

*Required fields are shown with yellow backgrounds and asterisks.*

Page 1 of * 20	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2012 - * 031	Amendment No. (req. for Amendments *)
Proposed Rule Change by NASDAQ OMX BX, Inc. Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
			Rule	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
<b>Description</b> Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *). A proposed rule change to eliminate the fees under Rule 7003b and replace them with a new Equities Regulatory Fee.				
<b>Contact Information</b> Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.				
First Name *	Sean	Last Name *	Bennett	
Title *	Assistant General Counsel			
E-mail *	sean.bennett@nasdaqomx.com			
Telephone *	(301) 978-8499	Fax		
<b>Signature</b> Pursuant to the requirements of the Securities Exchange Act of 1934,  has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.				
Date	05/03/2012			
By	Edward S. Knight	Executive Vice President and General Counsel		
	(Name *)	(Title *)		
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.		Edward S Knight,		

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information (required)**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change (required)**

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> NASDAQ OMX BX, Inc. (“BX” or “Exchange”), is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to eliminate the fees under Rule 7003(b) and replace them with a new Equities Regulatory Fee.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

**7003. Registration and Processing Fees**

(a) No change.

(b) [The following fees will be collected via the Web CRD registration system for the registration of associated persons of Exchange members:

(1) \$60 for each initial Form U4 filed for the registration of a representative or principal. This fee shall be waived for initial registrations occurring between January 1, 2009 and October 1, 2009.

(2) \$40 for each registration U4 transfer or re-licensing of a representative or principal. This fee shall be waived for transfers or re-licensings occurring between January 1, 2009 and October 1, 2009.

(3) \$50 annually for each of the member’s registered representatives and principals for system processing. This fee shall be waived for the period from January 1, 2009 until such time as the Exchange submits a proposed rule change to reinstate it.]

The Equities Regulatory Fee is a fee assessed to member firms to offset the cost of regulating member firms’ activity on the Exchange. The fee is assessed on a member firm annually based on historical daily average orders entered on the Exchange in the prior calendar year by a member firm, according to the following table:

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

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

<u>Daily Order Tiers</u>	<u>Annual Equities Regulatory Fee</u>	<u>Pro-Rated Equities Regulatory Fee (7 months)</u>
>= 50,000 orders	\$4,000	\$2,333
>= 1,000 orders, but < 50,000 orders	\$2,500	\$1,458
< 1,000 orders	\$0	\$0

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of BX pursuant to authority delegated by the Board of Directors of BX on August 19, 2011. BX staff will advise the Board of Directors of BX of any action taken pursuant to delegated authority. No other action by BX is necessary for the filing of the rule change. The Exchange will implement the amended fees effective June 1, 2012.

Questions regarding this rule filing may be directed to T. Sean Bennett, Assistant General Counsel, The NASDAQ OMX Group, Inc. at (301) 978-8499 (telephone) or (301) 978-8472 (fax).

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The Exchange is proposing to eliminate the fees found under Rule 7003(b) ("Registration Fees") and adopt a new Equities Regulatory Fee. Currently, the Exchange assesses a member firm the following Registration Fees: \$60 fee for each initial Form U4 filed for the registration of a representative or principal; \$40 fee for each registration U4 transfer or re-licensing of a representative or principal; and \$50 for each of the member

firm's registered representatives and principals for system processing (this fee is currently waived). The Exchange is proposing to eliminate these fees and introduce a new Equities Regulatory Fee ("ERF"), which is a tier based fee on a member firm's historical average daily orders entered on the Exchange over the prior calendar year. Registration Fees, as well as other membership fees collected by the Exchange, are intended to cover a portion of the cost of the Exchange's regulatory program. The Exchange's regulatory program consists of, among other things, surveillance, analysis and investigation of trading occurring on the Exchange conducted by the NASDAQ OMX Group's Market Watch group. The Exchange also has certain fixed costs associated with running its regulatory program. In addition to the costs incurred by the regulatory program effectuated by the Exchange, it also incurs regulatory costs associated with a regulatory services agreement with the Financial Industry Regulatory Authority, Inc. ("FINRA"), whereby FINRA performs certain regulatory functions on behalf of the Exchange for a fee.<sup>3</sup>

Exchange rules require that every qualified registered representative and principal of a member firm be registered with, and approved by, the Exchange.<sup>4</sup> The Exchange believes that Registration Fees are no longer the best means to assess regulatory fees because they are based on the number of persons registered with the Exchange. The Exchange has found that the number of registered persons employed by a member firm is not the most accurate measure of regulatory cost incurred by the Exchange. Specifically, the regulatory effort expended by the Exchange is largely related to the number of orders

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<sup>3</sup> Rule 1001.

