

necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather would delete unnecessary rule commentary in the Exchange's rulebook, thereby reducing confusion and making the Exchange's rules easier to understand and navigate.

*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<sup>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup> 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 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.<sup>19</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to delete unnecessary and obsolete rule text and therefore make the Exchange's rules easier to understand and navigate. Therefore, the Commission designates the proposed rule change as operative upon filing.<sup>20</sup>

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2013-22 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-NYSE-2013-22. 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 Section, 100 F Street NE., Washington, DC 20549. Copies of the filing will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://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-NYSE-

2013-22 and should be submitted on or before April 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69232; File No. SR-BX-2013-013]

**Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving a Proposed Rule Change for the Permanent Approval of a Pilot Program To Receive Inbound Orders Routed by NASDAQ Execution Services LLC From PSX**

March 25, 2013.

**I. Introduction**

On February 6, 2013, NASDAQ OMX BX, Inc. ("Exchange" or "BX") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change requesting permanent approval of the Exchange's pilot program that permits the BX Equities Market (the "System") to accept inbound orders routed by NASDAQ Execution Services LLC ("NES") from the NASDAQ OMX PSX facility ("PSX") of NASDAQ OMX PHLX LLC ("PHLX"). The proposed rule change was published for comment in the **Federal Register** on February 14, 2013.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

**II. Background**

BX Rule 2140(a) prohibits the Exchange or any entity with which it is affiliated from, directly or indirectly, acquiring or maintaining an ownership interest in, or engaging in a business venture with, an Exchange member or an affiliate of an Exchange member in the absence of an effective filing under Section 19(b) of the Act.<sup>4</sup> NES is a

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>20</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>21</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.

<sup>3</sup> See Securities Exchange Act Release No. 68890 (February 8, 2013), 78 FR 10674 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b). BX Rule 2140(a) also prohibits a BX member from being or becoming an affiliate of BX, or an affiliate of an entity affiliated with BX, in the absence of an effective filing under Section 19(b). See BX Rule 2140(a)(2).

registered broker-dealer that is a member of the Exchange, and currently provides to members of the Exchange optional routing services to other markets.<sup>5</sup> NES is owned by NASDAQ OMX Group, Inc. (“NASDAQ OMX”), which also owns three registered securities exchanges—the Exchange, the NASDAQ Stock Market LLC (“NASDAQ”) and PHLX.<sup>6</sup> Thus, NES is an affiliate of these exchanges.<sup>7</sup> Absent an effective filing, BX Rule 2140(a) would prohibit NES from being a member of the Exchange. The Commission initially approved NES’s affiliation with BX in connection with BX OMX’s acquisition of BX,<sup>8</sup> and NES currently performs certain limited activities for the Exchange.<sup>9</sup>

On September 30, 2011, BX filed a proposed rule change for the System to accept inbound orders routed from PSX on a pilot basis subject to certain limitations and conditions.<sup>10</sup> On February 6, 2013, the Exchange filed the instant proposal to allow the Exchange to accept such orders routed inbound by NES from PSX on a permanent basis subject to certain limitations and conditions.<sup>11</sup>

### 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 exchange.<sup>12</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section

6(b)(1) of the Act,<sup>13</sup> which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>14</sup> which requires, among other things, that the rules of a national securities exchange be 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, and 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. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange of which it is a member, the Exchange previously proposed, and the Commission approved, limitations and conditions on NES’s affiliation with the Exchange.<sup>15</sup> Also recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to NES’s affiliation with the Exchange to permit the Exchange to accept inbound orders that NES routes in its capacity as a facility of PSX on a pilot basis.<sup>16</sup> The Exchange has proposed to permit BX to accept inbound orders that NES routes in its capacity as a facility of PSX on a permanent basis, subject to the same limitations and conditions of this pilot:

- First, the Exchange and the Financial Industry Regulatory Authority (“FINRA”) will maintain a Regulatory Contract, as well as an agreement pursuant to Rule 17d–2 under the Act (“17d–2 Agreement”).<sup>17</sup> Pursuant to the Regulatory Contract and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NES’s compliance with certain BX rules.<sup>18</sup> Pursuant to the Regulatory Contract, however, the Exchange retains ultimate responsibility for enforcing its rules with respect to NES.

- Second, FINRA will monitor NES for compliance with BX’s trading rules, and will collect and maintain certain related information.<sup>19</sup>

- Third, FINRA will provide a report to the Exchange’s chief regulatory officer (“CRO”), on a quarterly basis, that: (i) Quantifies all alerts (of which the Exchange or FINRA is aware) that identify NES as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NES as a participant that has potentially violated Commission or BX rules.

- Fourth, the Exchange has in place BX Rule 2140(c), which requires NASDAQ OMX, as the holding company owning both the Exchange and NES, to establish and maintain procedures and internal controls reasonably designed to ensure that NES does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange’s systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange.

The Exchange stated that it has met all the above-listed conditions. By meeting such conditions, the Exchange believes that it has set up mechanisms that protect the independence of the Exchange’s regulatory responsibility with respect to NES, and has

<sup>17</sup> 17 CFR 240.17d–2.

<sup>18</sup> NES is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

<sup>19</sup> Pursuant to the Regulatory Contract, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of PSX routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission’s Office of Compliance Inspections and Examinations. See Notice, *supra* note 3, at 10675 n.12.

<sup>5</sup> See BX Rule 4758. See also Notice, *supra* note 3, at 10674.

