

exercise that nondisclosure option (“opt out notice”). The Rule applies to broker-dealers, investment advisers registered with the Commission, and investment companies (“covered entities”).

Commission staff estimates that, as of early May, 2012, the Rule’s information collection burden applies to approximately 21,500 covered entities (approximately 4,700 broker-dealers, 12,600 investment advisers registered with the Commission, and 4,200 investment companies). In view of (a) The minimal recordkeeping burden imposed by the Rule (since the Rule has no recordkeeping requirement and records relating to customer communications already must be made and retained pursuant to other SEC rules); (b) the summary fashion in which information must be provided to customers in the privacy and opt out notices required by the Rule (the model privacy form adopted by the SEC and the other agencies in 2009, designed to serve as both a privacy notice and an opt out notice, is only two pages); (c) the availability to covered entities of the model privacy form and online model privacy form builder; and (d) the experience of covered entities’ staff with the notices, SEC staff estimates that covered entities will each spend an average of approximately 12 hours per year complying with the Rule, for a total of approximately 258,000 annual burden-hours ( $12 \times 21,500 = 258,000$ ). SEC staff understands that the vast majority of covered entities deliver their privacy and opt out notices with other communications such as account opening documents and account statements. Because the other communications are already delivered to consumers, adding a brief privacy and opt out notice should not result in added costs for processing or for postage and materials. Also, privacy and opt out notices may be delivered electronically to consumers who have agreed to electronic communications, which further reduces the costs of delivery. Because SEC staff assumes that most paper copies of privacy and opt out notices are combined with other required mailings, the burden-hour estimates above are based on resources required to integrate the privacy and opt notices into another mailing, rather than on the resources required to create and send a separate mailing. SEC staff estimates that, of the estimated 12 annual burden-hours incurred, approximately 8 hours would be spent by administrative assistants at an hourly rate of \$65, and approximately 4 hours would be spent by internal counsel at an hourly rate of \$378, for a total

annualized cost of \$2,032 for each of the covered entities ( $8 \times \$65 = \$520$ ;  $4 \times \$378 = \$1,512$ ;  $\$520 + \$1,512 = \$2,032$ ). Hourly cost estimates for personnel time are derived from the Securities Industry and Financial Markets Association’s *Management & Professional Earnings in the Securities Industry 2011*, modified by SEC staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. Accordingly, SEC staff estimates that the total annualized cost for the estimated total hour burden for the approximately 21,500 covered entities subject to the Rule is approximately \$43,688,000 ( $\$2,032 \times 21,500 = \$43,688,000$ ).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s estimates of the burden of the proposed collection of information on respondents; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: June 27, 2012.

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67272; File No. SR-BX-2012-042]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Its Excess Order Fee

June 27, 2012.

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 25, 2012, NASDAQ OMX BX, Inc. (“BX” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a 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

BX proposes to institute an excess order fee. [sic] BX will implement the proposed change on July 2, 2012. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com/>, at BX’s principal office, 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 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 those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

BX recently submitted a proposed rule change to introduce an Excess

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

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

Order Fee,<sup>3</sup> aimed at reducing inefficient order entry practices of certain market participants that place excessive burdens on the systems of BX and its members and that may negatively impact the usefulness and life cycle cost of market data. The fee is scheduled to be implemented on July 2, 2012. In general, the determination of whether to impose the fee on a particular market participant identifier (“MPID”) is 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 is imposed on MPIDs that have an “Order Entry Ratio” of more than 100.

Through this proposed rule change, the Exchange is modifying the parameters of the fee slightly to provide that all calculations under the rule establishing the fee will be based on orders received by BX during regular market hours (generally, 9:30 a.m. to 4 p.m.)<sup>4</sup> and will exclude orders received at other times, even if they execute during regular market hours. BX is making the change because the concerns about inefficient order entry practices that have prompted the fee are generally not present with regard to trading activity outside of regular market hours, when volumes are light. BX is also concerned that lower execution rates outside of regular market hours may skew calculations under the rule, such that an MPID that is considered acceptably efficient during regular market hours would be required to pay a fee under the rule due to its activity outside of regular market hours.

## 2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>6</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.

As originally proposed and as modified by this proposed rule change, BX believes that the Order Entry Fee 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. The proposed change to the fee is reasonable because it will reduce the likelihood of the fee being imposed on an MPID that is considered acceptably efficient during regular market hours, when the impact of inefficient trading on BX and other market participants is highest.

