immediately and does not intend to assess a fee for such feed at this time, so waiving the 30-day operative delay would allow Exchange market participants to begin to receive the data in the C2 COB Feed immediately instead of having to wait 30 days. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because such waiver will enable market participants to receive the C2 COB data free of charge immediately, which data is otherwise only available to market participants for a fee (as part of the C2 BBO Data Feed) until the proposal becomes effective. For this reason, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[13]

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 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.* Please include File Number SR–C2–2013–025 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–C2–2013–025. 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–C2–2013–025 and should be submitted on or before August 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–19265 Filed 8–8–13; 8:45 am]

BILLING CODE 8011–01–P

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

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70114; File No. SR–BX–2013–044]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change to Its Excess Order Fee Under Rule 7018(d)

August 5, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 26, 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 the Substance of the Proposed Rule Change

The Exchange proposes changes to its Excess Order Fee under Rule 7018(d). While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on August 1, 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

1. Purpose

In 2012, BX introduced an Excess Order Fee, imposed on MPIDs that have characteristics indicative of inefficient order entry practices.[3] As BX explained at the time, inefficient order entry practices may place excessive burdens on the systems of BX and its members and may negatively impact the usefulness and life cycle cost of market data.[4] Market participants that flood the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release Nos. 67007 (May 17, 2012), 77 FR 30579 (May 23, 2012) (SR–BX–2012–033) (establishing fee); 67272 (June 27, 2012), 77 FR 39530 (July 3, 2012) (SR–BX–2012–042) (modifying terms and conditions of fee).

[4] *See generally* Recommendations Regarding Regulatory Reponses to the Market Events of May 6, 2010, Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues, at 11 (February 18, 2011) (''The SEC and CFTC should also consider addressing the disproportionate impact that [high frequency trading] has on Exchange message traffic and market surveillance costs. . . . The Committee recognizes that there are valid reasons for algorithmic strategies to drive high cancellation rates, but we believe that this is an area that deserves further study. At a minimum, we believe that the participants of those strategies should

market with orders that are rapidly cancelled or that are priced away from the inside market do little to support meaningful price discovery.

In general, the determination of whether to impose the fee on a particular MPID has been made by calculating the ratio between (i) entered orders, weighted by the distance of the order from the national best bid or offer (''NBBO''), and (ii) orders that execute in whole or in part. The fee has been imposed on MPIDs with an ''Order Entry Ratio'' of more than 100. The Order Entry Ratio is calculated, and the Excess Order Fee imposed, on a monthly basis. BX is now proposing to modify the fee, such that it will be calculated and assessed on the basis of all of a member's trading activity on BX, rather than on an MPID basis. The purpose of this change is to ensure that members do not act in a manner inconsistent with the intent of the fee by spreading inefficient order activity across multiple MPIDs in a manner that allows the MPIDs to avoid a charge that would not be avoided if all of the member's activity were aggregated. Thus, the change replaces the term ''MPID'' with the term ''member'' throughout the text of Rule 7018(d). The rule, as amended, will operate as follows:

For each member, the Order Entry Ratio will be the ratio of (i) the member's ''Weighted Order Total'' to (ii) the greater of one (1) or the number of displayed, non-marketable orders [5] sent to BX by the member during the month that execute in full or in part.[6] The Weighted Order Total is the number of displayed, non-marketable orders sent to BX by the member, as adjusted by a ''Weighting Factor.'' The applicable Weighting Factor is applied to each order based on its price in comparison to the NBBO at the time of order entry:

Order's price versus NBBO at entry	Weighting factor
Less than 0.20% away	0x
0.20% to 0.99% away	1x
1.00% to 1.99% away	2x
2.00% or more away	3x

Thus, in calculating the Weighted Order Total, an order that was more than 2.0% away from the NBBO would be equivalent to three orders that were 0.50% away. Due to the applicable Weighting Factor of 0x, orders entered less than 0.20% away from the NBBO would not be included in the Weighted Order Total, but would be included in the ''executed'' orders component of the Order Entry Ratio if they execute in full or part.[7] In addition, members with a daily average Weighted Order Total of less than 100,000 during the month will not be subject to the Excess Order Fee. Finally, the fee is based on orders received by BX during regular market hours (generally, 9:30 a.m. to 4:00 p.m.),[8] and will exclude orders received at other times, even if they execute during regular market hours.

The following example illustrates the calculation of the Order Entry Ratio:

- A member enters 15,000,000 displayed, liquidity-providing orders:
- 10,000,000 orders are entered at the NBBO. The Weighting Factor for these orders is 0x.
- 5,000,000 orders are entered at a price that is 1.50% away from the NBBO. The Weighting Factor for these orders is 2x.
- Of the 15,000,000 orders included in the calculation, 90,000 are executed.
- The Weighted Order Total is $(10{,}000{,}000 \times 0) + (5{,}000{,}000 \times 2) = 10{,}000{,}000$. The Order Entry Ratio is $10{,}000{,}000/90{,}000 = 111$.

