

that transactions in ByRDs contracts over \$1.02 shall qualify as catastrophic errors if participants request a review under the existing provisions of paragraph (d)(3)(A). Transactions in ByRDs contracts that qualify as catastrophic errors will be adjusted in accordance with the procedures of proposed subsection (i) of paragraph (d)(3)(C), which states that any catastrophic error in ByRDs contracts will result in an adjustment to \$1.02 unless the parties mutually agree to nullify the transaction or agree to a different adjustment price.<sup>24</sup>

### III. Discussion and Commission Findings

After careful consideration of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>25</sup> and, in particular, the requirements of Section 6 of the Act.<sup>26</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>27</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission believes that allowing the Exchange to relaunch FROs for listing and trading as ByRDs may provide investors with a useful investment choice. The proposal should ensure that these binary options would continue to receive the benefits of trading on an exchange, which include: A centralized forum for price discovery; pre- and post-trade transparency; standardized contract specifications; and the guarantee of the Options Clearing Corporation (“OCC”).

The Commission believes that replacing the references in Section 17 of NYSE MKT’s rules to Fixed Return Options and/or FROs to Binary Return Derivatives and/or ByRDs may remove impediments to and perfect the mechanism of a free and open market by making the rule text consistent with the new name of the options product. The Commission also believes that the proposed clarifying changes and the deletions of obsolete rule references may reduce potential investor

confusion, and protect investors and the public interest.

The Commission believes that permitting the Exchange to list and trade consecutive week expiration series may provide market participants an investment vehicle that may be more useful for short-term strategies than cycle month series. In addition, the Commission believes that the proposal to include additional eligible underlying securities upon which ByRDs contracts may be listed, the proposed strike price intervals, and the MPV for quoting and trading all ByRDs contracts series are reasonable and consistent with the Act.

The Commission believes that the proposal to calculate the settlement price to always round up \$0.01 in instances when the settlement price exactly equals an expiring ByRDs option strike price is reasonable and may perfect the mechanism of a free and open market. In addition, the proposed change may protect investors and reduce potential confusion by providing certainty that either the Finish High or Finish Low ByRDs option contracts will pay off at expiration.

The Commission believes that the proposed changes to the obvious and catastrophic error rule, Rule 975NY, are consistent with the Act as they would protect investors and the public interest by providing certainty about how obvious and catastrophic errors in ByRDs would be treated. The Commission notes that the new provisions in the obvious and catastrophic error rule describe how to determine whether transactions in ByRDs contracts should be treated as errors, and if so, how they should be adjusted and the maximum adjustment price for such errors. The new provisions still require that the transactions be erroneous, as provided in Rule 975NY, and set forth specific criteria and procedures for the handling of such errors. The Commission emphasizes the importance of specific and objective criteria to determine how and when to adjust transactions involving obvious or catastrophic errors to provide certainty to market participants and to reduce confusion. Therefore, the Commission believes that the proposed changes to Rule 975NY are appropriate.

In approving this proposal, the Commission has relied on the following representations made by NYSE MKT: (i) The Exchange systems have the functionality to support the trading of ByRDs; (ii) the Exchange and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle additional traffic associated with the re-listing and

trading of ByRDs contracts; (iii) the Exchange has discussed the proposed listing and trading of ByRDs contracts with the OCC, which has represented that it is able to accommodate the clearing and settlement of ByRDs contracts; and (iv) the Exchange will monitor any increased trading volume associated with the listing of new series of ByRDs and will analyze the effect, if any, that the additional volume has on the capacity of the Exchange’s, OPRA’s, and the OCC’s automated systems.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>28</sup> that the proposed rule change (SR-NYSEMKT-2014-06), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

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

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BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71956; File No. SR-BX-2014-018]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Amend the Fee Schedule Under Exchange Rule 7018(a) With Respect to Transactions in Securities Priced at \$1 per Share or More

April 16, 2014.

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 April 8, 2014, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule under Exchange Rule 7018(a) with respect to transactions in

<sup>24</sup> See Notice, *supra* note 3, at 11847.

<sup>25</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>26</sup> 15 U.S.C. 78f.

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</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.

securities priced at \$1 per share or more.