<sup>6</sup> See Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01) (order approving NASDAQ OMX’s acquisition of BX) (“BX Acquisition Order”);

<sup>7</sup> See *id.* See also Notice, *supra* note 3, at 10674. See also, Securities Exchange Act Release No. 65514 (October 7, 2011), 76 FR 63969 (October 14, 2011) (SR–BX–2011–066).

<sup>8</sup> See BX Acquisition Order, *supra* note 6, at 46944.

<sup>9</sup> See, e.g., BX Rule 4758 (governing order routing by BX). See also Securities Exchange Act Release Nos. 65470 (October 3, 2011), 76 FR 62489 (October 7, 2011) (SR–BX–2011–048).

<sup>10</sup> See Securities Exchange Act Release No. 65514 (October 7, 2011), 76 FR 63969 (October 14, 2011) (SR–BX–2011–066) (notice of proposed rule change to allow the System to accept inbound orders from the NASDAQ OMX BX Equities Market of BX on a one-year pilot basis). See also, Securities Exchange Act Release No. 67995 (October 5, 2012), 77 FR 62292 (October 12, 2012) (extending one-year pilot for an additional six-month period).

<sup>11</sup> See Notice, *supra* note 3.

<sup>12</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(1).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> See *supra*, note 6, 73 FR at 46944. See also, Notice, *supra* note 3, at 10675 n.8 and accompanying text. In addition, the Exchange has authority to accept inbound orders that NES routes in its capacity as a facility of NASDAQ, subject to certain limitations and conditions. See *supra* note 6, 73 FR at 46944.

<sup>16</sup> See Notice, *supra* note 3, at 10675.

demonstrated that NES cannot use any information advantage it may have because of its affiliation with the Exchange.<sup>20</sup>

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.<sup>21</sup> Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit NES, in its capacity as a facility of PSX, to route orders inbound to the Exchange on a permanent basis instead of a pilot basis, subject to the limitations and conditions described above.<sup>22</sup>

The Exchange has proposed four ongoing conditions applicable to NES's routing activities, which are enumerated above. The Commission believes that these conditions will mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of NES,<sup>23</sup> combined with FINRA's monitoring of NES's

compliance with the Exchange's rules and quarterly reporting to the Exchange, will help to protect the independence of the Exchange's regulatory responsibilities with respect to NES. The Commission also believes that the Exchange's Rule 2140(a) is designed to ensure that NES cannot use any information advantage it may have because of its affiliation with the Exchange.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change (SR-BX-2013-013) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69234; File No. SR-MAIX-2013-15]

### Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Limit Up Limit Down Functionality

March 25, 2013.

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 March 25, 2013, Miami International Securities Exchange LLC ("MIAX" 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 Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 530, Limit Up-Limit Down ("LULD"), to provide for how the Exchange proposes to treat option orders, market-making quoting obligations, openings, priority quotes (as defined below), systemic changes,

Trading Pauses and openings following a Trading Pause in response to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, as it may be amended from time to time (the "Plan"). The proposed rules establish procedures to address extraordinary volatility in NMS Stocks and outlines MIAX's LULD processing for options overlying such NMS Stocks. Rule 530, as proposed to be amended, will be effective on a one year pilot basis beginning on the date of implementation of the Plan.

The text of the proposed rule change is provided in *Exhibit 5*.<sup>3</sup> The text of the proposed rule change is also available on the Exchange's Web site at [http://www.miaxoptions.com/filter/wotitle/rule\\_filing](http://www.miaxoptions.com/filter/wotitle/rule_filing), at MIAX'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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to amend MIAX Rule 530 to provide for how the Exchange proposes to treat options orders, market-making quoting obligations, openings, priority quotes (as defined below), systemic changes, Trading Pauses, and openings following a Trading Pause in response to the Plan.

###### Background

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period, i.e., the "flash crash," the equities exchanges and The Financial Industry Regulatory Authority ("FINRA") have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility.

<sup>3</sup> The Commission notes that Exhibit 5 is attached to the filing, not to this notice.

<sup>20</sup> See Notice, *supra* note 3, at 10675.

<sup>21</sup> See, e.g., Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006) (order approving NASDAQ's proposal to adopt NASDAQ Rule 2140, restricting affiliations between NASDAQ and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-Amex-2008-62 and SR-NYSE-2008-60) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR-ISE-2009-85) (order approving the purchase by ISE Holdings of an ownership interest in Direct Edge Holdings LLC); 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR-NYSE-2008-120) (order approving a joint venture between NYSE and BIDS Holdings L.P.); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10-182) (order granting the exchange registration of BATS Exchange, Inc.); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10-194 and 10-196) (order granting the exchange registration of EDGX Exchange, Inc. and EDGA Exchange, Inc.); and 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10-198) (order granting the exchange registration of BATS-Y Exchange, Inc.).

<sup>22</sup> The Commission notes that these limitations and conditions are consistent with those previously approved by the Commission for the Exchange. See, e.g., Securities Exchange Act Release Nos. 67256 (June 26, 2012) 77 FR 39277 (July 2, 2012) (SR-BX-2012-030); and 64090 (March 17, 2011), 76 FR 16462 (March 23, 2011) (SR-BX-2011-007).

<sup>23</sup> This oversight will be accomplished through the 17d-2 Agreement between FINRA and the Exchange and the Regulatory Contract. See Notice, *supra* note 3, at 10675 n.10 and accompanying text.

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</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.