

Required fields are shown with yellow backgrounds and asterisks.

Filing by NASDAQ OMX BX, Inc.  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pilot <input checked="" type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
Date Expires * <input type="text"/>			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) <input type="checkbox"/>	Section 3C(b)(2) <input type="checkbox"/>
Section 806(e)(2) <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

A Proposed Rule Change Relating to extend a pilot program related to Rule 11890, entitled "Clearly Erroneous Transactions"

**Contact Information**

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 action.

First Name \* Manny Last Name \* Alicandro

Title \* Associate General Counsel

E-mail \* manny.alicandro@nasdaqomx.com

Telephone \* (212) 401-8982 Fax

**Signature**

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.

(Title \*)

Date 01/31/2013

By Edward S. Knight

Executive Vice President and General Counsel

Edward S Knight,

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.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

Add Remove View

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 \***

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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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies**

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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, security-based swap submission, or advance notice 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 the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> the NASDAQ OMX BX, Inc. (“Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposal to extend a pilot program related to Rule 11890, entitled “Clearly Erroneous Transactions.” The Exchange also proposes to adopt new paragraph (g) to Rule 11890 in connection with the upcoming operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the “Limit Up-Limit Down Plan” or “Plan”).<sup>3</sup> The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.<sup>4</sup>

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule filing was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on July 10,

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<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. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the “Limit Up-Limit Down Release”).

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

2012. The Exchange staff will advise the Board of Directors of the Exchange of any action taken pursuant to delegated authority. No other action is necessary for the filing of this proposal.

Questions regarding this rule filing may be directed to Manny Alicandro, Associate General Counsel, the NASDAQ OMX Group, at (212) 401-8982 (telephone) or (212) 213-5435 (fax).

3. (a) Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Transactions and to adopt new paragraph (g) to Rule 11890 in connection with upcoming operation of the Limit Up-Limit Down Plan.

Proposal to Extend Pilot

Portions of Rule 11890, explained in further detail below, are currently operating as a pilot program set to expire on February 4, 2013.<sup>5</sup> The Exchange proposes to extend the pilot program to September 30, 2013.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Exchange Rule 11890 to provide for uniform treatment: (1) of clearly erroneous transaction reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.<sup>6</sup> The Exchange also adopted additional changes to

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<sup>5</sup> See Securities Exchange Act Release No. 67570 (August 2, 2012), 77 FR 47486 (August 8, 2012) (SR-BX-2012-056).

<sup>6</sup> See Securities Exchange Act Release No. 63490 (December 9, 2010), 75 FR 78299 (December 15, 2010) (SR-BX-2010-086).

Rule 11890 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11890.<sup>7</sup> The Exchange believes the benefits to market participants from the more objective clearly erroneous transactions rule should continue on a pilot basis through September 30, 2013, which is the date that the Exchange anticipates that the phased implementation of the Limit Up-Limit Down Plan will be complete. As explained in further detail below, although the Limit Up-Limit Down Plan is intended to prevent transactions that would need to be nullified as clearly erroneous, the Exchange believes that certain protections should be maintained while the industry gains initial experience operating with the Limit Up-Limit Down Plan, including the provisions of Rule 11890 that currently operate as a pilot.

#### Proposed Limit Up-Limit Down Provision to Rule 11890

The Exchange proposes to adopt new paragraph (g) to Rule 11890, to provide that the existing provisions of Rule 11890 will continue to apply to all Exchange transactions, including transactions in securities subject to the Plan, other than as set forth in proposed paragraph (g). Accordingly, other than as proposed below, the Exchange proposes to maintain and continue to apply the Clearly Erroneous Transaction standards in the same way that it does today. Notably, this means that the Exchange might nullify transactions that occur within the price bands disseminated pursuant to the Limit Up-Limit Down Plan to the extent such transactions qualify as clearly erroneous under existing criteria. As an example, assume that a Tier 1 security pursuant to the Plan has a reference price pursuant to both the Plan and Rule 11890 of \$100.00. The lower pricing band under the Plan would be \$95.00 and the upper pricing band under the Plan would be \$105.00. An

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<sup>7</sup> Id.

execution could occur on the Exchange in this security at \$96.00, as this is within the Plan's pricing bands. However, if subjected to review as potentially clearly erroneous, the Exchange would nullify an execution at \$96.00 as clearly erroneous because it exceeds the 3% threshold that is in place pursuant to Rule 11890(a)(2)(C)(1) for securities priced above \$50.00 (i.e., with a reference price of \$100.00, any transactions at or below \$97.00 or above \$103.00 could be nullified as clearly erroneous). Accordingly, this proposal maintains the status quo with respect to reviews of Clearly Erroneous Transactions and the application of objective numerical guidelines by the Exchange. The proposal does not increase the discretion afforded to the Exchange in connection with reviews of Clearly Erroneous Transactions.

