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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 18

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2012 - * 40
Amendment No. (req. for Amendments *)

Proposed Rule Change by NYSE MKT LLC.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☐	☑	☐

Rule

Pilot	Extension of Time Period for Commission Action *	Date Expires *	19b-4(f)(1)	19b-4(f)(2)	19b-4(f)(3)	19b-4(f)(4)	19b-4(f)(5)	19b-4(f)(6)
☐	☐		☐	☐	☐	☐	☐	☑

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

Proposal to offer certain proprietary options data products

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name * Marija Last Name * Willen

Title * Chief Counsel

E-mail * mwillen@nyx.com

Telephone * (212) 656-4440 Fax (212) 656-8101

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 08/13/2012

By Janet McGinness (Name *)

Corporate Secretary (Title *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

NYX Janet McGinness,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information (required) Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change (required) Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) NYSE MKT LLC ("NYSE MKT" or "Exchange"), on behalf of NYSE Amex Options LLC ("NYSE Amex Options"), proposes to offer certain proprietary options data products.

(b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action by the Board of Directors or the membership of the Exchange is required. Therefore, the Exchange's internal procedures with respect to the proposed change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

Marija Willen	Janet Parkhurst
Chief Counsel	Executive Vice President
NYSE Euronext	NYSE Euronext
(212) 656-4440	(212) 656-6864

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

(a) Purpose

The Exchange proposes to offer certain proprietary options data products. Specifically, the products are ArcaBook for Amex Options – Trades, ArcaBook for Amex Options – Top of Book, ArcaBook for Amex Options – Depth of Book, ArcaBook for Amex Options – Complex, ArcaBook for Amex Options – Series Status, and ArcaBook for Amex Options – Order Imbalance.[1] Each of these products, which are described in more detail below, is either identical or substantially similar to products offered by other exchanges.

ArcaBook for Amex Options – Trades would make available NYSE Amex Options last sale information on a real-time basis as it is reported to the Options

[1] For these products, the name "ArcaBook" is used strictly for marketing purposes to describe the technology used to support the product. All of the data that will be distributed through the products is solely NYSE Amex Options data.

Price Reporting Authority ("OPRA") and disseminated on a consolidated basis under the OPRA Plan.[2] Other exchanges also offer this product.[3]

ArcaBook for Amex Options – Top of Book would make available NYSE Amex Options best bids and offers ("BBO") (including orders and quotes) on a real-time basis as it is reported to OPRA and disseminated on a consolidated basis under the OPRA Plan. Other exchanges also offer this product.[4]

ArcaBook for Amex Options – Depth of Book would make available NYSE Amex Options quotes and orders at the first five price levels in each series on a real-time basis as it is reported to OPRA and disseminated on a consolidated basis under the OPRA Plan. One exchange offers an identical product; other exchanges also offer similar products.[5]

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2 The OPRA Plan is a national market system plan approved by the Securities and Exchange Commission ("Commission") pursuant to Section 11A of the Securities Exchange Act of 1934 (the "Act") and Rule 608 thereunder (formerly Rule 11Aa3-2). *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at http://www.opradata.com.

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. Section 5.2(c) of the OPRA Plan also permits OPRA Plan participants to disseminate unconsolidated market information to certain of their members under certain circumstances. The manner in which the Exchange proposes to disseminate the proposed products would comply with Section 5.2(c).

3 For example, Chicago Board Options Exchange ("CBOE"), NASDAQ Options Market ("NOM"), and NASDAQ OMX PHLX LLC ("PHLX") offer proprietary products that include their last sale data as reported to OPRA. *See* Securities Exchange Act Release No. 66486 (February 28, 2012), 77 FR 13166 (March 5, 2012) (SR-CBOE-2012-016); NOM Rules, Chapter VI, Section 1(a)(3) and Securities Exchange Act Release No. 64652 (June 13, 2011), 76 FR 35498 (June 17, 2011) (SR-NASDAQ-2011-075); and Securities Exchange Act Release No. 67352 (July 5, 2012), 77 FR 40930 (July 11, 2012) (SR-Phlx-2012-83), respectively.

