

(9) A Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser, consistent with Commission guidance.

(10) The Adviser has implemented policies and procedures to assess the creditworthiness of prospective and existing derivatives counterparties. Derivatives transactions are conducted only with approved counterparties with whom appropriate documentation is executed. Exposure to counterparties is independently and actively monitored. Where appropriate, collateral is posted and actively managed to reduce counterparty credit exposure.

(11) Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

(12) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Funds.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>30</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>31</sup> that the proposed rule change (SR-NYSEArca-2013-138), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014-03569 Filed 2-18-14; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71526; File No. SR-BX-2014-009]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Amend the Fee Schedule Under Exchange Rule 7018(a) With Respect to Transactions in Securities Priced at \$1 per Share or More

February 12, 2014.

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 February 3, 2014, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule under Exchange Rule 7018(a) with respect to transactions in securities priced at \$1 per share or more. The Exchange will implement the proposed rule change on February 3, 2014.

The text of the proposed rule change is also available on the Exchange's Web site at <http://nasdaqomxbx.cchwallstreet.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 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 Exchange is proposing several changes to its fees for certain orders that execute at the New York Stock Exchange ("NYSE"). Additionally, the Exchange is proposing to modify the tier regarding credit for entering order [sic] that accesses liquidity in the BX Equities System.

Currently, the Exchange charges members for BSTG (includes BSKN orders since it is a form of BSTG), BSCN (includes BSKP orders since it is a form of BSCN) and BTFY orders that execute at NYSE \$0.0025 per share executed. The Exchange is proposing to increase the charge assessed for all such orders executed at NYSE to \$0.0030 per share.

Also currently, the Exchange charges members for BMOP orders that execute at NYSE \$0.0027 per share executed. The Exchange is proposing to increase the charge assessed for such orders executed at NYSE to \$0.0035 per share.

The Exchange is also proposing to modify a tier with respect to the rebates it pays for orders that access liquidity in securities priced at \$1 or more.

Currently, a member will receive a credit of \$0.0013 per share executed when accessing liquidity<sup>3</sup> if the member (i) has a daily average volume of liquidity accessed in all securities during the month of 6 million or more shares through one or more of its BX Equities System market participant identifiers ("MPIDs"), and (ii) adds and/or removes liquidity of 40,000 or more contracts per day during the month through BX Options. The Exchange proposes to reduce the 40,000 or more contracts per day to 30,000 or more contracts per day.

The tier recognizes the prevalence of trading in which members simultaneously trade different asset classes within the same strategy. Because cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other, the Exchange believes that a pricing incentive that encourages market participant activity in BX Options will also support price discovery and liquidity provision in the BX Equities System.

##### 2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions

<sup>30</sup> 15 U.S.C. 78f(b)(5).

<sup>31</sup> 15 U.S.C. 78s(b)(2).

<sup>32</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> As with other rebate tiers, the tier does not apply to an order that executes against a midpoint pegged order, because the accessing order receives price improvement.

of Section 6 of the Act,<sup>4</sup> in general, and Sections 6(b)(4) and (b)(5) of the Act,<sup>5</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the Exchange operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The change with respect to the tier for members active in both the BX Equities System and BX Options is reasonable because it reflects the availability of a price reduction for members that support liquidity on both markets. The change is consistent with an equitable allocation of fees because the pricing tier requires significant levels of liquidity provision, which benefits all market participants, and because activity in BX Options also supports price discovery and liquidity provision in the BX Equities System due to the increasing propensity of market participants to be active in both markets and the influence of each market on the pricing of securities in the other. Moreover, making one of the provisions of the tier easier to qualify for by reducing from 40,000 or more to 30,000 or more contracts per day during the month through BX options, has the potential to reduce fees for a wider range of market participants by introducing a new means of qualifying for a lower fee for providing liquidity. The change is not unreasonably discriminatory because market participants may qualify for a still lower fee without participating in BX Options through participation in BX's Qualified Liquidity Provider program.

The proposed change to fees for certain orders that execute at NYSE are reasonable because they reflect a modest increase to such fees. Specifically, the proposed change is reasonable because it reflects a modest increase of \$0.0005 per share, from \$0.0025 per share to \$0.0030 per share, in the charge assessed to members executing at NYSE of BSTG, BSCN and BTFY orders. The proposed change is also reasonable because it reflects a modest increase of \$0.0008 per share, from \$0.0027 per share to \$0.0035 per share, in the charge assessed to members executing at NYSE of BMOP orders. In addition, the change is equitable and not unfairly discriminatory because it affects similarly situated members in the same way.

