

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-616, OMB Control No. 3235-0671]

Submission for OMB Review; Comment Request; Extension: Rule 613 of Regulation NMS

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget (“OMB”) a request for approval of extension of the previously approved collection of information provided for in connection in connection with a National Market System (NMS) Plan filed with the Commission under Rule 613 (17 CFR 242.613), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 613 of Regulation NMS (17 CFR part 242) required national securities exchanges and national securities associations (“Participants”) to jointly submit to the Commission a national market system (“NMS”) plan to govern the creation, implementation, and maintenance of a consolidated audit trail (“CAT”) and Central Repository for the collection of information for NMS securities. On February 27, 2015, the Participants submitted the CAT NMS Plan to the Commission.¹ On April 27, 2016, the Commission published a notice soliciting comments from the public (“CAT NMS Plan Notice”).² On

¹ See Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. The Participants filed the CAT NMS Plan on September 30, 2014. See Letter from the Participants, to Brent J. Fields, Secretary, Commission, dated September 30, 2014. The CAT NMS Plan filed on February 27, 2015, was an amendment to and replacement of the Initial CAT NMS Plan (the “Amended and Restated CAT NMS Plan”). On December 24, 2015, the Participants submitted an Amendment to the Amended and Restated CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015 (the “Amendment”). On February 9, 2016, the Participants filed with the Commission an identical, but unmarked, version of the Amended and Restated CAT NMS Plan, dated February 27, 2015, as modified by the Amendment, as well as a copy of the request for proposal issued by the Participants to solicit Bids from parties interested in serving as the Plan Processor for the consolidated audit trail. Unless the context otherwise requires, the “CAT NMS Plan” shall refer to the Amended and Restated CAT NMS Plan, as modified by the Amendment.

² See Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30613 (May 17, 2016). The

November 15, 2016, the Commission approved the CAT NMS Plan (“CAT NMS Plan Order”), including the information collections proposed in the CAT NMS Plan Notice, and certain additional information collections.³

Since July 2020, the date of the last PRA renewal, the Commission believes one additional information collection was completed: a one-time independent audit of the fees, costs, and expenses incurred by the Participants on behalf of CAT NMS, LLC prior to the Effective Date⁴ of the Plan;⁵ In addition, certain information collection requirements have completed at least the implementation stage, although certain ongoing costs remain, including: (1) development of a Central Repository tasked with the receipt, consolidation, and retention of reported order and execution information submitted by Participants and their members;⁶ (2) the requirement that each Participant, and any member of such Participant, record and electronically report to the Central Repository details for each order and Reportable Event documenting the life of an order through the process of original receipt or origination, routing, modification, cancellation, and execution (in whole or in part) for each NMS security;⁷ (3) the requirement that the CAT NMS Plan require the Central Repository to collect and retain on a current and continuous basis NBBO information for each NMS security, transaction reports reported pursuant to an effective transaction reporting plan, and Last Sale Reports reported pursuant to the Options Price Reporting Authority Plan;⁸ (4) the requirement that the CAT NMS Plan must require that every national securities exchange and national securities association develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the consolidated audit trail;⁹ (5) an annual requirement that the CAT LLC financials be (i) in compliance with GAAP, (ii) be audited

burdens associated with the CAT NMS Plan Notice were submitted under OMB number 3235-0671 which relates to the NMS Plan required to be filed under Rule 613.

³ See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016), available at <https://www.sec.gov/rules/sro/nms/2016/34-79318.pdf> (“CAT NMS Plan Order”).

⁴ The “Effective Date” is the date the Commission approved the CAT NMS Plan, which is November 15, 2016. See *id.*

⁵ See CAT NMS Plan Order, *supra* note 3, at 84940.

⁶ See 17 CFR 242.613.

⁷ See 17 CFR 242.613(c)(1), (c)(5), (c)(6), (c)(7).

⁸ See 17 CFR 242.613(e)(7).

⁹ See 17 CFR 242.613(f).

by an independent public accounting firm, and (iii) be made publicly available;¹⁰ and (6) a requirement that each Participant conduct background checks for its employees and contractors that will use the CAT System.¹¹

This Notice addresses both the ongoing information collection requirements noted above and the remaining information collection requirements noticed in the CAT NMS Plan Notice and certain additional information collections of the CAT NMS Plan Order, which are: (1) a one-time report from the Participants discussing the feasibility and advisability of allowing Industry Members to bulk download the Raw Data that it has submitted to the Central Repository;¹² (2) a one-time assessment of the nature and extent of errors in the Customer information submitted to the Central Repository and whether the correction of certain data fields over others should be prioritized from the Participants;¹³ (3) a one-time report on the impact of tiered fees on market liquidity, including an analysis of the impact of the tiered-fee structure on Industry Members provision of liquidity from the Participants;¹⁴ and (4) an assessment of the projected impact of any Material Systems Change on the Maximum Error Rate, prior to the implementation of such Material Systems Change from the Participants;¹⁵

The Commission believes that the CAT NMS Plan, once fully implemented, will improve the quality of the data available to regulators in four areas that affect the ultimate effectiveness of core regulatory efforts—completeness, accuracy, accessibility and timeliness.¹⁶ The improvements in these data qualities would substantially improve regulators’ ability to perform analysis and reconstruction of market events, and market analysis and research to inform policy decisions, as well as perform regulatory activities, in particular market surveillance, examinations, investigations, and other enforcement functions.