4 *See id. See also* Securities Exchange Act Release No. 65000 (August 1, 2011), 76 FR 47627 (August 5, 2011) (SR-ISE-2011-44).

5 International Securities Exchange ("ISE") currently offers ISE Depth of Market Feed, which includes the first five price levels on ISE's limit order book. *See* Securities Exchange Act Release No. 59949 (May 20, 2009), 74 FR 25593 (May 28, 2009) (SR-ISE-2007-97). NOM and PHLX also offer full depth of market feeds. *See supra* note 3.

ArcaBook for Amex Options – Complex would make available NYSE Amex Options quote and trade information (including orders/quotes, requests for responses, and trades) for the complex order book on a real-time basis.[6] Other exchanges also offer similar data feeds related to their complex order execution facilities.[7]

ArcaBook for Amex Options – Series Status would make available series status messages for each individual options series in the event of a delayed opening or trading halt. The equity trading facility of NYSE Arca, Inc. ("NYSE Arca Equities") currently makes this information available via one of its market data products.[8]

Finally, ArcaBook for Amex Options – Order Imbalance would make available a data feed that includes order imbalance information prior to the opening and closing of the market, a data product that is offered by NYSE Arca Equities[9] and is similar to products offered by other options exchanges.[10]

Each of these options data products will be offered through the Exchange's Liquidity Center Network ("LCN"), a local area network in the Exchange's Mahwah, New Jersey data center that is available to users of the Exchange's co-location services. The Exchange would also offer the products through the Exchange's Secure Financial Transaction Infrastructure ("SFTI") network, through which all other Users and member organizations access the Exchange's trading and execution systems and other proprietary market data products.

The Exchange will submit a separate rule filing to establish fees for the data products.

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6 *See* Rule 900.3NY, which defines complex orders, and Rule 980NY, which describes electronic complex order trading, including requests for responses.

7 *See, e.g.*, description of ISE Spread Feed in SR-ISE-2011-44, *supra* note 4, and description of TOPO of PHLX Options Plus Orders feed in SR-Phlx-2012-83, *supra* note 3.

8 *See* Securities Exchange Act Release No. 65669 (November 2, 2011), 76 FR 69311 (November 8, 2011) (SR-NYSEArca-2011-78).

9 *See id.*

10 *See, e.g.*, SR-Phlx-2012-83 and SR-NASDAQ-2011-075, *supra* note 3. PHLX disseminates an Imbalance Message during the PHLX Opening Process. *See* Securities Exchange Act Release No. 66967 (May 11, 2012); 77 FR 29400 (May 17, 2012) (SR-Phlx-2012-60). NASDAQ's ITTO data product includes the order imbalance information relating to the opening as described in NASDAQ Options Market Rules Chapter VI, Section 8.

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b)[11] of the Act, in general, and furthers the objectives of Section 6(b)(5)[12] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

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 consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the options data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS – by lessening regulation of 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.

The Exchange further notes that the existence of alternatives to the Exchange's products, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, ensures that the Exchange is not unreasonably discriminatory because vendors and subscribers can elect these alternatives.

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11 15 U.S.C. 78f(b).

12 15 U.S.C. 78f(b)(5).

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

The proposed options data products will help to protect a free and open market by providing additional data to the marketplace and give investors greater choices. In addition, the proposal would not permit unfair discrimination because the products will be available to all of the Exchange's customers and broker-dealers through both the LCN and SFTI.

4. 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 that is not necessary or appropriate in furtherance of the purposes of the Act. The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data. 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 (such as internalizing broker-dealers and various forms of alternative trading systems, including dark pools and electronic communication networks), in a vigorously competitive market. It is common for market participants to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The Exchange believes that the proposal qualifies for immediate effectiveness upon filing as a "non-controversial" rule change in accordance with Section 19(b)(3)(A) of the Act[14] and Rule 19b-4(f)(6) thereunder.[15]

The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant

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[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b-4(f)(6).

burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as the Commission may designate.

