

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6)<sup>7</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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or 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-2013-116 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-2013-116. 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 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-CBOE-2013-116, and should be submitted on or before January 8, 2014.

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. 34-71061; File No. SR-EDGA-2013-36]

### Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.12, Limitations of Liability

December 12, 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 December 6, 2013, EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend paragraph (d)(3) of Rule 11.12 to provide Members<sup>3</sup> with additional time

<sup>8</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> The term "Member" is defined as "any registered broker or dealer, or any person associated

within which to submit a written claim for compensation for "losses resulting directly from the malfunction of the Exchange's physical equipment, devices and/or programming or the negligent acts or omissions of its employees" ("Exchange Systems Issues").

In addition, the Exchange proposes to add a new paragraph (e) to Rule 11.12 to permit the Exchange, subject to certain conditions and limitations, to compensate Members for certain losses incurred in connection with orders or portions of orders routed by the Exchange through its affiliated routing broker-dealer, Direct Edge ECN LLC (d/b/a/DE Route) ("DE Route"), to Trading Centers<sup>4</sup> where such losses are claimed by the Member to have resulted directly from a malfunction of the physical equipment, devices and/or programming, or the negligent acts or omissions of the employees, of such Trading Centers ("Trading Center Systems Issue").

All of the changes described herein are applicable to Members.<sup>5</sup> 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.

with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act." See Exchange Rule 1.5(n).

<sup>4</sup> Rule 600(b)(78) of Regulation NMS, 17 CFR 242.600(b)(78), defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." See also Exchange Rule 2.11(a).

<sup>5</sup> A Member is any registered broker or dealer, or any person associated with a registered broker or dealer that has been admitted to membership in the Exchange.

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

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

*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 Rule 11.12 to: (i) Amend paragraph (d)(3) to provide Members with additional time within which to submit a written claim for compensation for Exchange Systems Issues; and (ii) add a new paragraph (e) permitting the Exchange, subject to certain conditions and limitations, to compensate Members for certain losses incurred in connection with orders or portions of orders routed by the Exchange through DE Route to Trading Centers where such losses are claimed by the Member to have resulted directly from a Trading Center Systems Issue.

Extension of Deadline To Submit Claims

Rule 11.12 currently states that, except as provided in subsection (d) of the Rule, the Exchange and its affiliates shall not be liable for any losses, damages, or other claims arising out of the Exchange or its use. Exchange Rule 11.12(d) provides a limited exception to its general limitation of liability that allows for the payment of compensation to Members for Exchange Systems Issues, subject to certain conditions. Subsection (d)(1) of Rule 11.12 states that for the aggregate of all claims made by all market participants related to the use of the Exchange during a single calendar month, the Exchange's payments under Rule 11.12 shall not exceed the larger of \$500,000, or the amount of the recovery obtained by the Exchange under any applicable insurance policy.

Currently, Rule 11.12(d)(3) requires Members to submit claims for compensation to the Exchange by 12:00 p.m. Eastern Time on the business day following the day on which the Member's use of the Exchange gave rise to the claim. The Exchange proposes to extend the deadline to submit a claim to no later than 4:00 p.m. Eastern Time, or 1:00 p.m. in the event of an early market close,<sup>6</sup> on the second business day following the day on which the Member's use of the Exchange gave rise to the claim. The Exchange believes that such expansion of time is reasonable given that Members often do not have

<sup>6</sup> Regular trading hours for days when the markets close early are typically 9:30 a.m. to 1:00 p.m. Eastern Time on the day after Thanksgiving and on Christmas Eve, unless Christmas Eve happens to fall on a weekend. See, e.g., Direct Edge Trading Notice #13-47: Market Holiday Reminder—Thanksgiving. <http://www.directedge.com/About/exchangegenotices/ViewNewsletterDetail.aspx?NewsletterID=1143>.

all the necessary information to substantiate all facts bearing on the accuracy and completeness of a claim within the required current timeframe under Rule 11.12(d). The expansion of time to submit compensation claims should, therefore, increase the likelihood that Members will be able to submit claims to the Exchange in a timely manner.

Reimbursement for Losses Sustained at Trading Centers

The Exchange also proposes to amend Exchange Rule 11.12 to add a new paragraph (e) that would authorize the Exchange, subject to express conditions and limitations, to compensate Members for losses relating to orders routed by the Exchange through DE Route to Trading Centers that the Member claims resulted directly from a Trading Center Systems Issue.

