

Investor.<sup>13</sup> The term “Affiliated Co-Investor” with respect to any Partnership means any person who is: (i) An “affiliated person” (as such term is defined in section 2(a)(3) of the Act) of the Partnership (other than a Third Party Fund); (ii) Ares; (iii) an officer or director of Ares; (iv) an Eligible Employee; or (v) an entity (other than a Third Party Fund) in which an Ares entity acts as a general partner or has a similar capacity to control the sale or other disposition of the entity’s securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by an Affiliated Co-Investor (i) to its direct or indirect wholly-owned subsidiary, to any company (a “Parent”) of which the Affiliated Co-Investor is a direct or indirect wholly-owned subsidiary or to a direct or indirect wholly-owned subsidiary of its Parent, (ii) to immediate family members of the Affiliated Co-Investor or a trust or other investment vehicle established for any Affiliated Co-Investor or any such immediate family member, or (iii) when the investment is comprised of securities that are (a) listed on a national securities exchange registered under section 6 of the Exchange Act, (b) NMS stocks pursuant to section 11A(a)(2) of the Exchange Act and rule 600(a) of Regulation NMS thereunder, (c) government securities as defined in section 2(a)(16) of the Act or other securities that meet the definition of “Eligible Security” in rule 2a-7 under the Act, or (d) listed or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and its General Partner will maintain and preserve, for the life of each Series of the Partnership and at least six years thereafter, such accounts, books and other documents constituting the record forming the basis for the audited financial statements that are to be provided to the Limited Partners in the Partnership, and each annual report of the Partnership required to be sent to the Limited

Partners, and agree that all such records will be subject to examination by the Commission and its staff.<sup>14</sup>

5. Within 120 days after the end of each fiscal year of each Partnership, or as soon as practicable thereafter, the General Partner of each Partnership will send to each Limited Partner having an Interest in the Partnership at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership’s independent accountants with respect to those Series in which the Limited Partner had an Interest, except under certain circumstances in the case of a Partnership formed to make a single portfolio investment. In such cases, the Partnership may send unaudited financial statements, but each Limited Partner will receive financial statements of the single portfolio investment audited by such entity’s independent accountants. At the end of each fiscal year, the General Partner will make or cause to be made a valuation of all of the assets of the Partnership as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 120 days after the end of each fiscal year of each Partnership (or as soon as practicable thereafter), the General Partner will send a report to each person who was a Limited Partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Limited Partner of that partner’s federal and state income tax returns and a report of the investment activities of the Partnership during that fiscal year.

6. If a Partnership makes purchases or sales from or to an entity affiliated with the Partnership by reason of an officer, director or employee of an Ares entity (i) serving as an officer, director, general partner, manager or investment adviser of the entity (other than an entity that is an Aggregation Vehicle), or (ii) having a 5% or more investment in the entity, such individual will not participate in the Partnership’s determination of whether or not to effect the purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

**Robert W. Errett,**  
*Deputy Secretary.*

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<sup>14</sup> Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77282; File No. SR-BX-2016-013]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Access Services Fees under Rule 7015

March 3, 2016.

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 February 23, 2016, NASDAQ OMX BX, Inc. (“Exchange”)<sup>3</sup> filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Exchange’s Access Services fees under Rule 7015 to: (i) Assess a \$25/port/month Disaster Recovery Port fee for Disaster Recovery Ports used with FIX Trading Ports, OUCH, RASH, and DROP ports; and (ii) assess a \$100/port/month fee for Trading Ports used in Test Mode.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqomxbx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

<sup>13</sup> If a Partnership invests in a Rule 17d-1 Investment through an Aggregation Vehicle, the requirements of clauses (i) and (ii) of this sentence shall apply to both the Affiliated Co-Investor’s disposition of such Rule 17d-1 Investment and, if the Affiliated Co-Investor also holds a Rule 17d-1 Investment through such Aggregation Vehicle, its disposition of all or part of its investment in the Aggregation Vehicle.

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

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

<sup>3</sup> In the filing, the Exchange states that it has legally changed its name to NASDAQ BX, Inc. with the state of Delaware, and that the Exchange is in the process of both amending its Form 1 with the Commission and changing its rules to reflect this new name.

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 to Rule 7015 is to amend the Exchange's Access Services fees under Rule 7015 to: (i) Assess a \$25/port/month Disaster Recovery Port fee for Disaster Recovery Ports used with FIX Trading Ports, OUCH, RASH, and DROP ports; and (ii) assess a \$100/port/month fee for Trading Ports used in Test Mode.

First Change

The Exchange is in the process of transitioning its Disaster Recovery ("DR") functionality for the U.S. equities and options markets from Ashburn, VA to its new Chicago, IL data center. The Exchange has invested and installed new equipment in the Chicago data center for client connectivity and for the infrastructure of Exchange systems. The Exchange chose Chicago as the location of its new DR data center as many other exchanges are using this same location for a disaster recovery or a primary location and, as a result, many of our market participants have a presence or connection at this location, thus making it easier and less expensive for many market participants to connect to the Exchange for DR.

