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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2011–44 and should be submitted by August 26, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–19854 Filed 8–4–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65002; File No. SR–ISE–2011–50]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Data Fees

August 1, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Schedule of Fees to adopt subscription fees for the sale of two market data offerings, the ISE Top Quote Feed and the ISE Spread Book Feed. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.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 self-regulatory organization 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

ISE proposes to amend its Schedule of Fees to adopt subscription fees for the sale of two market data offerings, the ISE Top Quote Feed and the ISE Spread Book Feed. The Exchange previously submitted a proposed rule change to establish the two data feeds.[3] The Exchange proposes to implement the proposed fees for both market data offerings on August 1, 2011.

ISE Top Quote Feed

The ISE Top Quote Feed (''Top Quote'') is a real-time feed that aggregates all quotes and orders at the top price level on the Exchange, on both the bid and offer side of the market. Top Quote provides subscribers with a consolidated view of tradable prices at the BBO, the same data that is displayed on the OPRA feed. Top Quote shows bid/ask quote size for Customer and Professional Customer option orders for ISE traded options that are not currently distinguishable through the OPRA feed.[4] The identification of Customer orders is useful for market makers and market participants generally since Customer orders take precedence over all other order types on the ISE. The Exchange believes it is not discriminatory or a burden on competition for these orders to be identified because doing so increases the likelihood that these orders will be executed as they have priority on the ISE while Professional Customers, *i.e.,* persons or entities that (i) Are not a broker or dealer in securities, and (ii) place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), do not have priority on the Exchange.

Top Quote is currently imbedded in the Exchange's Depth of Market data feed offering and is available to subscribers of the Depth of Market data feed offering. With this proposed rule change, the Exchange is offering Top Quote as a separate subscription-based data feed. Top Quote will be available to members and non-members, and to both professional and non-professional subscribers.

Proposed Fees for Top Quote

The Exchange proposes to charge distributors[5] of Top Quote $3,000 per month. In addition, the Exchange proposes to charge a monthly controlled device[6] fee of $20 per controlled device for Professionals at a distributor where the data is for internal and/or external use. There are no monthly controlled device fees proposed for Non-Professionals subscribers to Top Quote. Further, the Exchange proposes to adopt an enterprise license fee, regardless of the number of controlled devices, as follows: (i) $4,000 for Professionals at a distributor where the data is for internal use only, (ii) $5,000 for Professionals at a distributor where the data is for internal and/or external use in a controlled device and (iii) $3,000 per month for Non-Professionals.

ISE Spread Book Feed

The ISE Spread Book Feed (''Spread Feed'') is a real-time feed that consists

[15] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* SR–ISE–2011–44.

[4] Customer and Professional Customer orders are identified in a number of market data offerings currently sold by other options exchanges on a subscription basis. *See* Securities Exchange Act Release No. 63351 (November 10, 2010), 75 FR 73140 (November 29, 2010) (SR–PHLX–2010–154) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for the PHOTO Historical Data Product). *See also* Securities Exchange Act Release No. 63997 (March 1, 2011), 76 FR 12388 (March 7, 2011) (SR–CBOE–2011–014) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify a Fee Schedule for the Sale by Market Data Express, LLC, of a BBO Data Feed for CBOE Listed Options).

[5] ISE proposes that a ''distributor'' be defined as any firm that receives a ISE data feed directly from ISE or indirectly through a vendor and then distributes it either internally or externally. Further, ISE proposes that all distributors execute an ISE distributor agreement.

[6] ISE proposes that a ''controlled device'' be defined as any device that a distributor of the ISE Top Quote Feed permits to: (a) Access the information in the Top Quote Feed offering, or (b) communicate with the distributor so as to cause the distributor to access the information in the Top Quote Feed offering. If a controlled device is part of an electronic network between computers used for investment, trading or order routing activities, the burden will be on the distributor to demonstrate that the particular controlled device should not be subject to the proposed fees.