<sup>4</sup> Rule 1030 series.

entered into the Exchange, and is not necessarily commensurate with the total number of registered persons employed by a member firm. In this regard, the Exchange notes that member firms must comply with, among other things, the best execution requirements of Regulation NMS,<sup>5</sup> which effectively means that an order of a registered representative's customer will not necessarily be executed on BX, but rather on a venue at which it will receive the best price for its customer. As a consequence of the current Registration Fee structure, a majority of these fees are paid by member firms with comparatively large groups of registered representatives that do not necessarily trade on the Exchange, and therefore are not a significant part of the regulatory expense incurred by the Exchange. Notwithstanding, under the current Registration Fee structure, such member firms are assessed greater regulatory fees as compared to a member firm with few registered representatives, but a large number of orders (and therefore greater regulatory cost) entered into the Exchange.

The proposed ERF is designed to more closely allocate the regulatory expenses incurred by the Exchange to the member firms responsible for those expenses. In lieu of assessing fees based on the number of registered representatives and principals, the Exchange is proposing to assess a fee on the number of orders entered into the Exchange by a member firm. The Exchange will assess the ERF annually, in arrears, based on a member firm's historical average daily orders entered into the Exchange over the last calendar year. The ERF is tiered so that member firms that enter what is essentially an immaterial number of orders into the Exchange will not be assessed an ERF. Member firms that qualify under the mid-level tier of the ERF will be assessed a fee of \$2,500

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<sup>5</sup> 17 CFR 242.600, et seq.

annually, and member firms that qualify for the top tier of the ERF will be assessed \$4,000 annually. The tier structure of the ERF is designed to more fairly allocate the fees assessed for regulatory expenses. Because the Exchange is implementing the ERF mid-calendar year, it will prorate the annual fee for each member firm from June 1, 2012 through December 31, 2012 and use the average daily order for calendar year 2011 for purposes of calculating its ERF obligation for calendar year 2012.

The Exchange believes that the ERF is a better means of allocating the regulatory costs incurred by the Exchange than the current Registration Fees, and it does not anticipate the ERF will result in an increase or decrease in total fees assessed to cover regulatory costs. Rather, the Exchange believes that the ERF will result in a more equitable allocation of the fees assessed for this purpose. The Exchange will evaluate annually the amount of revenue collected from the ERF to ensure that it does not materially exceed the regulatory costs incurred over the same period. If the Exchange determines regulatory revenues would exceed regulatory costs, it would adjust the ERF to bring the fees in line with costs.<sup>6</sup>

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>7</sup> 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 the Exchange operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange believes that the new ERF

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<sup>6</sup> If such a determination is made, the Exchange would submit a proposed rule change to the Commission to amend the ERF.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

is a more equitable allocation of fees as compared to the current Registration Fees, in that the ERF is tied to the use of, and hence regulatory cost incurred by, the Exchange.

Similarly, the Exchange believes that the ERF is a reasonable fee as it is assessed on member firms based on their usage of the Exchange and the Exchange does not believe that the new fee will result in a net increase in fees received compared to the fees currently received through assessment of the Registration Fees. Because the Exchange is implementing the ERF in the middle of a calendar year, it is pro-rating the fees assessed to reflect the partial calendar year of the ERF's effectiveness and the fact that member firms may have paid Registration Fees through the first five months of 2012. The new ERF will be applied to all member firms equally, based upon the tier under which they fall.

The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act<sup>8</sup> because it 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. As a self-regulatory organization, the Exchange has an obligation to regulate its member firms and their associated persons. The regulatory fees assessed by the Exchange are designed to cover the expenses associated with running an effective regulatory program. Eliminating the Registration Fees and implementing the ERF will not negatively impact the total fees assessed to cover the regulatory program costs. As discussed, the total fees assessed under Rule 7003(b) will

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<sup>8</sup> 15 U.S.C. 78f(b)(5).

be compared to the regulatory costs incurred during the same calendar year, and the Exchange will make any adjustments to the fee needed to keep it in line with such costs.

