

All submissions should refer to File Number SR-Phlx-2013-116. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2013-116, and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71039; File No. SR-BX-2013-060]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

December 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 2, 2013, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities

and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Chapter XV, Section 2 entitled "BX Options Market—Fees and Rebates" to amend various fees for routing options to away markets.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxbx.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The purpose of this filing is to amend the Routing Fees in Section 2(3) of Chapter XV in order to recoup costs the Exchange incurs for routing and executing certain orders in equity options to away markets. Today, the Exchange assesses a Non-Customer a \$0.95 per contract Routing Fee to any options exchange. The Customer Routing Fee for option orders routed to The NASDAQ Options Exchange LLC ("NOM") and NASDAQ OMX PHLX LLC ("PHLX") is a \$0.05 per contract Fixed Fee in addition to the actual transaction fee assessed. The Customer Routing Fee for option orders routed to all other options exchanges³ (excluding

³ Including BATS Exchange, Inc. ("BATS"), BOX Options Exchange LLC ("BOX"), the Chicago Board Options Exchange, Incorporated ("CBOE"), C2 Options Exchange, Incorporated ("C2"), International Securities Exchange, LLC ("ISE"), the

NOM and PHLX) is a fixed fee of \$0.15 per contract ("Fixed Fee") in addition to the actual transaction fee assessed. If the away market pays a rebate, the Routing Fee is \$0.00 per contract.⁴

The Exchange proposes to increase the Customer Routing Fixed Fee of \$0.15 per contract when an option order is routed to all other exchanges to \$0.20 per contract. With respect to the fixed costs, the Exchange incurs a fee when it utilizes Nasdaq Options Services LLC ("NOS"), a member of the Exchange and the Exchange's exclusive order router.⁵ Each time NOS routes an order to an away market, NOS is charged a clearing fee⁶ and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS, membership fees at away markets, Options Regulatory Fees ("ORFs") and technical costs associated with routing options. The Exchange assesses the actual away market fee at the time that the order was entered into the Exchange's trading system. This transaction fee would be calculated on an order-by-order basis since different away markets charge different amounts.

A new market entrant recently adopted an ORF.⁷ The Exchange proposes to increase its Fixed Fee from \$0.15 to \$0.20 per contract to recoup costs associated with increased costs.

2. Statutory Basis

BX believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and

Miami International Securities Exchange, LLC ("MIAX"), NYSE Arca, Inc. ("NYSE Arca"), NYSE MKT LLC ("NYSE Amex") and Topaz Exchange, LLC ("Gemini").

⁴ For all Routing Fees, the transaction fee will continue to be based on the away market's actual transaction fee or rebate for particular market participants and in the case that there is no transaction fee or rebate assessed by the away market, the Fixed Fee.

⁵ See BX Rules at Chapter VI, Section 11(e) (Order Routing).

⁶ The Options Clearing Corporation ("OCC") assesses \$0.01 per contract side.

⁷ Gemini adopted an ORF of \$0.0010 per contract. See Securities Exchange Act Release No. 70200 (August 14, 2013), 78 FR 51242 (August 20, 2013) (SR-Topaz-2013-01).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4), (5).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.

The Exchange believes that the proposed Routing Fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing orders to away markets on behalf of Participants. Each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets. The costs to the Exchange include clearing costs, administrative and technical costs associated with operating NOS, membership fees at away markets, ORFs and technical costs associated with routing options. The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets in addition to transaction fees assessed to market participants for the execution of orders by the away market. Specifically, new entrants have added costs associated with routing.¹⁰ The Exchange believes that it is reasonable to recoup these costs borne by the Exchange on each transaction. The proposed \$0.20 per contract Customer Routing Fixed Fee, which would be assessed when an option order is routed to all other exchanges, represents the overall cost to the Exchange for technical, administrative, clearing, regulatory, compliance and other costs, in addition to the transaction fee assessed by the away market.

In addition, the Exchange believes that it is equitable and not unfairly discriminatory to assess a \$0.20 per contract Customer Routing Fixed Fee when an option order is routed to all other exchanges because this fee would be assessed uniformly on all market participants in addition to the actual transaction fees on all orders routed to non-NASDAQ OMX markets.

