

Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2012-065 and should be submitted on or before June 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67103; File No. SR-BX-2012-038]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation Date for Its Excess Order Fee

June 4, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 24, 2012, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes a rule change to delay the implementation date for its Excess Order Fee. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com/>, at the Exchange's principal office, 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 recently submitted a proposed rule change to introduce an Excess Order Fee,<sup>3</sup> aimed at reducing inefficient order entry practices of certain market participants that place excessive burdens on the systems of BX and its members and that may negatively impact the usefulness and life cycle cost of market data. In order to provide market participants with additional time to enhance their efficiency so as to avoid the fee, BX is delaying the implementation date of the fee until July 2, 2012.

###### 2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Section 6(b)(5) of the Act,<sup>5</sup> in particular, in that the proposal 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

regulating, clearing, settling, processing information with respect to, and 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. Specifically, BX believes that delaying the implementation date of the Excess Order Fee will provide market participants with additional time to enhance the efficiency of their systems, and that implementation of the fee on July 2, 2012 will benefit investors and the public interest by encouraging more efficient order entry practices by all market participants.

##### 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. Specifically, BX believes that the fee will constrain market participants from pursuing certain inefficient and potentially abusive trading strategies. To the extent that this change may be construed as a burden on competition, BX believes that it is appropriate in order to further the purposes of Section 6(b)(5) of the Act.<sup>6</sup> BX further believes that the proposed delay of one month in the implementation of the fee will not have any effect on competition.

##### C. Self-Regulatory Organization's Statement on Comments Received From Members, Participants, or Others

Written comments were neither solicited nor 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)(i) of the Act.<sup>7</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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.

<sup>3</sup> Securities Exchange Act Release No. 67007 (May 17, 2012), 77 FR 30579 (May 23, 2012) (SR-BX-2012-033).

<sup>4</sup> 15 U.S.C. 78f.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(a)(i) [sic].

<sup>38</sup> 17 CFR 200.30-3(a)(12).

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

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

#### IV. Solicitation of Comments

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

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2012-038 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-BX-2012-038. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-2012-038, and should be submitted on or before June 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-67101; File No. SR-NYSEArca-2012-48]**

#### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31(h) To Add a PL Select Order Type**

June 4, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on May 22, 2012, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(h) to add a PL Select Order type. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

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

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

##### **1. Purpose**

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(h) to add a PL Select Order type.

Pursuant to NYSE Arca Equities Rule 7.31(h)(4), a Passive Liquidity ("PL") Order is an order to buy or sell a stated amount of a security at a specified, undisplayed price. The PL Order was initially designed to attract liquidity to the Exchange by permitting market participants to express their trading interest more accurately than was possible with other order types available at the time.<sup>3</sup> PL Orders were also designed to offer potential price improvement to incoming marketable orders submitted by any User.<sup>4</sup>

The Exchange believes that it is appropriate to provide Users who enter PL Orders with the flexibility to be able to select what type of contra-side interest that would interact with their PL Order. The Exchange believes that by restricting specified contra-side interest from interacting with PL Orders, Users may be incentivized to enter larger-sized, more aggressively-priced orders. In particular, the Exchange believes that market participants interested in providing liquidity that would offer potential price improvement should be provided the option to select that their "provider" interest would not interact with pure "taker" interest, i.e., interest that will execute immediately with interest at the Exchange without ever resting on the Exchange's order book.

The Exchange also believes that it would be able to attract larger-sized, more aggressively priced PL Orders if the User has the choice not to execute against contra-side orders that are larger sized than the resting PL Order. Because large-sized orders are more likely to trade at multiple price points, such an incoming order would likely sweep up the PL order as it executes through multiple price points. In such scenario, the PL Order would not serve its primary function of providing price improvement, but would instead be an execution among many that would ultimately be at an inferior price. The Exchange believes that if Users entering PL Orders can select not to trade with an incoming order that is larger in size,

<sup>3</sup> See Securities Exchange Act Release No. 54511 (September 26, 2006), 71 FR 58460, 58461 (October 3, 2006) (SR-PCX-2005-53).

<sup>4</sup> *Id.* The term "User" means any ETP Holder or Sponsored Participant who is authorized to obtain access to the NYSE Arca Marketplace pursuant to Rule 7.29. See NYSE Arca Equities Rule 1.1(yy).

<sup>8</sup> 17 CFR 200.30-3(a)(12).