The Limit Up-Limit Down Plan is designed to prevent executions from occurring outside of dynamic price bands disseminated to the public by the single plan processor as defined in the Limit Up-Limit Down Plan.<sup>8</sup> The possibility remains that the Exchange could experience a technology or systems problem with respect to the implementation of the price bands disseminated pursuant to the Plan. To address such possibilities, the Exchange proposes to adopt language to make clear that if an Exchange technology or systems issue results in any transaction occurring outside of the price bands disseminated pursuant to the Plan, a Senior Official of the Exchange, acting on his or her own motion or at the request of a third party, shall review and declare any such trades null and void. Absent extraordinary circumstances, any such action of the Senior Official of the Exchange shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such

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<sup>8</sup> See Limit Up-Limit Down Release, supra note 3.

action of the Senior Official of the Exchange must be taken by no later than the start of Regular Trading Hours<sup>9</sup> on the trading day following the date on which the execution(s) under review occurred. Although the Exchange will act as promptly as possible and the proposed objective standard (i.e., whether an execution occurred outside the band) should make it feasible to quickly make a determination, there may be circumstances in which additional time may be needed for verification of facts or coordination with outside parties, including the single plan processor responsible for disseminating the price bands and other market centers. Accordingly, the Exchange believes it necessary to maintain some flexibility to make a determination outside of the thirty (30) minute guideline. In addition, the Exchange proposes that a transaction that is nullified pursuant to new paragraph (g) would be appealable in accordance with the provisions of Rule 11890(c). In addition, the Exchange proposes to make clear that in the event that a single plan processor experiences a technology or systems problem that prevents the dissemination of price bands, the Exchange would make the determination of whether to nullify transactions based on Rule 11890(a)-(f).

The Exchange believes that cancelling trades that occur outside of the price bands disseminated pursuant to the Plan is consistent with the purpose and intent of the Plan, as such transactions are not intended to occur in the first place. If transactions do occur outside of the price bands and no exception applies -- which necessarily would be caused by a technology or systems issue -- then the Exchange believes the appropriate result is to nullify such transactions.

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<sup>9</sup> Regular Trading Hours commence at 9:30 a.m. Eastern Time. See Exchange Rule 11890(a)(2)(B).

(a) Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>10</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act,<sup>11</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Although the Limit Up-Limit Down Plan will be operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot for at least through the phased implementation of the Plan is operational will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether Rule 11890 is necessary once the Plan is operational and, if so, whether improvements can be made. Further, the Exchange believes it

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

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

consistent with the protection of investors and the public interest to adopt objective criteria to nullify transactions that occur outside of the Plan's price bands when such transactions should not have been executed but were due to a systems or technology issue.

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

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, the Exchange believes that FINRA and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistent rules across market centers.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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)

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>12</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup> The Exchange asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition,

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

<sup>13</sup> 17 CFR 240.19b-4.

and (3) and will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission.<sup>14</sup> In addition, because all transactions on the Exchange are currently subject to Rule 11890 and the Exchange is proposing to have transactions in securities subject to the Limit Up-Limit Down Plan remain governed by Rule 11890, the proposal to extend the pilot merely acts to maintain the status quo. Furthermore, because executions outside of the bands when the Exchange is experiencing a technology or systems issue would be executions that, by definition, should have not occurred, the Exchange believes that the proposed addition of language permitting the Exchange to nullify transactions in such an event is non-controversial. Based on the foregoing, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>15</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>16</sup>

The Exchange requests that the Commission waive the 30-day operative waiting period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>17</sup> The Exchange requests this waiver so that the proposal may become operative immediately upon filing. The Exchange believes that FINRA and other national securities exchanges are also extending the pilot program and thus, to ensure consistent rules across market centers, that the

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

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

<sup>16</sup> 17 CFR 240.19b-4.