The Exchange believes that it is equitable and not unfairly discriminatory to assess a fixed cost of \$0.05 per contract to route orders to NOM and PHLX because the cost, in terms of actual cash outlays, to the Exchange to route to those markets is lower. For example, costs related to routing to NOM and PHLX are lower as compared to other away markets because NOS is utilized by all three exchanges to route orders.¹¹ NOS and the three NASDAQ OMX options (PHLX, BX Options and NOM) markets

have a common data center and staff that are responsible for the day-to-day operations of NOS. Because the three exchanges are in a common data center, Routing Fees are reduced because costly expenses related to, for example, telecommunication lines to obtain connectivity are avoided when routing orders in this instance. The costs related to connectivity to route orders to other NASDAQ OMX exchanges are de minimis. When routing orders to non-NASDAQ OMX exchanges, the Exchange incurs costly connectivity charges related to telecommunication lines and other related costs. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to NOM and PHLX. Orders are routed to away markets in accordance with Exchange rules based on price.¹² Market participants may submit orders to the Exchange as ineligible for routing or "DNR" to avoid incurring the Routing Fees proposed herein.¹³

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

BX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the rule change would allow the Exchange to recoup its costs when routing orders designated as available for routing by the market participant. Participants may choose to mark the order as ineligible for routing to avoid incurring these fees.¹⁴ Today, other options exchanges also assess similar fees to recoup costs incurred when routing orders to away markets.

With respect to continuing to route orders to NOM and PHLX at a lower cost as compared to other away markets, the Exchange does not believe that the proposed amendments to increase those fees, while maintaining the same fee differential imposes a burden because all market participants would be assessed the same fees depending on the away market. Also, the Exchange is proposing to recoup costs incurred only when members request the Exchange route their orders to an away market. The Exchange is passing along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market

participants when those orders are routed to NOM and PHLX and is providing those savings to all market participants. Finally, the Exchange routes orders to away markets where the Exchange's disseminated bid or offer is inferior to the national best bid (best offer) price and based on price first.¹⁵

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁶ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BX-2013-060 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-2013-060. 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

¹² See BX Rules at Chapter XII (Options Order Protection and Locked and Crossed Market Rules).

¹³ See BX Rules at Chapter VI, Section 11(e) (Order Routing).

¹⁴ See note 13.

¹⁵ See BX Rules at Chapter XII (Options Order Protection and Locked and Crossed Market Rules).

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ See note 7.

¹¹ See Chapter VI, Section 11 of the NASDAQ and BX Options Rules and PHLX Rule 1080(m)(iii)(A).

only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2013-060 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2013-29894 Filed 12-16-13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71041; File No. SR-BATS-2013-061]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

December 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 2, 2013, BATS Exchange, Inc. (the "Exchange" or "BATS") 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 Exchange has

designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. 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 filed a proposal to amend the fee schedule applicable to Members⁵ and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

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 proposes to modify pricing charged by the Exchange's options platform ("BATS Options") for orders routed away from the Exchange and executed at the International Securities Exchange, LLC ("ISE") and the NASDAQ OMX PHLX LLC ("PHLX").

Background

The Exchange currently charges certain flat rates for routing to other options exchanges that have been

placed into groups based on the approximate cost of routing to such venues. The grouping of away options exchanges is based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (*i.e.*, clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, "Routing Costs"). To address different fees at various other options exchanges, the Exchange in most instances differentiates between either securities subject to the options penny pilot program ("Penny Pilot Securities") and non-Penny Pilot Securities or between "Make/Take issues" and "Classic issues." As set forth on the Exchange's fee schedule, pricing in Make/Take issues is for executions at the identified exchange under which rebates to post liquidity (*i.e.*, "Make") are credited by that exchange and fees to take liquidity (*i.e.*, "Take") are charged by that exchange; pricing in Classic issues applies to all other executions at such exchanges.

ISE Routing Fees

The Exchange currently charges \$0.30 per contract for Customer⁶ orders and \$0.57 per contract for Professional,⁷ Firm, and Market Maker⁸ orders executed at ISE in Make/Take issues. Based on execution fees charged by ISE, which currently exceed the fee charged for Customer orders even without taking other Routing Costs into consideration, the Exchange proposes to increase fees for Customer orders routed to and executed at ISE in Make/Take issues. Specifically, the Exchange proposes to charge \$0.52 per contract for Customer orders executed at ISE in Make/Take issues. This is the same fee charged for executions in Penny Pilot Securities for Customer orders routed to and executed at the Topaz Exchange, LLC ("ISE Gemini"), the NASDAQ Options Market ("NOM"), and NYSE Arca, Inc. ("ARCA"). Also, for consistency with such other markets, because the ISE's pricing model is now clearly differentiated between Penny Pilot Securities and non-Penny Pilot

⁶ As defined on the Exchange's fee schedule, a "Customer" order is any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation ("OCC"), except for those designated as "Professional".

⁷ The term "Professional" is defined in Exchange Rule 16.1 to mean any person or entity that (A) is not a broker or dealer in securities, and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

⁸ As defined on the Exchange's fee schedule, the terms "Firm" and "Market Maker" apply to any transaction identified by a member for clearing in the Firm or Market Maker range, respectively, at the Options Clearing Corporation ("OCC").

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ A Member is any registered broker or dealer that has been admitted to membership in the Exchange.