For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66165; File No. SR–NASDAQ–2012–005]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish an Enhanced Display Distributor Fee

January 17, 2012.

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 January 5, 2012, the NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

Nasdaq proposes to establish an optional tiered distributor fee for enhanced displays (the ''Enhanced Display Distributor Fee'').

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.[3]

* * * * *

7026. Distribution Models

(a) *Display Solutions* [Reserved]

(1) Enhanced Displays (optional delivery method)

(A) The charges to be paid by Distributors for offering subscribers of Nasdaq Depth data controlled display products along with access to an API or similar solution shall be:

	Number of downstream subscribers
Monthly Enhanced Display Solution Fee per Distributor for right to display products containing API or similar solution.*	*1–299 users = $2,000/month.* *300–399 users = $3,000/month.* *400–499 users = $4,000/month.* *500–599 users = $5,000/month.* *600–699 users = $6,000/month.* *700–799 users = $7,000/month.* *800–899 users = $8,000/month.* *900–999 users = $9,000/month.* *1,000 users or more = $10,000/month.*

* Customers that are subscribing to certain enterprise depth capped fees as described in Nasdaq Rule 7023(a)(1)(c) are exempt from this fee.

(B) The monthly fee per Professional or Non-Professional subscriber for utilizing Nasdaq TotalView or Nasdaq OpenView data on a controlled display product with access to an API or similar solution through that display is the applicable Nasdaq TotalView or Nasdaq OpenView rates.

The monthly fee per Professional or Non-Professional subscriber for utilizing the Level 2 data for Nasdaq-listed securities on a controlled display product with access to an API or similar solution through that display is the applicable Nasdaq TotalView rates.

The monthly fee per Professional or Non-Professional subscriber for utilizing Nasdaq Level 2 data for NYSE, AMEX or regional listed securities on a controlled display product with access to an API or similar solution through that display is the applicable Nasdaq OpenView rates.

(2) The term ''non-professional'' shall have the same meaning as set forth in Nasdaq Rule 7011(b).

(3) The term ''Distributor'' shall have the same meaning as set forth in Nasdaq Rule 7019(c).

(b)–(c) No change.

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq is proposing to amend Nasdaq Rule 7026 (Distribution Models) to establish an optional Enhanced Display Solution Fee to further the distribution of Nasdaq TotalView, Nasdaq OpenView and/or Nasdaq Level 2 Information (collectively, ''Nasdaq Depth Information''). The new data distribution model (an ''Enhanced Display Solution'') offers a delivery method available to firms seeking simplified market data administration and may be offered by Distributors to external subscribers that are using the Nasdaq Depth Information internally.

The proposed optional Enhanced Display Solution Fee is intended to provide a new pricing option for Distributors who provide a controlled display product along with an Application Programming Interface

[16] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic Nasdaq Manual found at *http://nasdaqomx.cchwallstreet.com.*

(''API'') or similar solution to subscribers. Non-display use is not permitted under the Enhanced Display Solution Fee structure. To ensure compliance with this new fee, Distributors must monitor for any non-display or excessive use suggesting that the subscriber is not in compliance. The Distributor is liable for any unauthorized use by the Enhanced Data subscribers under the Enhanced Display Solution. This proposed optional new fee only applies to external Distributors offering any Nasdaq Depth Information and who opt for an Enhanced Display option.

This new pricing and administrative option is in response to industry demand, as well as due to changes in the technology to distribute market data. By providing this new fee option, Distributors will have more administrative flexibility in their receipt and distribution of Nasdaq Depth Information. Distributors opting for the Enhanced Display Solution Fee would still be fee liable for the applicable Professional or Non-Professional subscriber fees for Nasdaq TotalView and Nasdaq OpenView, as described in Nasdaq Rule 7023.[4] Nasdaq proposes to permit Distributors to select the Enhanced Display Solution Fee at a minimum rate of $2,000 per month for up to 299 subscribers, and each tier of 100 users will be at an additional incremental rate of $1,000 per month up to a maximum of $10,000 per month for 1,000 or more subscribers per month. The Enhanced Display Solution Fee is independent from the applicable subscriber fees as described above. These new Enhanced Display Solution Fees will become fee liable for the billing month of April 2012.