of options quotes and orders for all complex orders (*i.e.,* spreads, buy-writes, delta neutral strategies, *etc.*) aggregated at the top price level on both the bid and offer side of the market as well as all aggregated quotes and orders for complex orders at the top five price levels on both the bid and offer side of the market. In addition, the Spread Feed provides real-time updates every time a new complex limit order that is not immediately executable at the BBO is placed on the ISE complex order book. The Spread Feed shows bid/ask quote size for Customer and Professional Customer option orders for ISE traded options. As noted above, since Customer orders take precedence over all other order types, the identification of these orders in the Spread Feed is useful information for market makers and market participants generally. Again, the Exchange believes it is not discriminatory or a burden on competition for these orders to be identified because doing so increases the likelihood that these orders will be executed as they have priority on the ISE while Professional Customers, *i.e.,* persons or entities that (i) Are not a broker or dealer in securities, and (ii) place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), do not have priority on the Exchange.

The Exchange further notes that ISE Market Makers currently receive a spread book data feed as part of their membership. Pursuant to this proposed rule change, however, all recipients, including ISE Market Makers, will be subject to the proposed fees to access the Spread Feed. The Spread Feed will be available to members and non-members and to both professional and non-professional subscribers and will not be available on a non-subscription basis.

Proposed Fees for Spread Feed

The Exchange proposes to charge distributors of Spread Feed $3,000 per month. In addition, the Exchange proposes to charge a monthly controlled device [7] fee of $25 per controlled device for Professionals at a distributor where the data is for internal and/or external use. There are no monthly controlled device fees proposed for Non-Professionals subscribers to the Spread Feed. Further, the Exchange proposes to adopt an enterprise license fee, regardless of the number of controlled devices, as follows: (i) $4,250 for Professionals at a distributor where the data is for internal use only, (ii) $5,500 for Professionals at a distributor where the data is for internal and/or external use in a controlled device, and (iii) $3,000 for Non-Professionals.

Multi-Product Subscription Discount

The Exchange currently offers two real-time market data feed offerings, the ISE Depth of Market Data Feed [8] and the ISE Order Feed.[9] With the addition of the Spread Feed and Top Quote, the Exchange will have four fee-liable real-time market data feed offerings. In order to encourage subscriptions to multiple market data feeds, ISE proposes to adopt a multi-product subscription discount, as follows: Ten percent (10%) discount for subscribers who subscribe to two feeds and twenty percent (20%) discount for subscribers who subscribe to three feeds.

2. Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and with Sections 6(b)(4) of the Act,[11] 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 or system which ISE operates or controls.

The Exchange believes that the proposed rule change is also consistent with Section 6(b)(8) of the Act [12] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The fees charged would be the same for all market participants, and therefore do not unreasonably discriminate among market participants.

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.[13]

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 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

[7] ISE proposes that a ''controlled device'' be defined as any device that a distributor of the ISE Spread Feed permits to: (a) Access the information in the Spread Feed offering, or (b) communicate with the distributor so as to cause the distributor to access the information in the Spread Feed offering. If a controlled device is part of an electronic network between computers used for investment, trading or order routing activities, the burden will be on the distributor to demonstrate that the particular controlled device should not be subject to the proposed fees.

[8] *See* Securities Exchange Act Release No. 59949 (May 20, 2009), 74 FR 25593 (May 28, 2009) (SR–ISE–2007–97) (Order Approving Proposed Rule Change Relating to Market Data Fees).

[9] *See* Securities Exchange Act Release No. 62399 (June 28, 2010), 75 FR 38587 (July 2, 2010) (SR–ISE–2010–34) (Order Approving Proposed Rule Change Relating to Fees for the ISE Order Feed).

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(8).

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

(2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

ISE 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. ISE 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 nonmembers, 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,* No. 09–1042 (DC 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.' '' [14]

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.

