

to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to include options on interest rate futures contracts with maturities not longer than two years in the one-pot cross-margining program between the Government Securities Division (“GSD”) and New York Portfolio Clearing, LLC (“NYPC”).<sup>3</sup> The proposed rule change was published for public comment in the **Federal Register** on May 3, 2013.<sup>4</sup> The Commission has received no comment letters regarding the proposal.

Section 19(b)(2)(A) of the Act<sup>5</sup> provides that, within 45 days of the date of publication of notice of the filing of a proposed rule change in the **Federal Register**, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, the Commission shall either approve or disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The forty-fifth day after publication of notice of this proposed rule change is Monday, June 17, 2013.

As noted, the proposed rule change would allow FICC to include options on interest rate futures contracts with maturities not longer than two years in the one-pot cross-margining program between the GSD and NYPC. In the proposed rule change, FICC acknowledged that it will have to alter its risk management framework to account for the non-linear risks presented by options on interest rate futures.<sup>6</sup> The Commission deems it appropriate to designate a longer time period within which to take action on the proposed rule change so that it has sufficient time to evaluate the risk management implications of the proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act,<sup>7</sup> the Commission designates Thursday, August 1, 2013 as the date by which the Commission should either approve, disapprove, or institute proceedings to determine whether to disapprove the

proposed rule change (SR-FICC-2013-02).

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. 34-69753; File No. SR-BX-2013-038]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Its Schedule of Fees and Rebates for Execution of Orders for Securities Priced at \$1 or More Under Rule 7018

June 13, 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 June 3, 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 schedule of fees and rebates for execution of orders for securities priced at \$1 or more under Rule 7018. These amendments are effective upon filing, and the Exchange has designated the proposed amendments to be operative on June 3, 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

The Exchange charges a reduced fee for members providing liquidity if they meet the criteria of a “Qualified Liquidity Provider.” These criteria include requirements that the member access and provide volumes of liquidity in excess of certain levels, expressed as a percentage of Consolidated Volume.<sup>3</sup> The Exchange has determined that it would be beneficial to members to exclude the date of the annual reconstitution of the Russell Investments Indexes (the “Russell Reconstitution”) (in 2013, June 28) from calculations of Consolidated Volume. Trades occurring on that date would be excluded from the calculation of total Consolidated Volume and from the calculation of the member's trading activity (i.e., they would be excluded from both the numerator and the denominator of the calculation of a member's percentage).

Trading volumes on the date of the Russell Reconstitution are generally far in excess of volumes on other days during the month. As a result, the trading activity of members that are regular daily participants in BX, expressed as a percentage of Consolidated Volume, is likely to be lower than their percentage of Consolidated Volume on other days during the month. Including the date of the Russell Reconstitution in calculations of Consolidated Volume is therefore likely to make it more difficult for members to achieve particular volume levels during the month. Accordingly, excluding the date of the Russell Reconstitution from these calculations will diminish the likelihood of a *de facto* price increase occurring because a member is not able to reach a volume percentage on that date that it reaches on other trading days during the month. Moreover, excluding the date is very unlikely to result in a price increase for any

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

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

<sup>3</sup> NYPC is jointly owned by NYSE Euronext and The Depository Trust & Clearing Corporation.

<sup>4</sup> See Securities Exchange Act Release No. 69470 (April 29, 2013), 78 FR 26093-01 (May 3, 2013) (SR-FICC-2013-02).

<sup>5</sup> 15 U.S.C. 78s(b)(2)(A).

<sup>6</sup> See Securities Exchange Act Release No. 69470 (April 29, 2013), 78 FR 26093-01, 26094 (May 3, 2013) (SR-FICC-2013-02).

<sup>7</sup> 15 U.S.C. 78s(b)(2)(A)(ii)(I).

<sup>8</sup> 17 CFR 200.30-3(a)(31).

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

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

<sup>3</sup> “Consolidated Volume” is the consolidated volume of shares reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month.

members, since a member that was not, on other days during the month, trading in BX at volume levels that would allow it qualify for the criteria of a Qualified Liquidity Provider, would be unlikely to achieve percentage volume levels on the date of the Russell Reconstitution that would increase its overall monthly percentage to the required levels, even if it was very active on that date.

## 2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>5</sup> 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. BX believes that the proposed change to exclude the date of the Russell Reconstitution from calculations of Consolidated Volume is reasonable because it will diminish the likelihood of a *de facto* price increase occurring because a member is not able to reach a volume percentage on that date that it reaches on other trading days during the month. BX further believes that the change is consistent with an equitable allocation of fees and is not unfairly discriminatory. Specifically, because trading activity on the date of the Russell Reconstitution will be excluded from determinations of a member's percentage of Consolidated Volume, BX believes it will be easier for members to determine the volume required to meet a certain percentage of participation than would otherwise be the case. To the extent that a member has been active in BX at a significant level throughout the month, excluding the date of the Russell Reconstitution, on which its percentage of Consolidated Volume is likely to be lower than on other days, will increase its overall percentage for the month. Conversely, even if a member was more active on the date of Russell Reconstitution than on other dates, it is unlikely that its activity on one day would be able to increase its overall monthly percentage to a meaningful extent. Thus, BX believes that the change will benefit members that are in a position to achieve volume levels required by the BX pricing schedule but without harming the ability of any members to reach such levels. Finally, BX believes that the change does not unfairly burden

competition because it will help to preserve or improve the pricing status that would apply to members' trading activity in the absence of the Russell Reconstitution, and therefore will not impact the ability of such members to compete.