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

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

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

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

#### 1. Purpose

The Exchange is proposing several changes to its fees and rebates applicable to transactions in securities priced at \$1 or more under BX Rule 7018(a).

First, the Exchange proposes to introduce a new credit for an order entered by a member that accesses liquidity equal to or exceeding 0.1% of total consolidated volume per month. BX will provide such firms \$0.0015 per share executed for liquidity accessing orders.

Next, the Exchange proposes to amend the criteria by which it provides a credit of \$0.0013 per share executed for liquidity accessing orders (excluding orders executing against the midpoint). Previously, this rate was available to a member (i) With an average daily volume of liquidity accessed in all securities during the month of 6 million or more shares through one or more BX Equities System MPIDs, provide [sic], however, that (ii) the member adds and/or removes liquidity of 30,000 or more contracts per day during the month through BX Options with an average daily volume of liquidity provided in all securities during the month of 1 million or more shares.

The Exchange proposes to amend the criteria by which it provides a credit of \$0.0011 per share executed for liquidity accessing orders (excluding orders executing against the midpoint).

Previously, this rate was available to a BX Equities System MPID through which the member provides an average daily volume of at least 25,000, but less than 1 million, shares of liquidity during the month. BX proposes to make this credit available to members that provide an average daily volume of at least 25,000, but less than 1 million, shares of liquidity during the month.

In BX Rule 7018(a) the term "Qualified Liquidity Provider" will be replaced with "Qualified Market Maker" ("QMM") and both of these sub-sections will clarify that for members that qualify under these sub-sections, the member must have at least one Qualified MPID, respectively. There will now be two tiers available for the QMM, Tier 1 and Tier 2. Tier 1 will be achieved by the methods currently outlined in BX Rule 7018(a)(1) and (2). The Exchange proposes that a firm may become a Qualified Market Maker (Tier 2) by having at least one Qualified MPID, that is, an MPID through which, for at least 300 securities, the Qualified Market Maker quotes at the NBBO an average of at least 75% of the time during the regular market hours (9:30 a.m. through 4:00 p.m. during the month.

The Exchange proposes that the charge of \$0.0014 per share executed for a displayed order entered by a Qualified Liquidity Provider through a Qualified MPID remains the same, but that it now applies to a Qualified Market Maker (Tier 1) and no longer must go through a Qualified MPID.

Additionally, the Exchange proposes that a new charge of \$0.0017 per share executed will be added for a displayed order entered by a QMM (Tier 2).

The Exchange also proposes that the charge of \$0.0016 per share executed for a displayed order entered by a member (i) with a daily average volume of liquidity provided in all securities during the month of 2 million or more shares through one or more BX Equities System MPIDs, and (ii) that adds BX Options Market Maker volume under Chapter XV of BX Options rules of 20,000 or more contracts per day during the month, be replaced with a charge for a displayed order entered by a member that adds liquidity equal to or exceeding \$0.25% of total consolidated volume during a month of \$0.00165 per share executed.

As for a displayed order entered through a NASDAQ OMX BX Equities System MPID through which a member provides an average daily volume of 4 million or more shares of liquidity during the month, the Exchange proposes that the current charge of \$0.0018 per share executed now applies

to a displayed order by a member that provides an average daily volume of 2.5 million or more shares of liquidity during the month.

Next, the Exchange proposes that the charge for a midpoint pegged order entered by a member that provides an average daily volume of 2 million or more shares of liquidity using midpoint pegged orders during the month be reduced from \$0.0010 to \$0.0005 per share executed, and that it will now apply to a midpoint pegged order entered by a member that provides an average daily volume of 2 million or more shares of non-displayed liquidity during the month.

The Exchange also proposes that the charge for midpoint pegged order entered by a member that provides an average daily volume of 1 million or more, but less than 2 million, shares of liquidity using midpoint pegged orders during the month be reduced from \$0.00125 to \$0.0009 per share executed, and that it will now apply to a midpoint pegged order entered by a member that provides an average daily volume of 1 million or more, but less than 2 million shares of non-displayed liquidity.

The Exchange additionally proposes that a new charge for other non-displayed orders (other than those pegged to the midpoint) entered by a member that provides an average daily volume of 5 million or more shares of non-displayed liquidity, that a charge [sic] will be added of \$0.0019 per share executed.