4. 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. To the contrary, the Exchange believes that the new fee is pro-competitive as it will more closely align the fee assessed for the Exchange's regulatory program with the use of the Exchange, thus allowing member firms to compete for order flow on a level playing field in terms of regulatory fees assessed as a precondition for participation on the Exchange. The Exchange notes a member firm that believes the ERF to be an excessive burden may reduce its order flow to the Exchange, thus reducing the impact of the ERF, or may withdraw as a member of the Exchange altogether.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup>, the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-BX-2012-031)

May \_\_, 2012

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate the Fees Under Rule 7003(b) and Adopt a new Equities Regulatory Fee

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 May 3, 2012 NASDAQ OMX BX, Inc. (“BX” or “Exchange”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to eliminate the fees under Rule 7003(b) and replace them with a new Equities Regulatory Fee. The Exchange will implement the fee effective June 1, 2012.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

**7003. Registration and Processing Fees**

(a) No change.

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

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

(b) [The following fees will be collected via the Web CRD registration system for the registration of associated persons of Exchange members:

(1) \$60 for each initial Form U4 filed for the registration of a representative or principal. This fee shall be waived for initial registrations occurring between January 1, 2009 and October 1, 2009.

(2) \$40 for each registration U4 transfer or re-licensing of a representative or principal. This fee shall be waived for transfers or re-licensings occurring between January 1, 2009 and October 1, 2009.

(3) \$50 annually for each of the member’s registered representatives and principals for system processing. This fee shall be waived for the period from January 1, 2009 until such time as the Exchange submits a proposed rule change to reinstate it.]

The Equities Regulatory Fee is a fee assessed to member firms to offset the cost of regulating member firms’ activity on the Exchange. The fee is assessed on a member firm annually based on historical daily average orders entered on the Exchange in the prior calendar year by a member firm, according to the following table:

<u>Daily Order Tiers</u>	<u>Annual Equities Regulatory Fee</u>	<u>Pro-Rated Equities Regulatory Fee (7 months)</u>
>= 50,000 orders	\$4,000	\$2,333
>= 1,000 orders, but < 50,000 orders	\$2,500	\$1,458
< 1,000 orders	\$0	\$0

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II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to eliminate the fees found under Rule 7003(b) (“Registration Fees”) and adopt a new Equities Regulatory Fee. Currently, the Exchange assesses a member firm the following Registration Fees: \$60 fee for each initial Form U4 filed for the registration of a representative or principal; \$40 fee for each registration U4 transfer or re-licensing of a representative or principal; and \$50 for each of the member firm’s registered representatives and principals for system processing (this fee is currently waived). The Exchange is proposing to eliminate these fees and introduce a new Equities Regulatory Fee (“ERF”), which is a tier based fee on a member firm’s historical average daily orders entered on the Exchange over the prior calendar year. Registration Fees, as well as other membership fees collected by the Exchange, are intended to cover a portion of the cost of the Exchange’s regulatory program. The Exchange’s regulatory program consists of, among other things, surveillance, analysis and investigation of trading occurring on the Exchange conducted by the NASDAQ OMX Group’s Market Watch group. The Exchange also has certain fixed costs associated with running its regulatory program. In addition to the costs incurred by the regulatory program effectuated by the Exchange, it also incurs regulatory costs associated with a regulatory services agreement with the Financial Industry Regulatory Authority, Inc. (“FINRA”), whereby FINRA performs certain regulatory functions on behalf of the Exchange for a fee.<sup>3</sup>

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<sup>3</sup> Rule 1001.

Exchange rules require that every qualified registered representative and principal of a member firm be registered with, and approved by, the Exchange.<sup>4</sup> The Exchange believes that Registration Fees are no longer the best means to assess regulatory fees because they are based on the number of persons registered with the Exchange. The Exchange has found that the number of registered persons employed by a member firm is not the most accurate measure of regulatory cost incurred by the Exchange. Specifically, the regulatory effort expended by the Exchange is largely related to the number of orders entered into the Exchange, and is not necessarily commensurate with the total number of registered persons employed by a member firm. In this regard, the Exchange notes that member firms must comply with, among other things, the best execution requirements of Regulation NMS,<sup>5</sup> which effectively means that an order of a registered representative's customer will not necessarily be executed on BX, but rather on a venue at which it will receive the best price for its customer. As a consequence of the current Registration Fee structure, a majority of these fees are paid by member firms with comparatively large groups of registered representatives that do not necessarily trade on the Exchange, and therefore are not a significant part of the regulatory expense incurred by the Exchange. Notwithstanding, under the current Registration Fee structure, such member firms are assessed greater regulatory fees as compared to a member firm with few registered representatives, but a large number of orders (and therefore greater regulatory cost) entered into the Exchange.