¹⁰ *Id.*

¹¹ *Id.* The Commission believes that these background checks are necessary to ensure that only authorized and qualified persons are using the CAT System.

¹² *Id.* at 84941.

¹³ *Id.*

¹⁴ *Id.* at 84941–84942.

¹⁵ *Id.* at 84942. The Commission believes that four assessments would be filed annually.

¹⁶ See CAT NMS Plan Order, *supra* note 3, at 45727 (discussing four “qualities” of trade and order data that impact the effectiveness of core Participant and Commission regulatory efforts: accuracy, completeness, accessibility, and timeliness).

The Commission estimates that 1375 respondents¹⁷ will require an aggregate total of approximately 4,931,332 hours per year to comply with the collection of information. The Commission further estimates that the aggregate cost to comply with the collection of information will be approximately \$328,662,911 per year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: www.reginfo.gov. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Written comments and recommendations for the proposed information collection should be sent by August 24, 2023 to (i) www.reginfo.gov/public/do/PRAMain and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov.

Dated: July 19, 2023.

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97946; File No. SR–BX–2023–016]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Field-Programmable Gate Array Technology as an Optional Delivery Mechanism for BX TotalView

July 19, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on July 11, 2023, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule

change as described in Items I, II, and III below, which Items have been prepared by 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 set fees for the purchase of field-programmable gate array (“FPGA”) technology as an optional delivery mechanism for BX TotalView.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, 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

The purpose of the proposed rule change is to establish a fee schedule for the purchase of field-programmable gate array (“FPGA”) technology as an optional delivery mechanism for BX TotalView.³ This follows a recently-filed proposal to offer FPGA technology as an optional delivery mechanism for BX TotalView.⁴

³ This Proposal was initially filed by the Exchange on May 23, 2023. See Securities Exchange Act Release No. 97627 (May 31, 2023), 88 FR 37112 (June 6, 2023) (SR–BX–2023–014). On July 7, 2023, that filing was withdrawn and replaced by the instant filing. The instant filing provides additional information regarding the Proposal, but does not change it in substance.

⁴ See SR–BX–2023–011 (“A proposal to offer field-programmable gate array (‘FPGA’) technology as an optional delivery mechanism for BX TotalView.”), available at <https://listingcenter.nasdaq.com/rulebook/BX/rulefilings>. A proposal to establish a fee schedule for the use of FPGA technology for the Phlx exchange is being filed concurrently with this proposal.

FPGA

FPGA is a hardware-based delivery mechanism that utilizes an integrated circuit that is programmed to reduce “jitter”—a technical term of art referring to the deviation in amplitude, phase timing or width of a signal pulse in a digital signal—that will allow data to be processed in a more predictable, or “deterministic,” fashion. Reducing jitter can be useful for certain customers due to the variability in the timing of market data packets transmitted by an exchange over the course of the trading day. Orders, and therefore market data packets, typically accumulate in larger numbers at the beginning and end of the trading day, as well as during the peaks of activity that occur at random intervals during the day. These bursts of activity may alter the time interval between the delivery of data packets because software processes information at variable rates depending on load to the system. Processing times may increase at higher loads, and decrease during periods of lesser activity. FPGA technology processes data packets at a constant time interval, without regard to the number of packets processed. Higher levels of determinism means less variable queuing, which improves the predictability of data transfer, particularly during times of peak market activity.

The benefits of determinism depend on the use case of the customer, as well as the customer’s specific system architecture.

Higher determinism does not necessarily mean lower latency. The concepts of determinism and latency are related, but distinct. Determinism refers to predictability in the rate of data transmission; latency refers to the time required to process data or transport it from one location to another. Low latency is not necessarily deterministic, and higher determinism does not necessarily mean low latency. As such, use of FPGA technology will increase determinism, but does not guarantee lower latency at all times.⁵

Among customers that seek a higher degree of determinism, the benefits of FPGA technology varies, as FPGA technology is one possible solution, among a catalog of possible solutions, for increasing the consistency and predictability of message throughput over the course of the trading day. Some customers are able to adequately control jitter without using FPGA technology; other customers address jitter using specialized software, coding or other

⁵ Because software can be impacted by workload, FPGA has lower latency during periods of peak activity.

¹⁷ The Commission notes that 25 Participants (the 24 national securities exchanges and one national securities association) and 1,350 broker-dealers are subject to information collection requirements pursuant to Rule 613 and the CAT NMS Plan.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.