Finally, the Exchange also proposes to make several grammatical and conforming changes to BX Rule 7018(a) for the purposes of consistency and clarity.

#### 2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>3</sup> in general, and Sections 6(b)(4) and (b)(5) of the Act,<sup>4</sup> in particular, because 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 that the Exchange operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

At a high level, the changes simplify various aspects of the BX fee schedule to encourage firms to make use of the favorable economics it offers. By [sic] assigning rates to members based on their aggregate activity instead of on an MPID by MPID basis enhances a member's ability to earn certain

<sup>3</sup> 15 U.S.C. 78f.

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

proposed rates. By assigning displayed liquidity fees based on the total amount of liquidity provided, firms are more likely to be able to attain trading thresholds to receive superior execution rates. By lowering fees across multiple levels of firm level activity, BX ensures that growth in participation occurs across a broad contingent of Exchange members. In effect, this change lowers prices for BX members.

More specifically, the proposed increase of \$0.0013 to \$0.0015 per share executed of the credit for an order that accesses liquidity (excluding liquidity pegged to the midpoint) entered by a member that accesses liquidity equal to or exceeding 0.1% of total consolidated volume during a month is consistent with an equitable allocation of fees and is not unfairly discriminatory because it remains [sic] consistent with the Exchange's approach of providing a credit for orders accessing liquidity, which benefits all market participants, and is applicable to all such orders. Additionally, it is reasonable because it reflects the availability of what is in effect a price reduction for all members that access liquidity in this manner.

The applicability of the credit of \$0.0013 per share executed for an order that accesses liquidity (excluding liquidity pegged to the midpoint) entered by a member with a daily average volume of liquidity provided in all securities during the month of 1 million or more shares is consistent with an equitable allocation of fees and is not unfairly discriminatory because it does not change the credit, but simply reduces the requirement of 6 million or more shares through one or more BX Equities System MPIDs, and that adds/ or removes liquidity of 30,000 or more contracts per days [sic] during the month through BX Options (excluding any order that executes against a midpoint pegged order) to simply 1 million or more shares. The amount of the credit is not being changed, and is reasonable because it has the potential to reduce aggregate fees while simplifying the process for obtaining that particular rate.

The applicability of the credit of \$0.0011 per share executed for an order that accesses liquidity (excluding liquidity pegged to the midpoint) entered by a member that provides an average daily volume of at least 25,000, but less than 1 million, shares of liquidity during the month is consistent with an equitable allocation of fees and is not unfairly discriminatory because it does not change the credit, but simply removes the requirement that the order is entered by a member through a BX Equities System MPID. The amount of

the credit is in essence not being changed. As discussed above, the change makes the credit more inclusionary since some firms may have multiple MPIDs.

The applicability of the charge of \$0.0014 per share executed for a displayed order entered by a Qualified Market Maker (Tier 1) is consistent with an equitable allocation of fees and is not unfairly discriminatory because it does not change the charge, but merely substitutes "Qualified Market Maker (Tier 1)" for "Qualified Liquidity Provider through a Qualified MPID". Moreover, this change, much like the others above, make [sic] a more favorable rate available to a member as a whole, and not for just one of its constituent MPIDs. Indeed, this change makes the provision of such a rate less discriminatory.

The new charge of \$0.0017 per share executed for a displayed order entered by a Qualified Market Maker (Tier 2) and the introduction of a method for obtaining this status is consistent with an equitable allocation of fees and is not unfairly discriminatory because it expands the eligibility of favorable rates to add liquidity under the QMM program. It is reasonable because the program has proven valuable in improving the quotations of BX, which, in turn, benefits market participants who seek to access liquidity at favorable rates.

The increase to the charge of \$0.0016 per share executed for a displayed order entered by a member (i) with a daily average volume of liquidity provided in all securities during the month of 2 million or more shares through one or more BX Equities System MPIDs, and (ii) that adds BX Options Market Maker volume under Chapter XV of BX Options rules of 20,000 or more contracts per day during the month, to a charge of \$0.00165 per share executed for a displayed order entered and replaces the above requirement with a requirement that it be by a member that adds liquidity equal to or exceeding 0.25% of total consolidated volume during the month is consistent with an equitable allocation of fees and is not unfairly discriminatory because it only modestly increases the charge by \$0.00005 per share executed and the updated requirement applicable to the member entering the displayed order is reasonable because it affects similarly situated members in the same way.