This delivery option assesses a new fee schedule to Distributors of Nasdaq Depth Information that provide an API or similar solution from a controlled display. The Distributor must first agree to reformat, redisplay and/or alter the Nasdaq Depth Information prior to retransmission, but not to affect the integrity of the Nasdaq Depth Information and not to render it inaccurate, unfair, uninformative, fictitious, misleading or discriminatory. An Enhanced Display Solution is any controlled display product containing Nasdaq Depth Information where the Distributor controls a display of Nasdaq Depth Information, but also allows the subscriber to access an API or similar solution from that display product. The subscriber of an Enhanced Display may use the Nasdaq Depth Information for the subscriber's own purposes and may not redistribute the information outside of their organization. The subscriber may not redistribute the data internally to other users in the same organization.

In the past, Nasdaq has considered this type of retransmission to be an uncontrolled display since the Distributor does not control both the entitlements and the display of the information. Over the last ten years, Distributors have improved the technical delivery and monitoring of data and the Enhanced Display offering responds to an industry need to administer these new types of technical deliveries.

Some Distributors believe that an API or other distribution from a display is a better controlled product than a data feed and as such should not be subject to the same rates as a data feed. The offering of a new pricing option for an Enhanced Display would not only result in Nasdaq offering lower fees for certain existing Distributors, but will allow new Distributors to deliver Enhanced Displays to new clients, thereby increasing transparency of the market. Nasdaq continues to create new pricing policies aimed at increasing transparency in the market and believes this is another step in that direction. This includes the Enhanced Display Solution as well as the Managed Data Solution.

Accordingly, Nasdaq is establishing the Enhanced Display Solution Fee for Distributors who are seeking simplified market data administration and would like to offer Nasdaq Depth Information to subscribers that are using the Nasdaq Depth Information internally. The Nasdaq Enhanced Display Solution Fee is optional for firms providing a controlled display product containing Nasdaq Depth Information where the Distributor controls a display of Nasdaq Depth Information, but allows the subscriber to access an API or similar solution from that display product since these firms can choose to pay the data feed fees. The new Nasdaq Enhanced Display Solution Fee is designed to allow TotalView subscribers to redistribute data via a terminal without paying a higher fee for an attached API. As a result, it does not impact individual usage fees for TotalView or in any way increase the costs of any user of the TotalView data product. For subscribers wanting to use this same functionality for other products, they would be able to do so by paying the applicable TotalView rates.

2. *Statutory Basis*

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of Nasdaq data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to 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 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.[7]

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

On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or

[4] Subscribers redistributing Nasdaq Level 2 information under the proposed fee change will pay underlying Nasdaq TotalView or Nasdaq OpenView rates. A Subscriber redistributing Nasdaq Level 2 for Nasdaq-listed securities will pay the underlying Nasdaq TotalView rates and a customer redistributing Nasdaq Level 2 for NYSE, AMEX or regional listed securities will pay the underlying Nasdaq OpenView rates.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

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

other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Exchange Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