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 participants, the fee would be applied to them in order to encourage better order entry practices that will benefit all market participants. Ideally, the fee will be applied to no one, because market participants will adjust their behavior in order to avoid the fee. The proposed change will increase the likelihood that the fee will not be imposed in unwarranted circumstances. 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. The proposed modification to the fee is not unfairly discriminatory because although it will lessen the potential impact of the fee on MPIDs that are active outside of regular market hours, this change is rationally related to the fee’s purpose of promoting efficient trading practices in conditions where inefficiency may negatively impact BX and other market participants.

### 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. Specifically, BX believes that the 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 further the purposes of Section

6(b)(5) of the Act.<sup>7</sup> The proposed change will lessen any burden on competition by removing from consideration orders entered outside of regular market hours, when concerns about the impact of inefficient trading on BX and other market participants are diminished.

### 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>8</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 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–2012–042 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–2012–042. 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

<sup>3</sup> Securities Exchange Act Release No. 67007 (May 17, 2012), 77 FR 30579 (May 23, 2012) (SR–BX–2012–033).

<sup>4</sup> 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 p.m.

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(a)(ii). [sic]

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 a.m. and 3 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-2012-042, and should be submitted on or before July 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-16212 Filed 7-2-12; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67274; File No. SR-BYX-2012-011]

### Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Exchange Rule 11.13, Entitled "Order Execution"

June 27, 2012.

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 June 15, 2012, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") 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 11.13 entitled "Order Execution" to modify Exchange system functionality when the consolidated market is crossed and to modify the handling of orders that have been rejected after routing away through the Exchange's affiliated broker-dealer.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.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 parts 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 changes to its system functionality to implement a price constraint in the event the Exchange receives a non-routable order and a Protected Bid<sup>3</sup> and a Protected Offer<sup>4</sup> are crossed (a "Crossed Market"). The Exchange is also proposing to provide its Users with the option to avoid any execution when there is a Crossed Market. Finally, the Exchange is proposing a change to the way that it

responds to rejections of orders that were routed to a Protected Quotation.<sup>5</sup>

Under current BYX Rules, for any execution to occur during Regular Trading Hours,<sup>6</sup> the price must be equal to or better than the Protected NBBO,<sup>7</sup> unless the order is marked ISO or unless the execution falls within another exception set forth in Rule 611(b) of Regulation NMS. For any execution to occur during the Pre-Opening Session<sup>8</sup> or the After Hours Trading Session,<sup>9</sup> the price must be equal to or better than the highest Protected Bid or lowest Protected Offer. As noted below, the Exchange also currently allows executions of orders outside of Regular Trading Hours when an order is marked ISO and there is a Crossed Market.

The restrictions on executions described above reflect the Exchange's implementation of the trade-through rule of Regulation NMS, Rule 611, which only applies during Regular Trading Hours; however the Exchange has also implemented trade-through protection outside of Regular Trading Hours in order to promote the handling of orders in a consistent and orderly fashion. Pursuant to the exception of Rule 611(b)(4) during Regular Trading Hours, as well as during the Pre-Opening Session and the After Hours Trading Session, the Exchange does not currently impose trade-through protections when there is a Crossed Market. In order to constrain the price of executions when there is a Crossed Market, in the event that a Protected Bid is crossing a Protected Offer, whether during or outside of Regular Trading Hours, unless an order is marked ISO, the Exchange will not execute any portion of a bid at a price more than the greater of 5 cents or 0.5 percent higher than the lowest Protected Offer or any portion of an offer that is not marked ISO that would execute at a price more than the greater of 5 cents or 0.5 percent lower than the highest Protected Bid. In order to provide an additional option for Users<sup>10</sup> that do not want any orders to

<sup>5</sup> As defined in BYX Rule 1.5(t), Protected Quotation means a quotation that is a Protected Bid or Protected Offer.

<sup>6</sup> As defined in BYX Rule 1.5(w), Regular Trading Hours means the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

<sup>7</sup> As defined in BYX Rule 1.5(s), Protected NBBO means the national best bid or offer that is a Protected Quotation.

<sup>8</sup> As defined in BYX Rule 1.5(r), the Pre-Opening Session means the time between 8:00 a.m. and 9:30 a.m. Eastern Time.

<sup>9</sup> As defined in BYX Rule 1.5(c), the After Hours Trading Session means the time between 4:00 p.m. and 5:00 p.m. Eastern Time.

<sup>10</sup> As defined in BYX Rule 1.5(cc), a User is any Member or Sponsored Participant who is authorized to access the Exchange's system pursuant to Exchange Rules.

<sup>9</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.