The applicability of the charge of \$0.0018 per share executed for a displayed order entered by a member that provides an average daily volume of 2.5 million or more shares of liquidity during the month is consistent with an

equitable allocation of fees and is not unfairly discriminatory because it does not change the credit, but simply reduces the number of shares required to reach this level from 4 million to 2.5 million or more shares of liquidity during the month. It is reasonable in that it affects similarly situated members in the same way.

The reduction of the charge from \$0.0010 to \$0.0005 per share executed for a midpoint pegged order entered by a member that provides an average daily volume of 1 million shares, but less than 2 million shares of non-displayed liquidity (previously, liquidity using midpoint pegged orders) is consistent with an equitable allocation of fees and is not unfairly discriminatory because the Exchange believes that it is appropriate to charge a lower fee to midpoint pegged orders, which provide price improvement. It is also reasonable because it affects similarly situated members in the same way.

The new charge for non-displayed orders (other than those pegged to the midpoint) entered by a member that provides an average daily volume of 5 million or more shares of non-displayed liquidity of \$0.0019 per share executed is consistent with an equitable allocation of fees and is not unfairly discriminatory because use of non-displayed orders is wholly voluntary. It is also reasonable because it encourages additional activity from large non-display participants.

The proposed pricing changes are, in part, reflective of BX's ongoing efforts to use responsive pricing to attract orders that BX believes will improve market quality.

Finally, BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. BX believes that the proposed rule change reflects this competitive environment because it is designed to ensure that the charges and credits for participation on BX reflect changes in the cost of such participation to BX, and its desire to attract order flow that improves the market for all participants.

#### *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.<sup>5</sup> BX notes that it operates in a highly competitive market in which market participants can readily favor over 40 different competing exchanges and alternative trading systems if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, BX believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, the increases with respect to certain orders coupled with the easier to qualify for pricing tier for members active in the Exchange's cash equities market enhances the Exchange's competitiveness by reducing fees for some and raising fees modestly for others. Moreover, because there are numerous competitive alternatives to the use of the Exchange, it is likely that BX will lose market share as a result of the changes if they are unattractive to market participants. Accordingly, BX does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and paragraph (f) of Rule 19b-4<sup>7</sup> thereunder. 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.

**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-2014-018 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number *SR-BX-2014-018*. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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-2014-018* and should be submitted on or before May 13, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

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

[FR Doc. 2014-09079 Filed 4-21-14; 8:45 am]

**BILLING CODE 8011-01-P**

**SMALL BUSINESS ADMINISTRATION**

[Docket No: SBA-2014-0004]

**Small Business Investment Company (SBIC) Program: SBA Model Form of Agreement of Limited Partnership for an SBIC Issuing Debentures Only**

**AGENCY:** Small Business Administration.  
**ACTION:** Notice; request for comments on SBA Model Form of Agreement of Limited Partnership for an SBIC Issuing Debentures Only.

**SUMMARY:** The Small Business Administration (SBA) intends to update the SBA Model Form of Agreement of Limited Partnership for an SBIC Issuing Debentures Only (the Model) to conform its contents to current industry norms and practices while maintaining the regulatory and policy provisions necessary to ensure that the Model remains consistent with SBA's requirements and to minimize the risk of loss in the SBIC program. The Agency welcomes comments from the public on how to achieve this objective.

**DATES:** This notice is effective April 22, 2014.

*Comment Date:* Comments on the Model must be received on or before June 23, 2014.

**ADDRESSES:** Submit your comments, identified by Docket ID No. SBA-2014-0004, at [www.regulations.gov](http://www.regulations.gov). Comments may only be submitted at this web address; follow the instructions on the Web site for submitting comments.

All comments received will be included in the public docket without change and will be available online at [www.regulations.gov](http://www.regulations.gov). All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive information and information that you consider to be Confidential Business Information or otherwise protected should not be included. Submissions will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Renee Gordon, Office of General Counsel, 409 Third Street SW., Washington, DC 20416; (202) 401-2744.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>7</sup> 17 CFR 240.19b-4(f).