If a member has an Order Entry Ratio of more than 100, the amount of the Order Entry Fee will be calculated by determining the member's ''Excess Weighted Orders.'' Excess Weighted Orders are calculated by subtracting (i) the Weighted Order Total that would result in the member having an Order Entry Ratio of 100 from (ii) the member's actual Weighted Order Total. In the example above, the Weighted Order Total that would result in an Order Entry Ratio of 100 is 9,000,000, since $9{,}000{,}000/90{,}000 = 100$. Accordingly, the Excess Weighted Orders would be $10{,}000{,}000 - 9{,}000{,}000 = 1{,}000{,}000$.

The Excess Order Fee charged to the member will then be determined by multiplying the ''Applicable Rate'' by the number of Excess Weighted Orders. The Applicable Rate is determined based on the member's Order Entry Ratio:

Order entry ratio	Applicable rate
101–1,000	0.005
More than 1,000	0.01

In the example above, the Applicable Rate would be $0.005, based on the member's Order Entry Ratio of 111. Accordingly, the monthly Excess Order Fee would be $1{,}000{,}000 \times \$0.005 = \$5{,}000$.

BX continues to expect that the impact of the fee, as modified, will be narrow because the change will encourage potentially affected market participants to modify their order entry practices in order to avoid the fee, thereby improving the market for all participants. Accordingly, BX does not expect to earn significant revenues from the modified fee.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that 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 which BX operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

With respect to the Excess Order Fee, BX stated in its original filing to institute the fee that it is reasonable because it is designed to achieve improvements in the quality of displayed liquidity and market data that will benefit all market participants. In addition, although the level of the fee may theoretically be very high, the fee is reasonable because market participants may readily avoid the fee by making improvements in their order entry practices that reduce the number of orders they enter, bring the prices of their orders closer to the NBBO, and/or increase the percentage of their orders that execute. Similarly, the change proposed herein is reasonable because it will provide further incentive to members to improve order entry practices by insuring that they cannot evade the fee by spreading activity across multiple MPIDs.

For similar reasons, the fee is consistent with an equitable allocation of fees, because although the fee may apply to only a small number of market

properly absorb the externalized costs of their activity.'').

[5] The fee focuses on displayed orders since they have the most significant impact on investor confusion and the quality of market data.

[6] Thus, in an extreme case where no orders entered by the member executed, this component of the ratio would be assumed to be 1, so as to avoid the impossibility of dividing by zero.

[7] An analogous fee of The NASDAQ Stock Market LLC (''NASDAQ'') includes an exclusion from both components of the ratio for orders sent by market makers in securities in which they are registered, through the MPID applicable to the registration. Although BX rules currently allow for market maker registration, BX does not currently have any registered market makers. Accordingly, BX has not deemed it necessary to adopt a comparable exclusion. In the event that market maker participation in BX increases, BX will evaluate the advisability of adopting an exclusion.

[8] Regular market hours may be different in some circumstances, such as on the day after Thanksgiving, when regular market hours on all exchanges traditionally end at 1:00 p.m.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4) and (5).

participants, the fee would be applied to them in order to encourage better order entry practices that will benefit all market participants. The change is also equitable because it will further encourage better order entry practices across a wider group of market participants. Finally, BX believes that the fee is not unfairly discriminatory. Although the fee may apply to only a small number of market participants, it will be imposed because of the negative externalities that such market participants impose on others through inefficient order entry practices. Accordingly, BX believes that it is fair to impose the fee on these market participants in order to incentivize them to modify their behavior and thereby benefit the market. The change is likewise not unfairly discriminatory because it will negatively affect members only if they have been evading the incentives to improve order entry practices provided by the fee.

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

BX 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.[11] 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, while also seeking to earn a reasonable profit from its trading and routing services. 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. With respect to the change to the Excess Order Fee, BX believes that the change, like the original fee, will constrain market participants from pursuing certain inefficient and potentially abusive trading strategies. To the extent that this change may be construed as a burden on competition, BX believes that it is appropriate in order to allow BX to better achieve this purpose.

[11] 15 U.S.C. 78f(b)(8).

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 rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and paragraph (f) of Rule 19b–4 thereunder.[13]

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.* Please include File Number SR–BX–2013–044 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–2013–044. 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 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–BX–2013–044, and should be submitted on or before August 30, 2013.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–19261 Filed 8–8–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70116; File No. SR–Phlx–2013–79]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Delisting Series in the STOs and Opening up to Five Consecutive Weekly Expirations of STOs

August 5, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 25, 2013, NASDAQ OMX PHLX LLC (the ''Exchange'' or ''Phlx'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Commission a proposal to amend Rule 1012 (Series of Options Open for Trading) and Rule 1101A (Terms of

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.