proposed the instant rule change to prepare for such dissemination, which has not yet become effective, as well as to prepare for any future dissemination of additional ABS market segments.[10]

Specifically, FINRA has proposed to amend FINRA Rule 6730(d)(2) to require a member to report to TRACE the Factor in the limited instances when the member effects a transaction in an ABS (except a TBA transaction) as agent and charges a commission.[11] Under FINRA's current transaction reporting rules, for a transaction in an ABS that is backed by mortgages or other assets that amortize over the life of the security, instead of reporting the size of the transaction by reporting the total par or principal value, a member must report two items from which the size is calculable: (1) The original face value of the ABS, which is the size at issuance; and (2) the Factor, but only if the Factor used to execute the transaction is not the most current Factor that is publicly available at the Time of Execution[12] (a ''non-conforming Factor'').[13] As a result of the proposed rule change, when an ABS transaction (except for a TBA transaction) is executed in an agency capacity with a commission charged, the FINRA member would be required to report the Factor regardless of whether it is the most current Factor publicly available at the Time of Execution or is a non-conforming Factor.[14] In addition, FINRA has proposed supplementary material to make clear that the requirement to report the Factor will apply to every ABS transaction (except for a TBA transaction) executed in an agency capacity with a commission charged, including the small number of transactions in non-amortizing ABS.[15]

FINRA has also proposed technical amendments to reorganize the current size reporting requirements in FINRA Rule 6730(d)(2) and to make them consistent with proposed Rule 6730(d)(2)(B)(iv).[16]

FINRA stated that it will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval, and that the effective date will be no later than 270 days following publication of the *Regulatory Notice*.[17]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[18] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[19] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

In approving the original TRACE rules, the Commission stated that price transparency plays a fundamental role in promoting fairness and efficiency of U.S. capital markets.[20] FINRA believes that the proposed rule change would promote price transparency provided by TRACE for ABS transactions executed in an agency capacity with a commission charged.[21] When an ABS transaction is executed in an agency capacity with a commission charged, the TRACE system must take the Factor, as well as other information, into account when calculating the disseminated price of the transaction.[22] Currently, all components of the formula that would be used to calculate a disseminated price in an agency ABS transaction, except the Factor, are reported by a member effecting the transaction.[23] FINRA represented that requiring that the Factor also be reported would ensure the accuracy of the disseminated price for an agency ABS transaction because the TRACE system would rely exclusively upon information reported by the members that are parties to such a transaction in calculating the transaction's disseminated price.[24] The Commission believes that the proposal is reasonably designed to promote the accuracy of the disseminated price data for agency ABS transactions and to further the goal of increasing price transparency in the ABS market.

The commenter suggested that the proposed rule change would add an administrative burden to the industry.[25] FINRA responded that the proposed rule change is necessary and appropriate, and noted that it would be narrowly tailored to apply to the very limited number of ABS transactions where a member trades in an agency capacity and charges a commission.[26] FINRA also noted that the accuracy of the price transparency provided by TRACE assists all market participants in determining the quality of their executions and firms in complying with their regulatory obligations.[27] The Commission believes that the commenter has not raised any issue that would preclude approval of the proposal.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–FINRA–2012–052) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05570 Filed 3–11–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69041; File No. SR–BX–2013–018]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Establishing a Program for Managed Data Solutions (MDS)

March 5, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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[10] *See* Notice, 77 FR at 74896.

[11] *See* proposed Rule 6730(d)(2)(B)(iv); *see also* Notice, 77 FR at 74896. FINRA stated that only a small number of ABS transactions are executed on an agency basis with a commission charged; ABS are traded mostly on a principal basis. *See id.*

[12] The term ''Time of Execution'' is defined in FINRA Rule 6710(d).

[13] *See* FINRA Rules 6730(c)(2) and (d)(2); *see also* Notice, 77 FR at 74896. When a member uses the most current Factor that is publicly available at the Time of Execution of the transaction, the member currently is not required to report the Factor. Instead, the TRACE system incorporates the most current Factor publicly available at the Time of Execution. FINRA receives such information from commercial data vendors. *See* Notice, 77 FR at 74896 n.7.