The Exchange believes that the proposed rule change will provide a remedy, not currently available under Rule 11.12, to Members that experience losses due to Trading Center Systems Issues after DE Route routed the Members' orders to a Trading Center that experienced such issues. The Exchange's authority to compensate Members for losses under Rule 11.12(d) only covers losses incurred as a result of Exchange Systems Issues, and does not currently extend to Trading Center Systems Issues. Even if the Exchange, via DE Route, were to seek and receive compensation on behalf of a Member from a Trading Center relating to a Trading Center Systems Issue, it does not currently have the authority to, in turn, pass such compensation along to the affected Member. The Exchange, therefore, proposes to add a new paragraph (e) to Rule 11.12 as an accommodation to Members, whereby the Exchange, via DE Route, would employ reasonable efforts to submit Members' claims for compensation on such Members' behalf to a Trading Center, and pass along to such Members the full amount of compensation, if any, obtained by DE Route from such Trading Center.<sup>7</sup>

Under proposed Rule 11.12(e), the Exchange would undertake to accept claims for losses submitted by Members, which claims must contain representations from such Members as to the accuracy of the information contained therein and that any losses incurred were the direct result of a

<sup>7</sup> DE Route is considered a facility of the Exchange, and, therefore, claims for compensation due to an Exchange Systems Issue experienced by DE Route must be submitted in accordance with Exchange Rule 11.12(d).

Trading Center Systems Issue.<sup>8</sup> The Exchange would employ reasonable efforts to submit such claims, via DE Route, to the Trading Center in question. If and to the extent that DE Route were to receive compensation from a Trading Center in response to a claim submitted on behalf of a Member, the full amount of such compensation would be passed through to the Member.

Proposed Rule 11.12(e)(1) would require that a Member seeking compensation for a loss due to a Trading Center Systems Issue must submit its claim to the Exchange in writing. The proposed rule would not include a specific deadline by which Members must submit claims for compensation. The Exchange notes that Trading Centers that are national securities exchanges impose different deadlines by which their Members must submit claims for compensation,<sup>9</sup> and that many Trading Centers that are not national securities exchanges either do not impose any deadline or otherwise handle requests for compensation on a case-by-case basis. It is, therefore, incumbent on, and the sole responsibility of, the Member to submit claims to the Exchange in a timely manner so that the Exchange may then forward such claim, via DE Route, in advance of any deadline required by that Trading Center. Upon receipt of a Member's claim, the Exchange would only verify that a valid order was submitted by the Member and accepted and acknowledged by the Exchange, that the Member's order or a portion of the order was routed by the Exchange via DE Route to a Trading Center, and that the Member represented that it incurred a loss as a result of a Trading Center Systems Issue. The Exchange would then use reasonable efforts to forward the claim, via DE Route, to such Trading Center.

Proposed Rule 11.12(e)(2) would state that the Exchange would pass along to the Member the full amount of any compensation that the Exchange, via DE Route, received from a Trading Center as a result of a claim submitted on

<sup>8</sup> Members receive reports from the Exchange shortly after a trade is consummated indicating whether their order, or a portion thereof, was executed at a Trading Center. The report will indicate the size and price of the execution on the Trading Center.

<sup>9</sup> See Nasdaq Stock Market LLC Rule 4626 (requiring claims for compensation to be submitted by 12:00 p.m. Eastern Time on T+1). See also NYSE Arca, Inc. Options Rule 14.2, NYSE MKT LLC Rule 905NY, Chicago Board Options Exchange, Incorporated Rule 6.7, BATS Exchange, Inc. Rule 11.16, and BATS-Y Exchange, Inc. Rule 11.16 (requiring claims for compensation to be submitted by the open of regular trading hours on T+1).

behalf of the Member. Any compensation paid to the Member would be paid solely from the compensation, if any, recovered from that Trading Center and not from any other source.

Proposed Rule 11.12(e)(3) would account for the circumstance where more than one Member submitted a claim for loss resulting from the same Trading Center Systems Issue and the total amount of compensation received from the Trading Center is insufficient to fully satisfy the claims of all such Members. In such case, the Exchange would proportionally allocate the total amount received from the Trading Center, if any, among all such Members' claims based on the proportion that each such claim bears to the sum of all such claims. The Exchange believes that this provision will provide for equitable compensation among all Members that submit a valid claim related to a Trading Center Systems Issue by ensuring that Members are compensated on a pro rata basis.

The payment of claims submitted in response to an Exchange Systems Issue would be separate and apart from any pass-through of compensation paid due to a Trading Center Systems Issue. Proposed Rule 11.12(e)(4) would state that any pass-through of compensation to a Member in accordance with Rule 11.12(e) would be unrelated to any other claims for compensation that are made due to an Exchange Systems Issues under Exchange Rule 11.12(d)(3). Accordingly, proposed Rule 11.12(e)(4) would state that any compensation paid to Members from reimbursement recovered from a Trading Center would not count against the Exchange's \$500,000 monthly liability limit set forth in Rule 11.12(d)(1), nor any applicable insurance maintained by the Exchange.