These fee changes are consistent with an equitable allocation of fees and not unfairly discriminatory because the

increase will maintain the same fee being assessed to members executing at NYSE for BSTG, BSCN and BTFY orders. The fee increase for members executing at NYSE for BMOP orders is an equitable allocation of fees and not unfairly discriminatory because BMOP<sup>6</sup> is a premium routing option and the fee increase is modest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange 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.<sup>7</sup> BX notes that it operates 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, BX 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, BX believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, the increases with respect to certain orders coupled with the easier to qualify for pricing tier for members active in the Exchange's cash equities and options markets enhances the Exchange's competitiveness by reducing fees for some and raising fees modestly for others. Thus, although price increases, one of the proposed rule changes provides incentives for behavior that may allow members to reduce their trading costs. Moreover, because there are numerous competitive alternatives to the use of the Exchange, it is likely that BX will lose market share as a result of the changes if they are unattractive to market participants. Accordingly, BX does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their

<sup>6</sup> BX Rule 4758(a)(1)(A)(iii) defines BMOP as a routing option under which orders route only to protected quotations and only for displayed size. If shares remain unexecuted after routing, they are posted to the book. Once on the book, should the order subsequently be locked or crossed by another market center, the system will not route the order to the locking or crossing market center.

<sup>7</sup> 15 U.S.C. 78f(b)(8).

competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and paragraph (f) of Rule 19b-4<sup>9</sup> thereunder. 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.

### **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-2014-009 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-2014-009. 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

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

<sup>5</sup> 15 U.S.C. 78f(b)(4), (5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f).

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-BX-2014-009 and should be submitted on or before March 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014-03557 Filed 2-18-14; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71535; File No. SR-Phlx-2014-011]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ OMX PSX's Optional Anti-Internalization Functionality

February 12, 2014.

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 February 4, 2014, NASDAQ OMX PHLX LLC ("Phlx" 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 modify the optional anti-internalization

functionality of NASDAQ OMX PSX ("PSX").

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.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 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

Phlx is proposing to modify PSX's voluntary anti-internalization functionality to provide an additional option under that functionality. In addition, the proposed rule change contains certain clarifications to the text of the rule. Anti-internalization functionality is designed to assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act ("ERISA") that preclude and/or limit broker-dealers managing accounts governed by ERISA from trading as principal with orders generated for those accounts. The functionality can also assist market participants in avoiding execution fees that may result from the interaction of executable buy and sell trading interest from the same firm. Phlx notes that use of the functionality does not relieve or otherwise modify the duty of best execution owed to orders received from public customers. As such, market participants using anti-internalization functionality will need to take appropriate steps to ensure that public customer orders that do not execute because of the use of anti-internalization functionality ultimately receive the same execution price (or better) they would have originally obtained if execution of the order was not inhibited by the functionality.

Currently, market participants may apply anti-internalization logic to all quotes/orders entered through a particular MPID, or to all orders entered through a particular order entry port, to which a unique group identification modifier is then appended. In other words, the logic may be applied on an MPID-by-MPID, or on a port-by-port basis.<sup>3</sup> Currently, two forms of anti-internalization logic may be applied: (i) If quotes/orders are equivalent in size, both quotes/orders will be cancelled, or if they are not equivalent in size, the smaller will be cancelled and the size of the larger will be reduced by the size of the smaller; or (ii) regardless of the size of the quotes/orders, the oldest quote/order will be cancelled in full. The applicable logic may be applied to an entire MPID, or alternatively, different logic may be applied to different order entry ports under a particular MPID.<sup>4</sup>

In response to member input, the proposed rule change will add an additional form of anti-internalization logic that a market participant could choose to apply, under which the most recent quote/order would be cancelled. As with the two existing forms of anti-internalization logic, the logic could be applied to an entire MPID, or to selected order entry ports under a particular MPID.<sup>5</sup> Phlx believes that the change will provide members with an additional tool for managing the book of orders that they submit to PSX and the associated execution costs.

###### 2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(5) of the Act<sup>7</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

<sup>3</sup> In the proposed rule change that introduced the ability to assign a group identification modifier with respect to anti-internalization processing, Phlx stated that the modifier may be assigned "at the port level." Securities Exchange Act Release No. 65869 (December 2, 2011), 76 FR 76793 (December 8, 2011) (SR-Phlx-2011-080). However, this level of specificity was not included in the text of Rule 3307. In addition, although the rule indicates that designation of functionality at the port level is an option available to the market participant, the rule does not make it clear that in order to make use of these options, market participants must use PSX's OUCH order entry protocol. Thus, the proposed rule change also adds additional specificity to the rule text with respect to these aspects of the anti-internalization functionality.

<sup>4</sup> With respect to this functionality also, participants wishing to make designations on the order port level must use the OUCH order entry protocol.

<sup>5</sup> *Id.*

<sup>6</sup> 15 U.S.C. 78f.

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

<sup>10</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.