

preferred stock, to the greater of \$52,500 or \$0.001025 per share and to increase the fee per share for each additional class of common shares, each additional class of preferred stock, each class of warrants, each class of listed securities of closed-end funds, structured products and short-term securities to \$0.001025 per share because the resulting fees would better reflect the Exchange's costs related to such listing and the resulting value that that such listings provide to the issuers. In that regard, the Exchange notes that it has incurred increased expenses as it continues to improve and increase the services it provides to listed companies. These improvements include renovating and upgrading the Exchange building to provide meeting spaces for listed companies and a significant upgrade to the NYSE Connect online community accessible to all listed companies. The Exchange believes that the proposed fee increases are equitably allocated because the per share fee increase will be the same for all issuers on the Exchange. Therefore, the proposed fee increases will not be unfairly discriminatory towards any individual issuer. Further, the Exchange believes it is consistent with section 6(b)(5) of the Act to increase the minimum fee for the primary class of common shares and primary class of preferred stock but not the minimum fee for each additional class of such securities. The Exchange notes that the minimum fee for an additional class of common shares or preferred stock is already less than the fee for a primary class and that such fee differential has been approved under the Act. The Exchange has determined to leave the minimum fee for an additional class of common shares or preferred stock unchanged at this time as there are only a few listed companies with more than one class of common shares or preferred stock listed on the Exchange.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that the fees charged by the Exchange accurately reflect the services provided and benefits realized by listed companies. The market for listing services is extremely competitive. Each listing exchange has a different fee schedule that applies to issuers seeking to list securities on its exchange. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by

each listing. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee changes impose a burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A)<sup>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under section 19(b)(2)(B)<sup>11</sup> of the Act to determine whether the proposed rule change 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-NYSE-2015-44 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSE-2015-44. This file

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

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

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

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 such 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-NYSE-2015-44 and should be submitted on or before November 5, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-76116; File No. SR-BX-2015-050]**

### **Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving Proposed Rule Change To Adopt a Kill Switch**

October 8, 2015.

#### **I. Introduction**

On August 7, 2015, NASDAQ OMX BX, Inc. (the "Exchange" or "BX") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule

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

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

19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt a risk protection functionality referred to as a kill switch that will be available to all Participants of the Exchange. The proposed rule change was published for comment in the **Federal Register** on August 27, 2015.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

## II. Description of the Proposed Rule Change

The Exchange proposes to offer to all its members a new optional risk protection functionality for options to help members control their quote and order activity on the Exchange.<sup>4</sup> Referred to as a “Kill Switch,” the functionality will allow BX Participants to remove quotes and cancel open orders, and will prevent the submission of new quotes and orders until the Exchange re-enables access to the BX System for the Participant.

To use the Kill Switch, a Participant will send a message<sup>5</sup> to the BX System to: (i) Promptly remove quotes; and/or (ii) promptly cancel orders for certain specified Identifiers (e.g., a particular Exchange account, port, or badge or mnemonic, or for a group of Identifiers).<sup>6</sup> The Exchange’s proposal does not allow Participants to remove quotes or cancel orders by symbol. The BX System will send an automated message to the Participant when it has processed a Kill Switch request.

The BX Participant will be unable to enter any new quotes or orders using the affected Identifier(s) until the Participant makes a verbal request to the Exchange and Exchange staff enables re-entry. Once enabled for re-entry, the Exchange will send a message to the Participant and, if it requests to receive such notifications, to the Participant’s clearing firm as well.

## III. Discussion and Commission Findings

After careful review, 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>7</sup> and, in particular, the requirements of section 6 of the Act.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

According to the Exchange, the proposed rule change is designed to protect BX Participants in the event that the Participant encounters a situation, like a systems issue, for which they would like to withdraw temporarily from the market.<sup>10</sup> The Exchange further notes that the proposed Kill Switch is designed to increase systemic protections and, in so doing, so should encourage liquidity generally while removing impediments to market participation.<sup>11</sup> To the extent that the Exchange’s proposal provides member firms with greater control over their quotes and orders, and allows firms to remove quotes and cancel orders in an appropriate manner, then the proposal may encourage firms to provide liquidity on BX and thus contribute to fair and orderly markets in a manner that protects the public interest, protects investors, and is not designed to permit unfair discrimination.

Further, the Commission agrees that it would be appropriate to notify a Participant’s clearing member, at the clearing member’s request, once a Participant’s selected Identifiers are re-enabled following the Participant’s use of the Kill Switch. Because the clearing member accepts financial responsibility for clearing the Participant’s trades, notifying the applicable clearing member of a Participant’s re-enabled Identifiers following use of the Kill Switch may be appropriate and help the clearing member manage the risk

associated with the Participant’s trading activity.

The Commission notes that the Exchange represented in its proposal that the Kill Switch will operate consistently with a broker-dealer’s firm quote obligations pursuant to Rule 602 of Regulation NMS,<sup>12</sup> and that the proposal does not diminish a market-maker’s obligation to provide continuous two-sided quotes on a daily basis under BX rules.<sup>13</sup> Specifically, the Exchange represents that “any interest that is executable against a BX Participant’s quotes and orders that are received by the Exchange prior to the time the Kill Switch is processed by the System will automatically execute at the price up to the BX Participant’s size.”<sup>14</sup> In that respect, the Exchange further represented that “[t]he Kill Switch message will be accepted by the System in the order of receipt in the queue and will be processed in that order so that interest that is already accepted into the System will be processed prior to the Kill Switch message.”<sup>15</sup> Based on these representations, the Commission believes that the proposal is designed to promote just and equitable principles of trade and perfect the mechanism of a free and open market.

Accordingly, the Commission finds that the Exchange’s proposal is consistent with the Act, including section 6(b)(5) thereof, in that it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

## IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-BX-2015-050) be, and hereby is, approved.

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

**Robert W. Errett,**

*Deputy Secretary.*

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

<sup>3</sup> See Securities Exchange Act Release No. 75744 (August 27, 2015), 80 FR 52068 (“Notice”).

<sup>4</sup> See *id.*

<sup>5</sup> BX Participants will be able to utilize an interface to send a message to the Exchange to initiate the Kill Switch, or they may contact the Exchange directly. See Notice, *supra* note 3, at note 3.

<sup>6</sup> Permissible groups could be formed only within a single broker-dealer. For example, a group could include, but would not be limited to, all market maker accounts or all order entry ports. See Notice, *supra* note 3.

<sup>7</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>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See Notice at 52069.

<sup>11</sup> See *id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> 15 U.S.C. 78s(b)(2).

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