Notwithstanding the foregoing, the Exchange is not proposing to undertake or assume any responsibility to: (1) Independently validate information submitted by a Member in connection with a claim for compensation for loss arising out of a Trading Center Systems Issue, other than the ticker, size and side of the affected orders and the Trading Center to which the affected orders were routed and alleged to have experienced a Trading Center Systems Issue; (2) ascertain or comply with any mandatory deadlines within which to submit claims for compensation to a Trading Center; (3) guarantee that any compensation will be procured from a Trading Center; (4) negotiate agreements with any Trading Centers to require compensation under any circumstances; or (5) take any additional steps with

respect to a Trading Center Systems Issue if such Trading Center denies or fails to respond to any claim for compensation, in whole or in part. In other words, the Exchange will, upon receipt of a claim for compensation from a Member for loss resulting from a Trading Center Systems Issue, reasonably endeavor to submit such claim, via DE Route, to the applicable Trading Center as soon as reasonably practicable, and if DE Route in turns receives an accommodation from such Trading Center, such accommodation will be passed along to the Member via the Exchange. Neither the Exchange nor DE Route will be under any obligation to know any Trading Center's rules, procedures and/or customs, to the extent any exist, for the submission of claims for compensation, nor to dispute a Trading Center's denial of a claim, whether in whole or in part, nor to take any further actions with respect to such claim in the event that the Trading Center does not respond at all to the claim. Accordingly, with this proposed rule change, the Exchange is not assuming any additional liability to Members for losses claimed to have resulted from Trading Center Systems Issues; rather, it proposes to serve a purely ministerial role, given the contractual privity that exists between DE Route and Trading Centers, in the submission of Members' claims for compensation to such Trading Centers on their behalf. To that end, proposed Rule 11.12(e)(5) would make clear that under no circumstances will the Exchanges' inability to procure compensation from a Trading Center, in whole or in part, for whatever reason, give rise to a claim for compensation from the Exchange pursuant to paragraph (d) of Rule 11.12 as a "negligent act or omission of an Exchange employee." Proposed Rule 11.12(e)(5) would further state that the Exchange would not be liable should the Trading Center deny such claim made pursuant to proposed Rule 11.12(e), in whole or in part, for any reason.

The Exchange believes that the provisions outlined in the above paragraph are equitable because any claim submitted under the proposed Rule 11.12(e) would be subject to the rules, procedures, and discretion of the Trading Center in question. It is the Trading Center, and not the Exchange or DE Route, that ultimately decides whether to approve or deny a Member's claim, or even whether to act on such request at all. For example, the Exchange has no discretion over or responsibility for the information

provided by the Member in its claim, and no discretion over or responsibility for whether such information is sufficient for the Trading Center to provide compensation. In addition, any claim submitted under the proposal would be subject to compensation only to the extent that the Trading Center provided such compensation to DE Route. Accordingly, because it is the Trading Center, and not the Exchange or DE Route, that ultimately decides whether a claim for compensation would be granted, the Exchange believes the proposal is fair and just in limiting the Exchange's liability in the event a Trading Center determines, for any reason, to deny a claim, in whole or in part, or even not to respond to such claim.

#### Implementation Date

The Exchange intends to implement the proposed rule changes no later than January 15, 2014 and will announce its availability via a trading notice to be posted on the Exchange's Web site.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>10</sup> and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in that it is designed promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

#### Extension of Deadline To Submit Claims

Extending the deadline by which claims for compensation are submitted to the Exchange is designed to increase the likelihood that Members will be able to submit claims in a timely manner. The Exchange believes that such expansion of time is reasonable given that Members often do not have all the necessary information to substantiate all facts bearing on the accuracy and completeness of a claim within the required current timeframe under Rule 11.12(d). Therefore, the Exchange believes the proposed rule change is equitable and will promote fairness in the market place by providing Members increased time to submit claims that result from an Exchange Systems Issue.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

### Reimbursement for Losses Sustained at other Trading Centers

Proposed Rule 11.12(e) would enable the Exchange to pass through to Members any compensation that the Exchange is able to procure, via DE Route, from a Trading Center for losses claimed by Members to have resulted from a Trading Center Systems Issue. The proposal specifies a standardized method for Members to submit claims for compensation from a Trading Center, and for the Exchange to pass through to its Members any such compensation obtained, if and to the extent the Exchange, via DE Route, is able to obtain such compensation from the Trading Center. Furthermore, any compensation obtained by the Exchange from a Trading Center would be passed on to the Member who requested such reimbursement. If the amount received by the Exchange from the Trading Center was insufficient to satisfy all claims, it would be allocated among the claimants proportionally based on the percentage that each claimant's claim in relation to the sum of all claims received by the Exchange. In addition, the proposed pro-rata allocation methodology that the Exchange would employ would provide for equitable compensation among all Members who submit a claim related to a Trading Center Systems Issue and deter the risk of preferential treatment of certain Members by the Exchange. Therefore, the Exchange believes that the proposed rule change would protect investors and the public interest by potentially providing Members with a remedy not currently available to them to recover for losses incurred as a result of Trading Center Systems Issues, which generally arise from factors unrelated to their trading activities.