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

extension should not be delayed. Accordingly, waiver of the operative delay is consistent with the protection of investors and the public interest. Furthermore, although not yet operational, the Exchange believes that waiver of the operative delay will provide clarity to market participants that are preparing for the operation of the Limit Up-Limit Down Plan.

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.

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

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1: Completed Notice of the Proposed Rule Change for publication in the Federal Register.

Exhibit 5: Text of Proposed Rule Change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-BX-2013-010)

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to extend a pilot program related to Rule 11890, entitled “Clearly Erroneous Transactions”

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on January 31, 2013, NASDAQ OMX BX, Inc. (“Exchange” or “BX”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

BX is filing with the Commission a proposal to extend a pilot program related to Rule 11890, entitled “Clearly Erroneous Transactions.” The Exchange also proposes to adopt new paragraph (g) to Rule 11890 in connection with the upcoming operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the “Limit Up-Limit Down Plan” or “Plan”).<sup>3</sup>

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

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<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. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the “Limit Up-Limit Down Release”).

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 purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Transactions and to adopt new paragraph (g) to Rule 11890 in connection with upcoming operation of the Limit Up-Limit Down Plan.

Proposal to Extend Pilot

Portions of Rule 11890, explained in further detail below, are currently operating as a pilot program set to expire on February 4, 2013.<sup>4</sup> The Exchange proposes to extend the pilot program to September 30, 2013.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Exchange Rule 11890 to provide for uniform treatment: (1) of clearly erroneous transaction reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.<sup>5</sup> The Exchange also adopted additional changes to

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<sup>4</sup> See Securities Exchange Act Release No. 67570 (August 2, 2012), 77 FR 47486 (August 8, 2012) (SR-BX-2012-056).

<sup>5</sup> See Securities Exchange Act Release No. 63490 (December 9, 2010), 75 FR 78299 (December 15, 2010) (SR-BX-2010-086).

Rule 11890 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11890.<sup>6</sup> The Exchange believes the benefits to market participants from the more objective clearly erroneous transactions rule should continue on a pilot basis through September 30, 2013, which is the date that the Exchange anticipates that the phased implementation of the Limit Up-Limit Down Plan will be complete. As explained in further detail below, although the Limit Up-Limit Down Plan is intended to prevent transactions that would need to be nullified as clearly erroneous, the Exchange believes that certain protections should be maintained while the industry gains initial experience operating with the Limit Up-Limit Down Plan, including the provisions of Rule 11890 that currently operate as a pilot.

Proposed Limit Up-Limit Down Provision to Rule 11890

The Exchange proposes to adopt new paragraph (g) to Rule 11890, to provide that the existing provisions of Rule 11890 will continue to apply to all Exchange transactions, including transactions in securities subject to the Plan, other than as set forth in proposed paragraph (g). Accordingly, other than as proposed below, the Exchange proposes to maintain and continue to apply the Clearly Erroneous Transaction standards in the same way that it does today. Notably, this means that the Exchange might nullify transactions that occur within the price bands disseminated pursuant to the Limit Up-Limit Down Plan to the extent such transactions qualify as clearly erroneous under existing criteria. As an example, assume that a Tier 1 security pursuant to the Plan has a reference price pursuant to both the Plan and Rule 11890 of \$100.00. The lower pricing band under the Plan would be \$95.00 and the upper pricing band under the Plan would be \$105.00. An

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<sup>6</sup> Id.

execution could occur on the Exchange in this security at \$96.00, as this is within the Plan's pricing bands. However, if subjected to review as potentially clearly erroneous, the Exchange would nullify an execution at \$96.00 as clearly erroneous because it exceeds the 3% threshold that is in place pursuant to Rule 11890(a)(2)(C)(1) for securities priced above \$50.00 (i.e., with a reference price of \$100.00, any transactions at or below \$97.00 or above \$103.00 could be nullified as clearly erroneous). Accordingly, this proposal maintains the status quo with respect to reviews of Clearly Erroneous Transactions and the application of objective numerical guidelines by the Exchange. The proposal does not increase the discretion afforded to the Exchange in connection with reviews of Clearly Erroneous Transactions.