## 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. 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 change will make it easier for members to achieve a certain percentage of Consolidated Volume during the month of the Russell Reconstitution, and therefore it is designed to protect members from the possibility of a *de facto* price increase. Accordingly, BX does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their 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 rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>6</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: (i)

Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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-2013-038 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-2013-038. 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 BX. 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-2013-038, and should be submitted on or before July 10, 2013.

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

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

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

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69755; File No. SR-NASDAQ-2013-070]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change for the Permanent Approval of a Pilot Program To Permit NASDAQ Options Market To Accept Inbound Options Orders From NASDAQ OMX BX, Inc.

June 13, 2013.

#### I. Introduction

On April 24, 2013, The NASDAQ Stock Market LLC ("Exchange" or "NASDAQ") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change requesting permanent approval of the Exchange's pilot program that permits the NASDAQ Options Market ("NOM") to accept inbound options orders routed by Nasdaq Options Services LLC ("NOS") from NASDAQ OMX BX, Inc. ("BX"). The proposed rule change was published for comment in the **Federal Register** on May 8, 2013.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

#### II. Background

NASDAQ Rule 2160(a) prohibits the Exchange or any entity with which it is affiliated from, directly or indirectly, acquiring or maintaining an ownership interest in, or engaging in a business venture with, an Exchange member or an affiliate of an Exchange member in the absence of an effective filing under Section 19(b) of the Act.<sup>4</sup> NOS is a broker-dealer that is a member of the Exchange, and currently provides to

members of BX optional routing services to other markets.<sup>5</sup> NOS is owned by NASDAQ OMX Group, Inc. ("NASDAQ OMX"), which also owns three registered securities exchanges—the Exchange, BX, and PHLX.<sup>6</sup> Thus, NOS is an affiliate of these exchanges.<sup>7</sup> Absent an effective filing, NASDAQ Rule 2160(a) would prohibit NOS from being a member of the Exchange. The Commission initially approved NOS's affiliation with NASDAQ in connection with the establishment of NOM,<sup>8</sup> and NOS performs certain limited activities for the Exchange.<sup>9</sup>

On May 15, 2012, the Exchange filed a proposed rule change for NOM to accept inbound options orders routed by NOS from BX on a one year pilot basis in connection with the establishment of a new options market by BX.<sup>10</sup> On April 24, 2013, the Exchange filed the instant proposal to allow NOM to accept such orders routed inbound by NOS from BX on a permanent basis subject to certain limitations and conditions.<sup>11</sup>

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>13</sup> which requires, among other things, that a national

securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>14</sup> which requires, among other things, that the rules of a national securities exchange be 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, and 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. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

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 to which it is routing orders, the Exchange proposed the following limitations and conditions to NOS's affiliation with the Exchange to permit the Exchange to accept inbound options orders that NOS routes in its capacity as a facility of BX on a pilot basis.<sup>15</sup> The Exchange has proposed to permit NASDAQ to accept inbound orders that NOS routes in its capacity as a facility of BX on a permanent basis, subject to the same limitations and conditions of this pilot:<sup>16</sup>

- First, the Exchange and the Financial Industry Regulatory Authority ("FINRA") will maintain a Regulatory Contract, as well as an agreement pursuant to Rule 17d-2 under the Act ("17d-2 Agreement").<sup>17</sup> Pursuant to the Regulatory Contract and the 17d-2 Agreement, FINRA will be allocated regulatory responsibilities to review NOS's compliance with certain NASDAQ rules.<sup>18</sup> Pursuant to the

<sup>5</sup> NOS operates as a facility of BX that provides outbound routing from BX to other market centers, subject to certain conditions. See BX Options Rules, Chapter VI, Sec. 11 (Order Routing). See also Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030).

<sup>6</sup> See Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01) (order approving NASDAQ OMX's acquisition of BX); Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR-PHLX-2008-31) (order approving NASDAQ OMX's acquisition of PHLX).

<sup>7</sup> See *id.* See also 78 FR at 26820.

<sup>8</sup> See Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521, 14532-14533 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080).

<sup>9</sup> See, e.g., NASDAQ Options Rule Chapter VI, Section 11(e) (governing order routing on NOM); and Securities Exchange Act Release No. 61668 (March 5, 2010), 75 FR 12323 (March 15, 2010) (SR-NASDAQ-2010-028) (relating to the routing of orders by NOS from NOM to PHLX).

<sup>10</sup> See Securities Exchange Act Release No. 67027 (May 18, 2012), 77 FR 31057 (May 24, 2012) (SR-NASDAQ-2012-061).

<sup>11</sup> See Notice, 78 FR 26820.

<sup>12</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(1).

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

<sup>15</sup> See Securities Exchange Act Release No. 67295 (June 28, 2012), 77 FR 39758 (July 5, 2012) (SR-NASDAQ-2012-061).

<sup>16</sup> See Notice, 78 FR at 26820-26821.

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

<sup>18</sup> NOS is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 69499 (May 2, 2013), 78 FR 26820 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b). NASDAQ Rule 2160 also prohibits a NASDAQ member from being or becoming an affiliate of NASDAQ, or an affiliate of an entity affiliated with NASDAQ, in the absence of an effective filing under Section 19(b). See NASDAQ Rule 2160(a)(2).