

products on the same security to be priced in the same minimum price increments.

*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**

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 self-regulatory organization consents, the Commission will:

- (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 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-CBOE-2013-016 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-CBOE-2013-016. 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-CBOE-2013-016 and should be submitted on or before March 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-03386 Filed 2-13-13; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68890; File No. SR-BX-2013-013]

**Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change Requesting Permanent Approval of a Pilot Program To Receive Inbound Equities Orders From PSX Through NES**

February 8, 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 February 6, 2013, NASDAQ OMX BX, Inc. ("Exchange" or "BX") 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

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

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

The Exchange has filed a proposed rule change for the permanent approval of the Exchange's pilot program to permit the BX Equities Market ("System") to accept inbound orders routed by Nasdaq Execution Services LLC ("NES") from the NASDAQ OMX PSX facility of NASDAQ OMX PHLX LLC ("PHLX").

**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**

In conjunction with PHLX providing outbound routing services on PSX to all markets using its affiliated routing broker, NES,<sup>4</sup> BX proposed that NES be permitted to route orders from PHLX to the Exchange on a pilot basis, subject to certain limitations and conditions, as described below.<sup>5</sup> The current pilot program expires March 30, 2013.<sup>6</sup>

NES is a broker-dealer and member of NASDAQ, PHLX and BX. NES provides all routing functions for The NASDAQ Stock Market ("NASDAQ"), BX and PHLX. BX, NASDAQ, PHLX and NES are affiliates. Accordingly, the affiliate relationship between BX and NES, its member, raises the issue of an exchange's affiliation with a member of such exchange. Specifically, in connection with prior filings, the Commission has expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair competitive advantage and

<sup>4</sup> See Securities Exchange Act Release No. 65469 (October 3, 2011), 76 FR 62486 (October 7, 2011) (SR-PHLX-2011-108).

<sup>5</sup> See Securities Exchange Act Release No. 65514 (October 7, 2011), 76 FR 63969 (October 14, 2011) (SR-BX-2011-066).

<sup>6</sup> See Securities Exchange Act Release No. 67995 (October 5, 2012), 77 FR 62292 (October 12, 2012) (SR-BX-2012-066).

potential conflicts of interest between an exchange's self-regulatory obligations and its commercial interests.<sup>7</sup>

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>8</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 proposed, and the Commission approved,<sup>9</sup> NES's affiliation with the Exchange to permit the Exchange to accept inbound orders that NES routes in its capacity as a facility of NASDAQ, subject to the certain limitations and conditions. The Exchange now proposes to permit BX to accept inbound orders that NES routes in its capacity as a facility of PHLX on a permanent basis, subject to the limitations and conditions of this pilot:

- First, the Exchange and FINRA maintain a Regulatory Contract, as well as an agreement pursuant to Rule 17d-2 under the Act ("17d-2 Agreement").<sup>10</sup> Pursuant to the Regulatory Contract and the 17d-2 Agreement, FINRA is allocated regulatory responsibilities to review NES's compliance with certain Exchange rules.<sup>11</sup> Pursuant to the Regulatory Contract, however, BX retains ultimate responsibility for enforcing its rules with respect to NES.
- Second, FINRA monitors NES for compliance with the Exchange's trading rules, and collects and maintains certain related information.<sup>12</sup>

<sup>7</sup> See Securities Exchange Act Release Nos. 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008) (SR-NASDAQ-2008-098); and 62736 (August 17, 2010), 75 FR 51861 (August 23, 2010) (SR-NASDAQ-2010-100).

<sup>8</sup> See Securities Exchange Act Release No. 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) ("Order approving the Acquisition of the Boston Stock Exchange, Incorporated by The NASDAQ OMX Group, Inc.").

<sup>9</sup> *Id.*

<sup>10</sup> 17 CFR 240.17d-2.