The Exchange believes that the proposed market data fees are consistent with the requirements of the Act for several reasons. First, the Exchange notes that the categories of Top Quote and Spread Feed market data and fees compare favorably with similar products offered by other markets such as NASDAQ Stock Market (''NASDAQ''), NASDAQ OMX PHLX (''Phlx''), and Chicago Board Options Exchange (''CBOE''). For example, NASDAQ offers a market data product that is similar to Top Quote: a data feed that shows the top of the market entitled Best of NASDAQ Options (''BONO℠).[15] Phlx also offers a market data feed, entitled Top of Phlx Options (''TOPO''), which is similar to Top Quote. TOPO shows orders and quotes at the top of the market, as well as trades.[16] Lastly, a subsidiary of CBOE for which CBOE charges fees offers a market data product that is similar to Spread Feed. The CBOE BBO Data Feed includes, among other things, customer versus non-customer contracts at the BBO and BBO data and last sale data for complex strategies (*e.g.,* spreads, straddles, buy-writes, *etc.*).[17]

The Exchange also believes that the proposed fee for Top Quote and Spread Feed are consistent with the requirements of the Act because competition provides an effective constraint on the market data fees that the Exchange has the ability and the incentive to charge. ISE has a compelling need to attract order flow from market participants in order to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on ISE to act reasonably in setting the fees for its market data offerings, particularly given that the market participants that will pay such fees often will be the same market participants from whom ISE must attract order flow. These market participants include broker-dealers that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one exchange to another, any exchange that sought to charge unreasonably high market data fees would risk alienating many of the same customers on whose orders it depends for competitive survival. ISE currently competes with eight options exchanges for order flow.[18]

ISE is constrained in pricing Top Quote and Spread Feed by the availability to market participants of alternatives to purchasing these products. ISE must consider the extent to which market participants would choose one or more alternatives instead of purchasing the Exchange's data. For example, although Top Quote is separate from the core data feed made available by OPRA, all the information available in Top Quote is included in the core data feed. The core OPRA data is widely distributed and relatively

[14] *NetCoaltion,* at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323).

[15] BONO has a monthly base access fee of $1,500 plus a $5 user fee for internal use professionals; a monthly base access fee of $2,000 plus (i) a $5 user fee for internal use professionals or, (ii) $1 user fee for internal use non-professionals. NASDAQ also has a monthly enterprise license fee of $2,500. *See* Securities Exchange Act Release No. 64652 (June 13, 2011), 76 FR 35498 (June 17, 2011) (SR–NASDAQ–2011–075).

[16] TOPO has a monthly fee of $2,000 per firm for internal use and a monthly fee of $2,500 per firm for internal and external use. *See* Securities Exchange Act Release No. 60459 (August 7, 2009), 74 FR 41466 (August 17, 2009) (SR–PHLX–2009–54).

[17] The subsidiary is identified as Market Data Express, LLC (''MDX'') by CBOE, which indicates that the feed will also provide data regarding contingency orders and complex strategies, the latter being comparable to the Spread Feed proposed by this rule filing. The monthly fee charged by CBOE for the data is $3,500 plus a $25 per user or device fee. *See* Securities Exchange Act Release No. 63997 (March 1, 2011), 76 FR 12388 (March 7, 2011) (SR–CBOE–2011–014) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify a Fee Schedule for the Sale by Market Data Express, LLC, of a BBO Data Feed for CBOE Listed Options).

[18] The Commission has previously made a finding that the options industry is subject to significant competitive forces. *See* Securities Exchange Act Release No. 59949 (May 20, 2009), 74 FR 25593 (May 28, 2009) (SR–ISE–2009–97) (order approving ISE's proposal to establish fees for a real-time depth of market offering).

inexpensive, thus constraining ISE's ability to price Top Quote. In this respect, the OPRA data feed, which includes the Exchange's transaction information, is a significant alternative to the Exchange's product. Further, other options exchanges have produced their own products and thus are sources of potential competition for both Top Quote and Spread Feed. As noted above, NASDAQ, Phlx and CBOE all offer market data products that compete with either Top Quote and Spread Feed or both.

For the reasons cited above, the Exchange believes that the proposed fees for Top Quote and Spread Feed are equitable, fair, reasonable and not unreasonably discriminatory. The Exchange further believes that the continued availability of Top Quote and Spread Feed data feeds enhances transparency, fosters competition among orders and markets, and enables buyers and sellers to obtain better prices. In addition, the Exchange believes that no substantial countervailing basis exists to support a finding that the proposed terms and fees for these products fail to meet the requirements of the Act.

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

ISE 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 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, ISE 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, ISE believes that a record may readily be established to demonstrate the competitive nature of the market in question.