[14] *See* proposed Rule 6730(d)(2)(B)(iv); *see also* Notice, 77 FR at 74897.

[15] *See* proposed supplementary material .01 to Rule 6730(d)(2); *see also* Notice, 77 FR at 74897. For transactions in non-amortizing ABS, a member would be required to report 1.0 as the Factor. *See id.* at 74897 n.11.

[16] *See* proposed Rules 6730(d)(2)(A)–(2)(B)(iv).

[17] *See* Notice, 77 FR at 74897.

[18] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78o–3(b)(6).

[20] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131, 8136 (January 29, 2001).

[21] *See* Notice, 77 FR at 74897.

[22] *See id.* at 74896–97.

[23] *See id.* at 74897.

[24] *See id.*

[25] *See* Sokolow Comment.

[26] *See* FINRA Letter at 2.

[27] *See id.*

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

(''Act'') [1], and Rule 19b–4 thereunder,[2] notice is hereby given that on February 22, 2013, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a 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 the Substance of the Proposed Rule Change

The Exchange proposes add new BX Rule 7026 (Distribution Models) to establish a program for Managed Data Solutions (''MDS'').

While the fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2013.

The text of the proposed rule change is provided in *Exhibit 5.* The text of the proposed rule change is also 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 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

BX is now proposing to create a new data distribution model known as MDS in new Rule 7026 to further the distribution of BX TotalView.[3] This offers a new pricing and administrative option available to firms seeking simplified market data administration for MDS products containing BX TotalView (''BX Depth Data'').

Proposed BX Rule 7026 is similar to The NASDAQ Stock Market LLC (''NASDAQ'') Rule 7026 in terms of offering MDS for a fee to members of the Exchange.[4] MDS may be offered by members of the Exchange as well as Distributors [5] to clients and/or client organizations that are using the BX Depth Data internally in a non-display manner. This new pricing and administrative option is in response to industry demand, as well as due to improvements in the contractual administration and the technology used to distribute market data. Distributors offering MDS continue to be fee liable for the applicable distributor fees for the receipt and distribution of the BX Depth Data such as BX Total View.[6]

MDS is a pricing and administrative option that will assess a new fee schedule to Distributors of BX Depth Data that provide datafeed solutions such as an Application Programming Interface (API) or similar automated delivery solutions to recipients with limited entitlement controls (e.g., usernames and/or passwords) (''Managed Data Recipients''). However, the Distributor must first agree to reformat, redisplay and/or alter the BX Depth Data prior to retransmission, but not to affect the integrity of the BX Depth Data and not to render it inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory. MDS is any retransmission datafeed product containing BX Depth Data offered by a Distributor where the Distributor manages and monitors, but does not necessarily control, the information. However, the Distributor does maintain contracts with the Managed Data Recipients and is liable for any unauthorized use by the Managed Data Recipients. The Managed Data Recipients may only use the information for internal, non-display purposes and may not distribute the information outside of their organization.

In the past, retransmissions were considered to be an uncontrolled data product if the Distributor did not control both the entitlements and the display of the information. Over the last ten years, however, Distributors have improved the technical delivery and monitoring of data, and the MDS offering responds to an industry need to offer new pricing and administrative options.

The Exchange notes that some Distributors believe that MDS is a better controlled datafeed product and as such should not be subject to the same rates as a datafeed. However, the Distributors may only have contractual control over the data and may not be able to verify how Managed Data Recipients are actually using the data at least without involvement of the Managed Data Recipient.[7] The proposal to offer MDS to Distributors would assist in the management of the uncontrolled data product on behalf of their Managed Data Recipients by contractually restricting the data flow and monitoring the delivery. Thus, offering MDS on BX per proposed Rule 7026 would allow Distributors to deliver MDS to their clients and would allow Professional and Non-Professional [8] Subscribers [9] to

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

[2] 17 CFR 240.19b–4.

[3] Proposed Rule 7026(b)(4) states that the term ''BX TotalView'' shall have the same meaning as set forth in Rule 7023(a). Rule 7023(a) states that the BX TotalView entitlement allows a Subscriber to see all individual NASDAQ OMX BX Equities System participant orders and quotes displayed in the system, the aggregate size of such orders and quotes at each price level, and the trade data for executions that occur within the NASDAQ OMX BX Equities System.