The Limit Up-Limit Down Plan is designed to prevent executions from occurring outside of dynamic price bands disseminated to the public by the single plan processor as defined in the Limit Up-Limit Down Plan.<sup>7</sup> The possibility remains that the Exchange could experience a technology or systems problem with respect to the implementation of the price bands disseminated pursuant to the Plan. To address such possibilities, the Exchange proposes to adopt language to make clear that if an Exchange technology or systems issue results in any transaction occurring outside of the price bands disseminated pursuant to the Plan, a Senior Official of the Exchange, acting on his or her own motion or at the request of a third party, shall review and declare any such trades null and void. Absent extraordinary circumstances, any such action of the Senior Official of the Exchange shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such

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<sup>7</sup> See Limit Up-Limit Down Release, supra note 3.

action of the Senior Official of the Exchange must be taken by no later than the start of Regular Trading Hours<sup>8</sup> on the trading day following the date on which the execution(s) under review occurred. Although the Exchange will act as promptly as possible and the proposed objective standard (i.e., whether an execution occurred outside the band) should make it feasible to quickly make a determination, there may be circumstances in which additional time may be needed for verification of facts or coordination with outside parties, including the single plan processor responsible for disseminating the price bands and other market centers. Accordingly, the Exchange believes it necessary to maintain some flexibility to make a determination outside of the thirty (30) minute guideline. In addition, the Exchange proposes that a transaction that is nullified pursuant to new paragraph (g) would be appealable in accordance with the provisions of Rule 11890(c). In addition, the Exchange proposes to make clear that in the event that a single plan processor experiences a technology or systems problem that prevents the dissemination of price bands, the Exchange would make the determination of whether to nullify transactions based on Rule 11890(a)-(f).

The Exchange believes that cancelling trades that occur outside of the price bands disseminated pursuant to the Plan is consistent with the purpose and intent of the Plan, as such transactions are not intended to occur in the first place. If transactions do occur outside of the price bands and no exception applies -- which necessarily would be caused by a technology or systems issue -- then the Exchange believes the appropriate result is to nullify such transactions.

## 2. Statutory Basis

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<sup>8</sup> Regular Trading Hours commence at 9:30 a.m. Eastern Time. See Exchange Rule 11890(a)(2)(B).

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>9</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act,<sup>10</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Although the Limit Up-Limit Down Plan will be operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot for at least through the phased implementation of the Plan is operational will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether Rule 11890 is necessary once the Plan is operational and, if so, whether improvements can be made. Further, the Exchange believes it consistent with the protection of investors and the public interest to adopt objective criteria to nullify

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

transactions that occur outside of the Plan's price bands when such transactions should not have been executed but were due to a systems or technology issue.

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

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, the Exchange believes that FINRA and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistent rules across market centers.

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 Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)<sup>11</sup> of the Act and Rule 19b-4(f)(6)(iii) thereunder<sup>12</sup> because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate.

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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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. 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2013-010 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-2013-010. 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, 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-BX-2013-010 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>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

Note: Proposed new language is underlined. Proposed deletions are enclosed in [brackets].

**Rules of NASDAQ OMX BX**

\* \* \* \* \*

**11000. Uniform Practice Code**

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## 11890. Clearly Erroneous Transactions

The provisions of paragraphs (C), (c)(1), (b)(i), and (b)(ii) of this Rule, as amended on September 10, 2010, and the provisions of paragraph (g), shall be in effect during a pilot period set to end on [February 4]September 30, 2013. If the pilot is not either extended or approved permanent by [February 4]September 30, 2013, the prior versions of paragraphs (C), (c)(1), and (b) shall be in effect, and the provisions of paragraph (g) shall be null and void.

(a)-(f) (No changes.)

(g) Securities Subject to Limit Up-Limit Down Plan. For purposes of this paragraph, the phrase “Limit Up-Limit Down Plan” or “Plan” shall mean the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act. The provisions of paragraphs (a) through (f) above shall govern all Exchange transactions, including transactions in securities subject to the Plan, other than as set forth in this paragraph (g). If as a result of an Exchange technology or systems issue any transaction occurs outside of the applicable price bands disseminated pursuant to the Plan, a Senior Official of the Exchange, acting on his or her own motion or at the request of a third party, shall review and declare any such trades null and void. Absent extraordinary circumstances, any such action of the Senior Official of the Exchange shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Senior Official of the Exchange must be taken by no later than the start of Regular Trading Hours on the trading day following the date on which the execution(s) under review occurred. Each Member involved in the transaction shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (c) above. In the event that a single plan processor experiences a technology or systems issue that prevents the dissemination of price bands, the Exchange will make the determination of whether to nullify transactions based on paragraphs (a) through (f) above.

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