As recently noted by a number of exchanges,[19] 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 decrease, 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.' ''[20] 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

[19] *See* Securities Exchange Act Release Nos. 63084 (October 13, 2010), 75 FR 64379 (October 19, 2010) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise an Optional Depth Data Enterprise License Fee for Broker-Dealer Distribution of Depth-of-Book Data) (SR–NASDAQ–2010–125); and 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Data Feeds) (SR–PHLX–2010–121).

[20] *NetCoalition,* at 24.

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.

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 numerous 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 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.

Competition among platforms has driven ISE continually to improve its platform data offerings and to cater to customers' data needs. For example, ISE has developed and maintained multiple delivery mechanisms that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. ISE offers front end applications such as its PrecISE Trade application which helps customers utilize data. ISE offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. ISE also offers an enterprise license option to help reduce the administrative burden and costs to firms that purchase market data. Despite these enhancements and a dramatic increase in message traffic, ISE's fees for market data have, for the most part, remained flat.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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 [21] and Rule 19b–4(f)(2) [22] thereunder. 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 change 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 e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2011–50 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISE–2011–50. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

[22] 17 CFR 240.19b–4(f)(2).

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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2011–50 and should be submitted by August 26, 2011.

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

Elizabeth M. Murphy,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65001; File No. SR–BX–2011–050]

Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of a Proposal to Amend Chapter VI, Section 15 (Automatic Quote Cancellation) of the BOX Trading Rules

August 1, 2011.

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 July 28, 2011, NASDAQ OMX BX (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with 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

The Exchange proposes to amend Chapter VI, Section 15 (Automatic Quote Cancellation) of the Rules of the Boston Options Exchange Group, LLC (''BOX'') to provide additional flexibility for BOX Market Makers to manage their risk. BOX will notify its Options Participants by Information Circular when the implementation schedule is finalized.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

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 reflect in the BOX Trading Rules that BOX Market Makers will be able to establish new risk control parameters to better manage their quotations and related risk. Specifically, the Exchange proposes to amend Chapter VI, Section 15, Automatic Quote Cancellation. As explained below, the proposed functionality is substantially similar to that currently existing on the International Securities Exchange, LLC (''ISE'').

Chapter VI, Section 6 of the BOX Trading Rules requires BOX Market Makers to enter and maintain continuous quotations for the options classes to which they are appointed. To comply with this requirement, each Market Maker may employ its own proprietary quotation and risk management system to determine the prices and sizes at which it quotes. As Market Makers are required to continuously quote in assigned options, quoting across many series in an option creates the possibility of ''rapid fire'' executions that can create large and unintended principal positions that expose the Market Maker to unnecessary market risk. The proposed functionality enhancements to Automatic Quote Cancellation will provide BOX Market Makers protection from the risk of multiple executions across multiple series of an option, and is intended to assist them in managing their market risk. BOX Market Makers will not be required to use the proposed functionality and can program their own systems to perform similar functions if they prefer.

The risk to Market Makers is not limited to a single option series. Market Makers have exposure in all series of a particular options class in which they are appointed, requiring them to offset or hedge their overall position in each option to minimize risk. By limiting a Market Maker's exposure across series, BOX believes that a Market Maker will be better able to provide quotations at better prices. BOX believes that the proposed functionality should help BOX Market Makers, as key liquidity providers, to better manage their risk, aiding them in providing deeper and more liquid markets, beneficial to all BOX market participants.

Pursuant to the amended Chapter VI, Section 15 of the BOX Trading Rules, Automatic Quote Cancellation permits each Market Maker to establish specific parameters that, if triggered, will cause the BOX Trading Host to cancel the Market Maker's quotes in the specified class(es). To enable Automatic Quote Cancellation, a Market Maker must send an Automatic Quote Cancellation enabling message to the BOX Trading Host, including specific information setting forth the parameters the Market Maker would like to establish. Unless enabled, Automatic Quote Cancellation is disabled for all options classes.

The Market Maker may establish triggering parameters for when the Market Maker's quotes may be cancelled. The parameters the Market Maker may set include a time period of

[23] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).