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<sup>4</sup> Rule 1030 series.

<sup>5</sup> 17 CFR 242.600, et seq.

The proposed ERF is designed to more closely allocate the regulatory expenses incurred by the Exchange to the member firms responsible for those expenses. In lieu of assessing fees based on the number of registered representatives and principals, the Exchange is proposing to assess a fee on the number of orders entered into the Exchange by a member firm. The Exchange will assess the ERF annually, in arrears, based on a member firm's historical average daily orders entered into the Exchange over the last calendar year. The ERF is tiered so that member firms that enter what is essentially an immaterial number of orders into the Exchange will not be assessed an ERF. Member firms that qualify under the mid-level tier of the ERF will be assessed a fee of \$2,500 annually, and member firms that qualify for the top tier of the ERF will be assessed \$4,000 annually. The tier structure of the ERF is designed to more fairly allocate the fees assessed for regulatory expenses. Because the Exchange is implementing the ERF mid-calendar year, it will prorate the annual fee for each member firm from June 1, 2012 through December 31, 2012 and use the average daily order for calendar year 2011 for purposes of calculating its ERF obligation for calendar year 2012.

The Exchange believes that the ERF is a better means of allocating the regulatory costs incurred by the Exchange than the current Registration Fees, and it does not anticipate the ERF will result in an increase or decrease in total fees assessed to cover regulatory costs. Rather, the Exchange believes that the ERF will result in a more equitable allocation of the fees assessed for this purpose. The Exchange will evaluate annually the amount of revenue collected from the ERF to ensure that it does not materially exceed the regulatory costs incurred over the same period. If the Exchange

determines regulatory revenues would exceed regulatory costs, it would adjust the ERF to bring the fees in line with costs.<sup>6</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>7</sup> 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 the Exchange operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange believes that the new ERF is a more equitable allocation of fees as compared to the current Registration Fees, in that the ERF is tied to the use of, and hence regulatory cost incurred by, the Exchange. Similarly, the Exchange believes that the ERF is a reasonable fee as it is assessed on member firms based on their usage of the Exchange and the Exchange does not believe that the new fee will result in a net increase in fees received compared to the fees currently received through assessment of the Registration Fees. Because the Exchange is implementing the ERF in the middle of a calendar year, it is pro-rating the fees assessed to reflect the partial calendar year of the ERF's effectiveness and the fact that member firms may have paid Registration Fees through the first five months of 2012. The new ERF will be applied to all member firms equally, based upon the tier under which they fall.

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<sup>6</sup> If such a determination is made, the Exchange would submit a proposed rule change to the Commission to amend the ERF.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act<sup>8</sup> because it 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. As a self-regulatory organization, the Exchange has an obligation to regulate its member firms and their associated persons. The regulatory fees assessed by the Exchange are designed to cover the expenses associated with running an effective regulatory program. Eliminating the Registration Fees and implementing the ERF will not negatively impact the total fees assessed to cover the regulatory program costs. As discussed, the total fees assessed under Rule 7003(b) will be compared to the regulatory costs incurred during the same calendar year, and the Exchange will make any adjustments to the fee needed to keep it in line with such costs.

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. To the contrary, the Exchange believes that the new fee is pro-competitive as it will more closely align the fee assessed for the Exchange's regulatory program with the use of the Exchange, thus allowing member firms to compete for order flow on a level playing field in terms of regulatory fees assessed as a precondition for participation on the Exchange. The Exchange notes a member firm that believes the ERF to be an excessive burden may reduce its order flow to the Exchange, thus reducing the

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<sup>8</sup> 15 U.S.C. 78f(b)(5).

impact of the ERF, or may withdraw as a member of the Exchange altogether.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>10</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 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, as amended, 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

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2012-031 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-2012-031. This file number should be included on the subject line if e-mail 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 website 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-2012-031, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Kevin M. O'Neill  
Deputy Secretary

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