[4] *See* Securities Exchange Release No. 63276 (November 8, 2010), 75 FR 69717 (November 15, 2010) (SR–NASDAQ–2010–138) (notice of filing and immediate effectiveness implementing MDS on NASDAQ) (the ''NASDAQ MDS filing''). Other options markets have also implemented a managed data solution. *See,* for example, Securities Exchange Release No. 65678 (November 3, 2011), 76 FR 70178 (November 10, 2011) (SR–ISE–2011–67)(notice of filing and immediate effectiveness implementing a managed data solution on ISE).

[5] Proposed Rule 7026(b)(2) states that the term ''Distributor'' shall have the same meaning as set forth in Rule 7019(b). Rule 7019(b) states that a ''Distributor'' of Exchange data is any entity that receives a feed or data file of Exchange data directly from the Exchange or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All distributors shall execute an Exchange distributor agreement. The Exchange itself is a vendor of its data feed(s) and has executed an Exchange distributor agreement and pays the distributor charge.

[6] *See,* for example, Rule 7023.

[7] In the NASDAQ MDS filing, for example, it was noted that some Distributors have even held off on deployment of new product offerings, pending the resolution to this issue. *See* supra note 4.

[8] Proposed Rule 7026(b)(1) states that the term ''Non-Professional'' shall have the same meaning as set forth in Rule 7023(b). Rule 7023(b) states that a ''Non-Professional'' is a natural person who is neither: (A) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (B) engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (C) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

[9] Proposed Rule 7026(b)(3) states that the term ''Subscriber'' shall have the same meaning as set forth in Rule 7023(c). Rule 7023(c) states that a ''Subscriber'' is any access that a distributor of the data entitlement package(s) provides to: (1) Access the information in the data entitlement package(s); or (2) communicate with the distributor so as to cause the distributor to access the information in the data entitlement package(s). If a Subscriber is part of an electronic network between computers

use BX Depth Data for their own non-display use.[10]

Finally, proposed Rule 7026 establishes a fee schedule for Distributors and Subscribers of MDS products containing BX Depth Data for non-display use only. Specifically, Distributors would be assessed $750/month per Distributor for the right to offer MDS to client organizations. Non-Professional Subscribers would be assessed $20/month per Subscriber for the right to obtain BX Depth Data (which includes TotalView) for internal non-display use only. And Professional Subscribers would be assessed $100/month per Subscriber for the right to receive BX Depth Data (TotalView) for internal non-display use only.[11]

This new fee is meant to lower the fee for current and potential future recipients of datafeed products by offering a new pricing option. No recipients will have an increased fee due to this filing.

Accordingly, the Exchange believes that the proposed rule establishes a program that allows all BX Members and Distributors a practicable methodology to access and receive MDS, similarly to other options [sic] exchanges.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general, and with Section 6(b)(4) of the Act,[13] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of BX 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.[14]

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

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 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.' '' *NetCoalition,* at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323).

BX believes that the proposed fees are fair and equitable, and not unreasonably discriminatory. The proposed fees are based on pricing conventions and distinctions that currently exist in the fee schedules of another exchange, namely NASDAQ. These distinctions (e.g. Distributor versus Subscriber, Professional versus Non-Professional, internal versus external distribution, controlled versus uncontrolled datafeed) are each based on principles of fairness and equity that have helped for many years to maintain fair, equitable, and not unreasonably discriminatory fees, and that apply with equal or greater force to the current proposal. BX believes that the MDS offering promotes broader distribution of controlled data, while offering a fee reduction in the form of a pricing option resulting in lower fees for Subscribers. The MDS proposal is reasonable in that it offers a methodology to get MDS data for less. It is equitable in that it provides an opportunity for all Distributors and Subscribers, Professional and Non-Professional, to get MDS data without unfairly discriminating against any.