The Exchange believes that the proposed rule change would not adversely affect investors or the public interest; rather, the proposed rule change will make available new options data products that will enable investors to better monitor trading activity on the Exchange, which will serve the public interest. Other exchanges already offer data products that are identical or substantially similar for their markets.[16]

The Exchange further believes that the proposed rule change would not impose a burden on competition for the reasons set forth in Section 4 above. As noted above, other exchanges already offer products that are identical or substantially similar for their options markets, and thus the Exchange's proposed products will enhance competition.

The Exchange believes that this filing is non-controversial because it raises no novel issues. In particular, the purpose of the proposed rule change is to make available to options market participants and data vendors the same types of data products that have already been approved by the Commission for the Exchange's competitors.[17] Accordingly, the Exchange believes that this rule change is eligible for immediately effective treatment under the Commission's current procedures for processing rule filings.[18]

For the foregoing reasons, the Exchange believes that this rule filing qualifies for immediate effectiveness as a "non-controversial" rule change. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule changes 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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

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16 *See supra* notes 3-10.

17 *Id*.

18 *See* Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008) (concerning 17 CFR 200 and 241).

9. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSEMKT-2012-40)

[Date]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing to Offer Certain Proprietary Options Data Products

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that on August 13, 2012, 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 offer certain proprietary options data products. The text of the proposed rule change is available on the Exchange's website at 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

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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.

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 offer certain proprietary options data products. Specifically, the products are ArcaBook for Amex Options – Trades, ArcaBook for Amex Options – Top of Book, ArcaBook for Amex Options – Depth of Book, ArcaBook for Amex Options – Complex, ArcaBook for Amex Options – Series Status, and ArcaBook for Amex Options – Order Imbalance.[4] Each of these products, which are described in more detail below, is either identical or substantially similar to products offered by other exchanges.

ArcaBook for Amex Options – Trades would make available NYSE Amex Options last sale information on a real-time basis as it is reported to the Options Price Reporting Authority ("OPRA") and disseminated on a consolidated basis under the OPRA Plan.[5] Other exchanges also offer this product.[6]

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4 For these products, the name "ArcaBook" is used strictly for marketing purposes to describe the technology used to support the product. All of the data that will be distributed through the products is solely NYSE Amex Options data.

5 The OPRA Plan is a national market system plan approved by the Securities and Exchange Commission ("Commission") pursuant to Section 11A of the Securities Exchange Act of 1934 (the "Act") and Rule 608 thereunder (formerly Rule 11Aa3-2). *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at http://www.opradata.com.

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. Section 5.2(c) of the OPRA Plan also permits OPRA Plan participants to

ArcaBook for Amex Options – Top of Book would make available NYSE Amex Options best bids and offers ("BBO") (including orders and quotes) on a real-time basis as it is reported to OPRA and disseminated on a consolidated basis under the OPRA Plan. Other exchanges also offer this product.[7]

ArcaBook for Amex Options – Depth of Book would make available NYSE Amex Options quotes and orders at the first five price levels in each series on a real-time basis as it is reported to OPRA and disseminated on a consolidated basis under the OPRA Plan. One exchange offers an identical product; other exchanges also offer similar products.[8]

ArcaBook for Amex Options – Complex would make available NYSE Amex Options quote and trade information (including orders/quotes, requests for responses, and trades) for the complex order book on a real-time basis.[9] Other exchanges also offer

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disseminate unconsolidated market information to certain of their members under certain circumstances. The manner in which the Exchange proposes to disseminate the proposed products would comply with Section 5.2(c).

6 For example, Chicago Board Options Exchange ("CBOE"), NASDAQ Options Market ("NOM"), and NASDAQ OMX PHLX LLC ("PHLX") offer proprietary products that include their last sale data as reported to OPRA. *See* Securities Exchange Act Release No. 66486 (February 28, 2012), 77 FR 13166 (March 5, 2012) (SR-CBOE-2012-016); NOM Rules, Chapter VI, Section 1(a)(3) and Securities Exchange Act Release No. 64652 (June 13, 2011), 76 FR 35498 (June 17, 2011) (SR-NASDAQ-2011-075); and Securities Exchange Act Release No. 67352 (July 5, 2012), 77 FR 40930 (July 11, 2012) (SR-Phlx-2012-83), respectively.