Nasdaq believes that these amendments to Section 19 of the Act reflect Congress's intent to allow the Commission to rely upon the forces of competition to ensure that fees for market data are reasonable and equitably allocated. Although Section 19(b) had formerly authorized immediate effectiveness for a ''due, fee or other charge imposed by the self-regulatory organization,'' the Commission adopted a policy and subsequently a rule stipulating that fees for data and other products available to persons that are not members of the self-regulatory organization must be approved by the Commission after first being published for comment. At the time, the Commission supported the adoption of the policy and the rule by pointing out that unlike members, whose representation in self-regulatory organization governance was mandated by the Act, non-members should be given the opportunity to comment on fees before being required to pay them, and that the Commission should specifically approve all such fees. Nasdaq believes that the amendment to Section 19 reflects Congress's conclusion that the evolution of self-regulatory organization governance and competitive market structure have rendered the Commission's prior policy on non-member fees obsolete. Specifically, many exchanges have evolved from member-owned not-for-profit corporations into for-profit investor-owned corporations (or subsidiaries of investor-owned corporations). Accordingly, exchanges no longer have narrow incentives to manage their affairs for the exclusive benefit of their members, but rather have incentives to maximize the appeal of their products to all customers, whether members or non-members, so as to broaden distribution and grow revenues. Moreover, we believe that the change also reflects an endorsement of the Commission's determinations that reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices. Simply put, the change reflects a presumption that all fee changes should be permitted to take effect immediately, since the level of all fees are constrained by competitive forces.

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoaliton* v. *SEC* [sic], No. 09–1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, 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.' *NetCoaltion* [sic], at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

NASDAQ believes that this proposal is in keeping with those principles by promoting increased transparency through the offering of a new pricing option for an Enhanced Display, which would not only result in Nasdaq offering lower fees for certain existing Distributors, but will allow new Distributors to deliver Enhanced Displays to new clients, thereby increasing transparency of the market. Additionally, the proposal provides for simplified market data administration and may be offered by Distributors to external subscribers that are using the Nasdaq Depth Information internally. Nasdaq notes also that this filing proposes to distribute no additional data elements and that the Enhanced Display Solution Fee is optional. Accordingly, distributors and users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Nasdaq continues to create new pricing policies aimed at increasing transparency in the market and believes this is another step in that direction.

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

Nasdaq 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. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoaltion* [sic] court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. For the reasons discussed above, Nasdaq believes that the Dodd-Frank Act amendments to Section 19 materially alter the scope of the Commission's review of future market data filings, by creating a presumption that all fees may take effect immediately, without prior analysis by the Commission of the competitive environment. Even in the absence of this important statutory change, however, Nasdaq believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. 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 the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without trade executions, exchange data products cannot exist. 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, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer 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 broker-dealer 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 broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Thus, 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* at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer 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. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

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. For example, some platform may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. 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. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of after-market alternatives to the manufacturer-supplied system.

The market for market data products is 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.

Broker-dealers currently have numerous alternative venues for their order flow, including ten 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. 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 Amex, NYSEArca, and BATS.

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 broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

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 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 an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Market data vendors provide another form of 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 Thomson 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 broker-dealers, 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. NASDAQ 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.

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 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 broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers 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.

The court in *NetCoalition* concluded that the Commission had failed to demonstrate that the market for market data was competitive based on the reasoning of the Commission's *NetCoalition* order because, in the court's view, the Commission had not adequately demonstrated that the depth-of-book data at issue in the case is used to attract order flow. Nasdaq believes, however, that evidence not before the court clearly demonstrates that availability of data attracts order flow. For example, as of July 2010, 92 of the top 100 broker-dealers by shares executed on Nasdaq consumed Level 2/NQDS and 80 of the top 100 broker-dealers consumed TotalView. During that month, the Level 2/NQDS-users were responsible for 94.44% of the orders entered into Nasdaq and TotalView users were responsible for 92.98%.

Competition among platforms has driven Nasdaq continually to improve its platform data offerings and to cater to customers' data needs. For example, Nasdaq has developed and maintained multiple delivery mechanisms (IP, multi-cast, and compression) that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. Nasdaq offers front end applications such as its ''Bookviewer'' to help customers utilize data. Nasdaq has created new products like TotalView Aggregate to complement TotalView ITCH and Level 2/NQDS, because offering data in multiple formatting allows Nasdaq to better fit customer needs. Nasdaq offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. Nasdaq has developed an online administrative system to provide customers transparency into their data feed requests and streamline data usage reporting. Nasdaq has also expanded its Enterprise License options that reduce the administrative burden and costs to firms that purchase market data.

