

in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, Phlx must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, Phlx believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, Phlx is introducing a new pricing programs [sic] to accompany changes to PSX's market structure. These changes were necessitated by the failure of PSX's former price/size execution algorithm to garner significant market share, and therefore reflect an effort to increase PSX's competitiveness. If the changes are unattractive to market participants, it is likely that PSX will fail to increase its share of executions. Conversely, because the proposed changes introduce new pricing incentive programs and reflect overall reductions in fees, if they are successful in attracting additional order flow, they will reduce costs to market participants and possibly encourage competitive responses from other trading venues. Accordingly, Phlx believes that the proposed changes will promote greater competition, but will not impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

Phlx further believes that the process for selection of LMMs does not burden competition. Although only one market maker may serve as the LMM for a particular Qualified Security at a given time, LMMs will be assigned on the basis of a competitive bidding process that relies on objective criteria. The process for challenging incumbent LMMs and reassigning Qualified Securities for which an LMM is not achieving the program's requirements will provide further opportunities for competition among market makers to receive designations under the program. Moreover, depending on the outcome of the bidding process, assignments of Qualified Securities may spread across a range of market makers, so as to allow the financial benefits of the program to be dispersed among those market makers that are willing and able to

achieve the goals of the program. Thus, the Exchange believes that the program will enhance competition among market makers.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change 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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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, as amended, 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-Phlx-2013-52 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-Phlx-2013-52*. 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 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-Phlx-2013-52 and should be submitted on or before June 18, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-69607; File No. SR-BX-2013-029]**

**Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving Proposed Rule Change Relating to Board of Director Qualifications**

May 20, 2013.

On March 27, 2013, NASDAQ OMX BX, Inc. ("BX" or "Exchange") 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 to amend Article IV, Section 4.3 of the Exchange's By-Laws ("BX By-Laws") with respect to the composition of the Exchange's Board of Directors ("BX Board").<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on April 8, 2013.<sup>4</sup> The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is

<sup>18</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. 69280 (April 2, 2013), 78 FR 20971.

<sup>4</sup> See *id.*

consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>5</sup> and, in particular, the requirements of Sections 6(b)(3)<sup>6</sup> and 6(b)(5) of the Act.<sup>7</sup> The proposal will reduce from three to one the minimum number of Public Directors<sup>8</sup> that will be required to be included in the calculation of Non-Industry Directors<sup>9</sup> for the purpose of determining the number of Non-Industry Directors that may serve on the BX Board. The Exchange proposed this change in light of the cessation in 2012 by the Boston Options Exchange LLC (“BOX”) of its operations as an options trading facility of the Exchange<sup>10</sup> and the termination of the Regulatory Services Agreement (“RSA”) between BX and BOX.<sup>11</sup> To accommodate BOX when BOX was a BX facility, three Public Directors were required to be included in the calculation of the number of Non-Industry Directors on the BX Board.<sup>12</sup> The Commission notes that, although only one Public Director must be included in the composition of Non-Industry Directors as a result of the proposed rule change, the requirement in BX By-Law Article IV, Section 4.3 that the number of Non-Industry

Directors must equal or exceed the sum of Industry Directors<sup>13</sup> and Member Representative Directors<sup>14</sup> will continue to be met. Moreover, the Commission notes that, as a result of the proposed rule change, the BX Board composition requirement regarding Public Directors now will be similar to the board composition requirements of NASDAQ OMX PHLX LLC (“Phlx”) and The NASDAQ Stock Market LLC (“NASDAQ”), both of which require that the number of Non-Industry Directors must include at least one Public Director.<sup>15</sup> In addition, the Commission notes that the BX Board will continue to have three Public Directors, because the BX Board still will need to have three Public Directors available to serve on its Regulatory Oversight Committee, as required by BX By-Law Article IV, Section 4.13. For the foregoing reasons, the Commission

believes that the proposed rule change is consistent with the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-BX-2013-029) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69614; File No. SR-EDGX-2013-17]

### Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to the EDGX Exchange, Inc.’s Routing Broker Dealer, as Described in EDGX Rule 2.12(b)

May 21, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 16, 2013, EDGX Exchange, Inc. (the “Exchange” or “EDGX”) 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 make permanent the existing pilot program that permits the Exchange’s inbound router, as described in Rule 2.12(b), to receive inbound routes of equities orders through Direct Edge ECN LLC d/b/a DE Route (“DE Route”), the Exchange’s routing broker dealer, from EDGA Exchange, Inc. (“EDGA”). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange’s Internet Web site at [www.directedge.com](http://www.directedge.com), at the Exchange’s principal office, and at the Public Reference Room of the Commission.

<sup>5</sup> 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).

<sup>6</sup> 15 U.S.C. 78f(b)(3).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> Pursuant to BX By-Law Article I(gg), a Public Director is a Director who has no material business relationship with a broker or dealer, the Corporation (*i.e.*, the Exchange) or its affiliates, or FINRA.

<sup>9</sup> Pursuant to BX By-Law Article I(bb), a Non-Industry Director is a Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry Director.

<sup>10</sup> BOX was a facility of the Exchange under Section 39(a)(2) of the Act. See Securities Exchange Act Release Nos. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (SR-BSE-2003-17); 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (SR-BSE-2003-04) (“BOXR Order”); and 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2002-15). See also Release No. 58324; 73 FR 46936 (August 7, 2008) (File Nos. SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01) (“Order Approving the Acquisition of the Boston Stock Exchange, Incorporated by The NASDAQ OMX Group, Inc.”).

<sup>11</sup> The RSA specified, among other matters, that BX would terminate its responsibility for fulfilling certain obligations and cease performing certain regulatory functions as of the effective date of June 1, 2012, or sooner if BOX satisfied all of the conditions required for BOX to operate as a national securities exchange.

<sup>12</sup> See Securities Exchange Act Release No. 34-58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (File Nos. SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01); see also Securities Exchange Act Release No. 67009 (May 17, 2012), 77 FR 30566 (May 23, 2012) (SR-BX-2012-036).

<sup>13</sup> Pursuant to BX By-Law Article I(t), an Industry Director is a Director (excluding any two officers of the Corporation, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the “Staff Directors”)), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute twenty percent or more of the professional revenues received by the Director or twenty percent or more of the gross revenues received by the Director’s firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns fifty percent or more of the voting stock of a broker or dealer, and such services relate to the director’s, officer’s, or employee’s professional capacity and constitute twenty percent or more of the professional revenues received by the Director or twenty percent or more of the gross revenues received by the Director’s firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Corporation or any affiliate thereof or to FINRA or has had any such relationship or provided any such services at any time within the prior three years.

<sup>14</sup> Pursuant to BX By-Law Article I(x), a Member Representative Director is a Director who has been elected by the stockholders after having been nominated by the Member Nominating Committee or voted upon by Exchange Members pursuant to the BX By-Laws (or elected by the stockholders without such nomination or voting in the case of the Member Representative Directors elected pursuant to Article IV, Section 4.3(b)). A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange Member.

<sup>15</sup> See Phlx By-Law Article III, Section 3-2(a) and NASDAQ By-Law Article III, Section 2(a).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.