQ OMX Information LLC and price NLS Plus is constrained by: (1) competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and market-specific data and free delayed consolidated data; and (3) the inherent contestability of the market for proprietary last sale data. The Exchange believes that its proposal is pro-competitive in that it will allow the Exchange to distribute consolidated volume for Tapes A, B, and C on a real-time basis, similarly to a data product on several exchanges that is similar to NLS Plus. The Exchange believes that this would be of great benefit to market participants, who could now get similar, real-time data across all U.S. markets that are reported to Tapes A, B, and C.

In addition, as discussed, NLS Plus competes directly with a myriad of similar products and potential products of market data vendors. This proposal allows offering on NLS Plus, on a real-time basis, U.S. market data that is reported to Tapes A, B, and C. 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, 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.

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).<sup>19</sup> In NASDAQ's case, 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, NASDAQ would be unable to defray its platform costs of providing the

---

<sup>19</sup> 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).

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,<sup>20</sup> 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.

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 [sic], charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity [sic]. 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

---

<sup>20</sup> It should be noted that the costs of operating the FINRA/NASDAQ TRF borne by NASDAQ include regulatory charges paid by NASDAQ to FINRA.

accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The competitive nature of the market for products such as NLS Plus is borne out by the performance of the market. In May 2008, the internet portal Yahoo! began offering its website viewers real-time last sale data (as well as best quote data) provided by BATS. In response, in June 2008, NASDAQ launched NLS, which was initially subject to an “enterprise cap” of \$100,000 for customers receiving only one of the NLS products, and \$150,000 for customers receiving both products. The majority of NASDAQ’s sales were at the capped level. In early 2009, BATS expanded its offering of free data to include depth-of-book data. Also in early 2009, NYSE Arca announced the launch of a competitive last sale product with an enterprise price of \$30,000 per month. In response, NASDAQ combined the enterprise cap for the NLS products and reduced the cap to \$50,000 (*i.e.*, a reduction of \$100,000 per month). Although each of these products offers only a specific subset of data available from the SIPs, NASDAQ believes that the products are viewed as substitutes for each other and for core last-sale data, rather than as products that must be obtained in tandem. For example, while Yahoo! and Google now both disseminate NASDAQ’s product, several other major content providers, including MSN and Morningstar, use the BATS product. Moreover, further evidence of competition can be observed in the recently-developed BATS One Feed and BQT feed.<sup>21</sup>

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 v. SEC, 615 F.3d 525 (D.C. Cir. 2010) (“NetCoalition I”). The existence of fierce competition for order flow implies a high degree of

---

<sup>21</sup> See supra note 6.

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 to NASDAQ and the value of its 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.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>22</sup> and Rule 19b-4(f)(6) thereunder.<sup>23</sup>

---

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>23</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>24</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>25</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the NLS Plus may as soon as possible offer real-time data across all U.S. markets that are reported to Tapes A, B, and C, in a manner similar to other markets.<sup>26</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>27</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.

---

<sup>24</sup> 17 CFR 240.19b-4(f)(6).

<sup>25</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>26</sup> See Securities Exchange Act Release Nos. 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); and 74726 (April 14, 2015), 80 FR 21776 (April 20, 2015) (SR-BATS-2015-29).

<sup>27</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2015-082 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-2015-082. This file number should be included on the subject line if e-mail 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 website (<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 website 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-2015-082 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

Brent J. Fields  
Secretary

---

<sup>28</sup> 17 CFR 200.30-3(a)(12).