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

The proposed rule change would not impose any burden on competition. The proposed rule change is designed to promote fairness in the marketplace by increasing the time within which a Member is to submit claims for Exchange System Issues and to be compensated for losses that result from Trading Center Systems Issues. The Exchange believes that the proposed rule changes will not burden intermarket competition because the benefits offered under the proposed rule changes are not currently offered by any other exchange. The Exchange believes that the proposed rule changes will not burden intramarket competition because all Members would be subject to the same deadline to submit a claim for

Exchange Systems Issues and be able to submit claims for reimbursement for certain losses incurred due to Trading Center System Issues.

### 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

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 for 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<sup>12</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6) of the Act<sup>14</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii) of the Act,<sup>15</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission 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. Such waiver would immediately extend the time period by which Exchange members are able to submit claims seeking compensation for Exchange systems issues under EDGA Rule 11.12(d) and would immediately establish a means for members to potentially receive compensation for losses caused by a systems issue occurring at another Trading Center on orders routed to such Trading Center by DE Route. For these reasons, the Commission hereby waives the 30-day operative delay and designates the

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

proposed rule change to be operative upon filing with the Commission.<sup>16</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 change should be approved or 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-EDGA-2013-36 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-EDGA-2013-36. 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.,

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 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-EDGA-2013-36, and should be submitted on or before January 8, 2014.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-30045 Filed 12-17-13; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71055; File No. SR-BX-2013-059]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness 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

December 12, 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 November 29, 2013, NASDAQ OMX BX, Inc. (“BX” 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 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 December 2, 2013.

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

The Exchange is proposing several changes to its fees and rebates applicable to transactions in securities priced at \$1 or more. First, the Exchange is proposing to add a new tier for members that are active in both the NASDAQ OMX BX Equities System (the “BX Equities System”) and BX Options. As such, the tier is similar to various tiers that have previously been introduced by the NASDAQ Stock Market for members of that exchange that are active in both the NASDAQ Market Center and the NASDAQ Options Market.<sup>3</sup> Under the proposed tier, a member will be charged \$0.0016 per share executed when providing liquidity through a displayed order if the member (i) has a daily average volume of liquidity provided in all securities during the month of 2 million or more shares through one or more BX Equities System market participant identifiers (“MPIDs”), and (ii) adds Options Market Maker volume under Chapter XV of BX Options rules of 20,000 or more contracts per day during the month.

The proposed 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.

Second, the Exchange is proposing new pricing tiers for midpoint pegged orders, a non-displayed order whose price is pegged to the midpoint between the national best bid and national best offer. Thus, midpoint pegged orders provide price improvement when they execute that is equivalent to the difference between the price of the order and the national best bid or offer (as applicable). Currently, midpoint orders are charged a fee of \$0.0015 per share executed when they provide liquidity, which is lower than the fee of \$0.0020 per share executed for displayed orders and the current fee of \$0.0025<sup>4</sup> per share executed for non-displayed orders other than midpoint orders. Thus, the pricing structure is designed to encourage members that provide liquidity to do so in a manner that provides price improvement. To further encourage the use of these orders, BX is proposing two new volume tiers for midpoint pegged orders. First, if a member provides an average daily volume of 2 million or more shares of liquidity using midpoint pegged orders during the month, the fee for such orders will be \$0.0010 per share executed. Second, if a member provides an average daily volume of 1 million or more, but fewer than 2 million, shares of liquidity using midpoint pegged orders during the month, the fee for such orders will \$0.00125 per share executed. For lower volumes, the fee will remain \$0.0015 per share executed.

Third, consistent with the goal of encouraging greater use of midpoint pegged orders to provide price improvement, BX is increasing the fee for non-displayed orders other than midpoint pegged orders to \$0.0028 per share executed. Thus, to the extent that a member wishes to offer non-displayed liquidity on BX, it will be provided with a meaningful pricing incentive to do so using midpoint pegged orders, which benefit the counterparty accessing liquidity through price improvement, rather than non-displayed orders, which neither offer price improvement nor contribute to pre-trade price discovery.

Fourth, BX is proposing to decrease the rebate for orders that access liquidity and that do not qualify for any other rebate category, from \$0.0007 per share executed to \$0.0004 per share executed.<sup>5</sup> Currently, BX offers several

<sup>4</sup> As discussed below, BX is proposing increasing this fee to \$0.0028 per share executed.

<sup>5</sup> It should be noted, however, that rebates are not paid for orders that access liquidity provided by

Continued

<sup>17</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 NASDAQ Rule 7018(a).