Under Rule 7015, member firms may subscribe to DR ports, which provide backup connectivity in the event of a failure or disaster rendering their primary connectivity at Carteret, NJ subscribed to under Rule 7015 unavailable. To date, the Exchange has transitioned its FIX Trading Ports, OUCH, RASH, and DROP Ports to the Chicago center from Ashburn. Currently, the Exchange does not assess a fee for any DR ports.

The Exchange has incurred an initial cost associated with moving DR ports to the Chicago center, including the purchase of upgraded hardware and physical space to house the DR ports, which is more expensive than the Ashburn location. The Exchange also incurs ongoing costs in maintaining the DR ports, including costs incurred maintaining servers and their physical location, monitoring order activity, and other support, which is collectively more expensive in Chicago than Ashburn. Accordingly, the Exchange is proposing to assess a fee of \$25 per port, per month for DR Ports used with FIX Trading Ports, OUCH, RASH, and DROP Ports.

Second Change

Under Rule 7015, Member firms may subscribe to Trading Ports used in Test Mode, which are trading ports available in primary market location in Carteret, NJ, that are exclusively used for testing purposes, at no cost. These ports may not be used for trading in securities in the System, but rather allow a member firm to test their systems prior to connecting to the live trading environment. Test Ports are identical to trading ports<sup>4</sup> and share the same infrastructure, but are restricted to only allow order entry into the System in test symbols. A member firm may elect to designate a subscribed trading port as either in "production mode" or in "test mode." A Trading Port that is in production mode allows a member firm to send orders for execution on the Exchange system in the normal course. When a member firm changes a trading port's status to test mode, the Exchange will not allow normal order activity to occur through the port but rather it limits all order activity to test symbols. Under Rule 7015, member firms are assessed a monthly fee of \$500 per port for each trading port subscribed in production mode. Member firms are not currently assessed a fee for Trading Ports used in Test Mode.

The Exchange has audited the use of Trading Ports used in Test Mode and found that a majority of Trading Ports used in Test Mode are not used for testing, but rather remain idle. The Exchange incurs costs associated with maintaining such ports, including costs incurred maintaining servers and their physical location, monitoring order activity, and other support. Accordingly, the Exchange is proposing to assess a fee of \$100 per port, per month.<sup>5</sup>

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

<sup>4</sup> E.g., FIX, RASH, and OUCH.

<sup>5</sup> The Exchange bills Access Services subscriptions by prorating the first monthly fee by the number of days that subscription was subscribed and thereafter assesses the full monthly fee, including the full month in which the subscription is cancelled. If a subscriber elects to change a test mode port to a production port in a given month, the Exchange will assess the Trading Ports used in Test Mode fee, which may be prorated if subscribed to in the same month, and will also assess the production port fee, which will be prorated from the date the change is made through the end of the month. Likewise, if a subscriber elects to change a production mode port to a test mode port in a given month, the Exchange will assess the monthly production port fee, which may be prorated if subscribed to in the same month, and will also assess the Trading Ports used in Test Mode fee, which will be prorated from the date the change is made through the end of the month.

of the Act<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act<sup>7</sup> 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 the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>8</sup> Likewise, in *NetCoalition v. Securities and Exchange Commission*<sup>9</sup> ("NetCoalition") the DC Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>10</sup> As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."<sup>11</sup>

Further, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ."<sup>12</sup>

<sup>6</sup> 15 U.S.C. § 78f(b).

<sup>7</sup> 15 U.S.C. § 78f(b)(4) and (5).

<sup>8</sup> Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) ("Regulation NMS Adopting Release").

<sup>9</sup> *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

<sup>10</sup> See *NetCoalition*, at 534.

<sup>11</sup> *Id.* at 537.

<sup>12</sup> *Id.* at 539 (quoting ArcaBook Order, 73 FR at 74782-74783).

#### DR Port Fees

The fee assessed for DR Ports is reasonable because it is based on the cost incurred by the Exchange in purchasing and maintaining DR ports in the Chicago data center. Currently, the Exchange does not have a means to recoup its investment and costs associated with providing member firms with DR ports in the Chicago data center. Thus, the Exchange believes that the proposed fee is reasonable because the fee is intended to cover the Exchange's costs incurred in maintaining DR ports. The proposed fee may also allow the Exchange to make a profit to the extent the costs associated with purchasing and maintaining DR ports are covered.