Thus, if BX has calculated improperly and the market deems the proposed fees to be unfair, inequitable, or unreasonably discriminatory, firms can diminish or discontinue the use of their data because the proposed fees are entirely optional to all parties. Firms are not required to choose to purchase MDS or to utilize any specific pricing alternative. BX is not required to make MDS available or to offer specific pricing alternatives for potential purchases. BX can discontinue offering a pricing alternative (as it has in the past) and firms can discontinue their use at any time and for any reason (as they often do), including due to their assessment of the reasonableness of fees charged. BX continues to establish and revise pricing policies aimed at increasing fairness and equitable allocation of fees among Subscribers.

used for investment, trading or order routing activities, the burden shall be on the distributor to demonstrate that the particular Subscriber should not have to pay for an entitlement.

[10] Downstream recipients are not allowed to redistribute the MDS products.

[11] Each of the fees for MDS on BX is initially set to be significantly lower than the fees for similar MDS on NASDAQ. *See* NASDAQ Rule 7026.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

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

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

BX 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 *NetCoalition* 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. BX believes that a record may readily be established to demonstrate the competitive nature of the market in question.

The proposal is, as described below pro-competitive. The proposal offers an overall fee reduction, which is, by its nature, pro-competitive. Moreover, 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 orders entered and trades executed, exchange data products cannot exist. Data products are valuable to many end Subscribers insofar as they provide information that end Subscribers expect will assist them 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.

''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 more than ten SRO markets, as well as internalizing 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 Financial Industry Regulatory Authority, Inc. (''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 (now NYSE MKT), NYSEArca, DirectEdge 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, for example, BATS and Arca did before registering as exchanges by publishing Depth-of-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 Subscribers. 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 Subscribers 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. BX 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.

Competition among platforms has driven BX continually to improve its platform data offerings and to cater to customers' data needs. For example, BX 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. BX has created new products like TotalView, because offering data in multiple formatting allows BX to better fit customer needs. BX offers data via multiple extranet and telecommunication providers such as Verizon, BT Radianz, and Savvis, among others, thereby helping to reduce network and total cost for its data products. BX has an online administrative system to provide customers transparency into their datafeed requests and streamline data usage reporting. BX has also implemented an Enterprise License option to reduce the administrative burden and costs to firms that purchase market data.

Despite these enhancements and ever increasing message traffic, BX's fees for market data have remained flat. The same holds true for execution services; despite numerous enhancements to BX'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 BX data is significant and the Exchange believes that this proposal itself clearly evidences such competition. BX is offering a new pricing model in order to keep pace with changes in the industry and evolving customer needs. This pricing option 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. BX 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 BX 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 the proposed data 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.[15] 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.

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

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2013–018 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.

All submissions should refer to File Number SR–BX–2013–018. 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 such 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–2013–018 and should be submitted on or before April 2, 2013.

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

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–05568 Filed 3–11–13; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of: Endeavor Power Corp.; Order of Suspension of Trading

March 8, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Endeavor Power Corp. (''Endeavor Power''), quoted under the ticker symbol EDVP, because of questions regarding the accuracy of assertions in Endeavor Power's public filings and press releases relating to, among other things, patents.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST on March 8, 2013 through 11:59 p.m. EDT on March 21, 2013.

By the Commission.

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2013–05729 Filed 3–8–13; 11:15 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before May 13, 2013.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Rachel Newman Karton, Program Analyst, Office of Entrepreneurial Development, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Rachel Newman Karton, Program Analyst, 202–619–1618 *rachel.newman@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

Title: ''Federal Cash Transaction Report; Financial Status Report Program Income Report Narrative Program Report.''

Abstract: The Small Business Development Centers (SBDC) must provide semi-annual financial and programmatic reports outlining accomplishments.

Description of Respondents: SBDC Directors.

Form Number: 2113.

Annual Responses: 126.

Annual Burden: 7,308.

Curtis Rich,

Management Analyst.

[FR Doc. 2013–05690 Filed 3–11–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13511 and #13512]

Michigan Disaster #MI–00038.

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of michigan dated 03/04/2013.

Incident: Severe Storms and Flooding.

Incident Period: 01/30/2013 through 02/16/2013.

Effective Date: 03/04/2013.

Physical Loan Application Deadline Date: 05/03/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 12/04/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Mecosta.

Contiguous Counties:

Michigan: Clare, Isabella, Lake,