<sup>11</sup> NES is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

<sup>12</sup> Pursuant to the Regulatory Contract, both FINRA and the Exchange collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of PHLX routing orders to BX) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA retain these records in an easily accessible

- Third, FINRA provides a report to the Exchange's chief regulatory officer ("CRO"), on a quarterly basis, that: (i) Quantifies all alerts (of which 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 Exchange rules.

- Fourth, the Exchange has in place BX Rule 2140(c), which requires The NASDAQ OMX Group, Inc., 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 has met all the above-listed conditions. By meeting the above conditions, the Exchange has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, as well as demonstrate that NES cannot use any information advantage it may have because of its affiliation with the Exchange. Because the Exchange has met all the above-listed conditions, it now seeks permanent approval of this inbound routing relationship. The Exchange will continue to comply with the conditions 1-4 stated above.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>13</sup> in general, and with Sections 6(b)(5) of the Act,<sup>14</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, because the proposed rule change will

manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations.

<sup>13</sup> 15 U.S.C. 78f.

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

allow the Exchange to continue to receive inbound orders from NES, acting in its capacity as a facility of PHLX, in a manner consistent with prior approvals and established protections. The Exchange believes that these conditions establish mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, as well as ensure that NES cannot use any information it may have because of its affiliation with the Exchange to its advantage.

## 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. Permanent approval of the current pilot program does not raise any issues of intramarket competition because it involves inbound routing from an affiliated exchange. Nor does it result in a burden on competition among exchanges, because there are many competing exchanges that provide routing services, including through an affiliate.

## 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 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-2013-013 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-2013-013. 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 business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street NE., Washington, DC 20549-1090. Copies of the filing will also 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-2013-013 and should be submitted on or before March 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

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

[FR Doc. 2013-03397 Filed 2-13-13; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68878; File No. SR-EDGX-2013-07]

### **Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule**

February 8, 2013.

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 January 31, 2013, EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 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 amend its fees and rebates applicable to Members<sup>3</sup> of the Exchange pursuant to EDGX Rule 15.1(a) and (c). 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.

#### **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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 Exchange currently assesses a charge of \$0.0003 per share for Members' orders that yield Flag RY. The Exchange proposes to increase the rate it charges for Flag RY from \$0.0003 per share to \$0.0005 per share for Members' orders that route to the BATS Y-Exchange, Inc. ("BATS BYX") and add liquidity. This proposed change represents a pass through of the rate that Direct Edge ECN LLC (d/b/a DE Route) ("DE Route"), the Exchange's affiliated routing broker dealer, is charged for routing orders to BATS BYX that do not qualify for additional volume tiered discounts, as described in BATS BYX's fee filing with the Securities and Exchange Commission.<sup>4</sup>

The Exchange proposes to add Flag RT to its fee schedule for Members' orders that route to away trading centers using the ROUT routing strategy<sup>5</sup> and remove liquidity from the away exchange. The Exchange proposes to assess a fee of \$0.0030 per share for orders yielding Flag RT.

The Exchange proposes to add Flag RX to its fee schedule for Members' orders that route to away trading centers using the ROUX routing strategy<sup>6</sup> and remove liquidity from the away exchange. The Exchange proposes to assess a fee of \$0.0030 per share for orders yielding Flag RX.

The Exchange proposes to implement these amendments to its fee schedule on February 1, 2013.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>8</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange's proposed fee increase for Flag RY represents a pass-through rate where BATS BYX charges DE Route \$0.0005 per share for Members' orders that route to BATS BYX through DE Route and add liquidity, and then DE Route charges the Exchange \$0.0005 per share, and then the Exchange charges its

<sup>4</sup> See Securities Exchange Act Release No. 68665 (January 16, 2013), 78 FR 4946 (January 23, 2013) (SR-BYX-2013-001).

<sup>5</sup> As defined in Exchange Rule 11.9(b)(3)(c)(ii).

<sup>6</sup> As defined in Exchange Rule 11.9(b)(3)(c)(iii).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

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

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

<sup>3</sup> As defined in Exchange Rule 1.5(n).

<sup>15</sup> 17 CFR 200.30-3(a)(12).