The Exchange believes that the proposed fee is equitably allocated and not unfairly discriminatory because it will apply equally to all subscribers to DR ports based on the number of ports subscribed. Last, the Exchange notes that, for most member firms, subscription to DR ports is voluntary, and member firms may subscribe to as many or as few ports they believe is necessary. A select number of member firms chosen by the Exchange to participate in business continuity and disaster recovery plan testing pursuant to Rule 1170 will be obligated to subscribe to a DR port to participate in the annual test. Although subscription to DR ports is not voluntary for member firms selected for this once a year test, the Exchange believes that assessing the proposed fee is an equitable allocation and not unfairly discriminatory because such member firms will derive the same benefit as those members that voluntarily elect to subscribe to DR ports and such members may cancel their DR port subscription once their Rule 1170 testing obligation is satisfied.

#### Trading Ports used in Test Mode Fees

The proposed fee is also reasonable because it is based on the cost incurred by the Exchange in developing and maintaining multiple port connections, which are not used in the production environment and are designated as in test mode. As noted, the Exchange invests time and capital in initiating, monitoring and maintaining port connections to its system. Currently, the Exchange does not have a means to recoup its investment and costs associated with providing member firms with Trading Ports used in Test Mode. Thus, the Exchange believes that the proposed fee is reasonable because the fee is intended to cover the Exchange's costs incurred in maintaining test mode ports and is less than what is charged

for a trading port in production mode. The proposed fee may also allow the Exchange to make a profit to the extent the costs associated with developing and maintaining Trading Ports used in Test Mode are covered. The Exchange believes that the proposed fee does not discriminate unfairly as it will promote efficiency in the market by incentivizing member firms to either place idle ports into production or cancel them if unneeded.

The proposed fee is also equitably allocated because all Exchange member firms that voluntarily elect to subscribe to trading ports, yet maintain them in test mode, will be charged the fee equally on a per-port basis. Last, the Exchange notes that subscription to Trading Ports used in Test Mode is voluntary, and member firms may subscribe to as many or as few ports they believe is necessary for their testing purposes.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed fee merely allows the Exchange to recapture the costs associated with maintaining member ports that are in test mode and DR, and may provide the Exchange with a profit to the extent its costs are covered. The Trading Port used in Test Mode fee is applied uniformly to member firms that have such ports in the Carteret data center, where the Exchange incurs expenses to support this port configuration option.

The proposed fee will also promote efficient use of Trading Ports for testing.

Similarly, the Exchange incurs greater costs in offering DR ports in the new Chicago data center, which the Exchange is seeking to cover. Any burden arising from the fees is necessary to cover costs associated with the location of the functionality in Chicago. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result as member firms chose one of many alternative venues on which they may trade. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

#### 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.<sup>13</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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

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

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2016-013 on the subject line.

#### Paper comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

<sup>13</sup> 15 U.S.C. § 78s(b)(3)(A)(ii).

Commission, 100 F Street NE.,  
Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2016-013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2016-013, and should be submitted on or before March 29, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-05122 Filed 3-7-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77275; File No. SR-  
NYSEMKT-2016-28]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of a Proposed Change Amending the Fees for NYSE Amex Options Proprietary Market Data as They Apply to Federal Agency Customers

March 2, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 17, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the fees for NYSE Amex Options proprietary market data as they apply to Federal agency customers. The proposed change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

##### 1. Purpose

The Exchange proposes to amend the NYSE Amex Options Proprietary Market Data Fee Schedule ("Fee Schedule"), to provide that market data fees do not apply to any Federal agency for their use of NYSE Amex Options real-time proprietary market data products. The term "Federal agency" as used in the Fee Schedule would include all Federal agencies subject to the Federal Acquisition Regulation (FAR),<sup>4</sup> as well as any Federal agency not subject to FAR that has promulgated its own procurement rules.<sup>5</sup>

The Exchange is proposing to specify that access fees, professional user fees and non-display fees do not apply to Federal agencies for those products to which those fees apply.<sup>6</sup> The proposal is designed to allow the Exchange to provide Federal agencies with NYSE Amex Options real-time proprietary market data products at no cost in support of Federal agencies' regulatory responsibilities. With the adoption of the proposed fee waiver, the Exchange is not waiving any of its contractual rights and all Federal agencies that subscribe to NYSE Amex Options real-time proprietary market data products will be required to execute the appropriate subscriber agreement, which include [sic], among other things, provisions against the redistribution of data.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and Sections 6(b)(4) and 6(b)(5) of the Act,<sup>8</sup> in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not

<sup>4</sup> FAR is the principal set of rules governing the process by which the U.S. federal government purchases goods and services.

<sup>5</sup> See 48 CFR 2.101. FAR defines "Federal agency" as "any executive agency or any independent establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect's direction)." "Executive agency" is defined as "an executive department, a military department, or any independent establishment within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101."

<sup>6</sup> These products are currently Amex Options Product and Amex Options Complex.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4), (5).

<sup>14</sup> 17 CFR 200.30-3(a)(12).