7 *See id. See also* Securities Exchange Act Release No. 65000 (August 1, 2011), 76 FR 47627 (August 5, 2011) (SR-ISE-2011-44).

8 International Securities Exchange ("ISE") currently offers ISE Depth of Market Feed, which includes the first five price levels on ISE's limit order book. *See* Securities Exchange Act Release No. 59949 (May 20, 2009), 74 FR 25593 (May 28, 2009) (SR-ISE-2007-97). NOM and PHLX also offer full depth of market feeds. *See supra* note 6.

9 *See* Rule 900.3NY, which defines complex orders, and Rule 980NY, which

similar data feeds related to their complex order execution facilities.[10]

ArcaBook for Amex Options – Series Status would make available series status messages for each individual options series in the event of a delayed opening or trading halt. The equity trading facility of NYSE Arca, Inc. ("NYSE Arca Equities") currently makes this information available via one of its market data products.[11]

Finally, ArcaBook for Amex Options – Order Imbalance would make available a data feed that includes order imbalance information prior to the opening and closing of the market, a data product that is offered by NYSE Arca Equities[12] and is similar to products offered by other options exchanges.[13]

Each of these options data products will be offered through the Exchange's Liquidity Center Network ("LCN"), a local area network in the Exchange's Mahwah, New Jersey data center that is available to users of the Exchange's co-location services. The Exchange would also offer the products through the Exchange's Secure Financial Transaction Infrastructure ("SFTI") network, through which all other Users and member organizations access the Exchange's trading and execution systems and other proprietary

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describes electronic complex order trading, including requests for responses.

10 *See, e.g.*, description of ISE Spread Feed in SR-ISE-2011-44, *supra* note 7, and description of TOPO of PHLX Options Plus Orders feed in SR-Phlx-2012-83, *supra* note 6.

11 *See* Securities Exchange Act Release No. 65669 (November 2, 2011), 76 FR 69311 (November 8, 2011) (SR-NYSEArca-2011-78).

12 *See id.*

13 *See, e.g.*, SR-Phlx-2012-83 and SR-NASDAQ-2011-075, *supra* note 3. PHLX disseminates an Imbalance Message during the PHLX Opening Process. *See* Securities Exchange Act Release No. 66967 (May 11, 2012); 77 FR 29400 (May 17, 2012) (SR-Phlx-2012-60). NASDAQ's ITTO data product includes the order imbalance information relating to the opening as described in NASDAQ Options Market Rules Chapter VI, Section 8.

market data products.

The Exchange will submit a separate rule filing to establish fees for the data products.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[14] of the Act, in general, and furthers the objectives of Section 6(b)(5)[15] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

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 consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the options data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS – by lessening regulation of the market in proprietary data – would itself further the Act's goals of facilitating efficiency and competition:

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[14] 15 U.S.C. 78f(b).

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

> [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.[16]

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.

The Exchange further notes that the existence of alternatives to the Exchange's products, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, ensures that the Exchange is not unreasonably discriminatory because vendors and subscribers can elect these alternatives.

The proposed options data products will help to protect a free and open market by providing additional data to the marketplace and give investors greater choices. In addition, the proposal would not permit unfair discrimination because the products will be available to all of the Exchange's customers and broker-dealers through both the LCN and SFTI.

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 that is not necessary or appropriate in furtherance of the purposes

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

of the Act. The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data. 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 (such as internalizing broker-dealers and various forms of alternative trading systems, including dark pools and electronic communication networks), in a vigorously competitive market. It is common for market participants to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[17] and Rule 19b-4(f)(6) thereunder.[18] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public

[17] 15 U.S.C. 78s(b)(3)(A)(iii).

[18] 17 CFR 240.19b-4(f)(6).

interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)[19] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such 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.

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 Number SR-NYSEMKT-2012-40 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities

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[19] 17 CFR 240.19b-4(f)(6).

[20] 17 CFR 240.19b-4(f)(6)(iii).

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

All submissions should refer to File Number SR-NYSEMKT-2012-40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at www.nyse.com. 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-NYSEMKT-2012-40 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill
Deputy Secretary

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[21] 17 CFR 200.30-3(a)(12).