Despite these enhancements and a dramatic increase in message traffic, Nasdaq's fees for market data have remained flat. In fact, as a percent of total customer costs, Nasdaq data fees have fallen relative to other data usage costs—including bandwidth, programming, and infrastructure—that have risen. The same holds true for execution services; despite numerous enhancements to Nasdaq's trading platform, absolute and relative trading costs have declined. Platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

The vigor of competition for depth information is significant and the Exchange believes that this proposal clearly evidences such competition. Nasdaq is offering a new pricing model in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. Nasdaq continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with Nasdaq or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this depth information is highly competitive and continually evolves as products develop and change.

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 [8]. 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–NASDAQ–2012–005 on the subject line.

Paper Comments

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

[8] 15 U.S.C. 78s(b)(3)(a)(ii).

All submissions should refer to File Number SR–NASDAQ–2012–005. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–005, and should be submitted on or before February 13, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66163; File No. SR–CBOE–2012–007]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Decouple and Extend CBOE's Credit Option Margin Pilot Program to January 17, 2013

January 17, 2012.

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 January 13, 2012, Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 and is approving the proposed rule change on an accelerated basis.

[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

CBOE is proposing to decouple and extend the duration of its Credit Option Margin Pilot Program through January 17, 2013. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, CBOE 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 III 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

On February 2, 2011, the Commission approved the Exchange's proposal to establish a Credit Option Margin Pilot Program (''Program'').[3] The Program became effective on a pilot basis and has run on a parallel track with FINRA Rule 4240, which is similarly operated on a pilot basis.[4] CBOE's Program is currently scheduled to expire on January 17, 2012.

[3] *See* Securities Exchange Act Release No. 63819 (February 2, 2011), 76 FR 6838 (February 8, 2011) (order approving [SR–CBOE–2010–106]). To implement the Program, the Exchange amended Rule 12.3(l), *Margin Requirements,* to make CBOE's margin requirements for Credit Options consistent with FINRA Rule 4240, *Margin Requirements for Credit Default Swaps.* CBOE's Credit Options (*i.e.,* Credit Default Options and Credit Default Basket Options) are analogous to credit default swaps.

In this current proposal, CBOE proposes to decouple its Program from the FINRA Rule 4240 margin pilot program. CBOE's decoupled Program will be substantially similar to the provisions of the FINRA Rule 4240 margin pilot program operated by FINRA.

CBOE understands that in connection with renewing its Rule 4240 margin pilot, FINRA will be revising its Rule 4240 by adding new Supplementary Material .02, which sets forth alternative tables to the existing tables that may be used by market participants to compute the required margin. CBOE similarly proposes to adopt alternative tables to the existing tables in its rules that may be used by Trading Permit Holders to compute the required margins. These new alternative tables are set forth in Rules 12.3(l)(3)(ii), 12.3(l)(3)(iv) and 12.4(l)(4)(ii). Also, a few minor changes are being made to Rule 12.3(l) to renumber paragraphs and to make other non-substantive changes.

Finally, CBOE proposes to extend its decoupled Program for an additional year to January 17, 2013.

CBOE notes for the Commission that there are currently Credit Options listed for trading on the Exchange that have open interest. As a result, CBOE believes that is in the public interest for the Program to continue uninterrupted.

In the future, if the Exchange proposes an additional extension of the Credit Option Margin Pilot Program or proposes to make the Program permanent, then the Exchange will submit a filing proposing such amendments to the Program.

2. Statutory Basis

The Exchange believes this rule proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest, and because it

[4] *See* Securities Exchange Act Release No. 63819 (February 2, 2011), 76 FR 6838 (February 8, 2011) (order approving [SR–CBOE–2010–106]).

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

[6] 15 U.S.C. 78f(b)(5).