

restructuring of indirect ownership interests of the Exchange, and will not involve the introduction of any new direct or indirect owners or any entity or individual that would have the right to direct the actions of the Exchange or vote the shares of the Exchange. As such, the Exchange believes that the proposal is consistent with the Act.

*C. 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 unsolicited written comments from members or other interested parties.

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

Within 45 days of the publication date of this notice or within such longer period (1) as the Commission may designate up to 45 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (2) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such Proposed Rule Change; or
- (B) institute proceedings to determine whether the Proposed Rule Change should be 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, as modified by Amendment No. 1, 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-ISEGemini-2014-24 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-ISEGemini-2014-24. 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-ISEGemini-2014-24, and should be submitted on or before December 3, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014-26691 Filed 11-10-14; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-73528; File No. SR-NYSE-2014-58]**

**Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the NYSE Proprietary Market Data Fee Schedule Regarding Non-Display Use Fees**

November 5, 2014.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on October 29, 2014, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have

been prepared by the self-regulatory organization. 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 a change to the NYSE Proprietary Market Data Fee Schedule ("Market Data Fee Schedule") regarding non-display use fees. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item 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 the Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The Exchange proposes a change to the Market Data Fee Schedule regarding non-display use fees for NYSE OpenBook, NYSE Trades, NYSE BBO and NYSE Order Imbalances, the market data products to which non-display use fees apply. Specifically, with respect to the three categories of, and fees applicable to, market data recipients for non-display use, the Exchange proposes to describe the three categories in the Market Data Fee Schedule.

In September 2014, the Exchange revised the fees for non-display use of NYSE OpenBook, NYSE Trades, and NYSE BBO and added fees for non-display use of NYSE Order Imbalances.<sup>4</sup> In the 2014 Filing, the Exchange proposed certain changes to the categories of, and fees applicable to, data recipients for non-display use. As set forth in the 2014 Filing: (i) Category 1 Fees apply when a data recipient's non-display use of real-time market data

<sup>38</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 72923 (August 26, 2014), 79 FR 52079 (September 2, 2014) (SR-NYSE-2014-43) ("2014 Filing").

is on its own behalf as opposed to use on behalf of its clients; (ii) Category 2 Fees apply when a data recipient's non-display use of real-time market data is on behalf of its clients as opposed to use on its own behalf; and (iii) Category 3 Fees apply when a data recipient's non-display use of real-time market data is for the purpose of internally matching buy and sell orders within an organization, including matching customer orders on a data recipient's own behalf and/or on behalf of its clients. The Market Data Fee Schedule currently lists each category as Category 1, Category 2, and Category 3, without further description.

The Exchange is proposing to amend the Market Data Fee Schedule to add the descriptions of the three categories, as set forth above, as a footnote to the Market Data Fee Schedule. Because there will now be multiple footnotes to the Market Data Fee Schedule, the Exchange proposes non-substantive edits to change the existing footnote references from asterisks to numbers.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>5</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>6</sup> of the Act, in particular, in that it is 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 it is not designed to permit unfair discrimination among customers, brokers, or dealers.

The Exchange believes that adding the description of the three categories of data recipients for non-display use to the Market Data Fee Schedule will remove impediments to and help perfect a free and open market by providing greater transparency for the Exchange's customers regarding the category descriptions that have been previously filed with the Commission and are applicable to the existing Market Data Fee Schedule.<sup>7</sup>

## 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 because the Exchange is merely adding to the Market Data Fee Schedule information that has been previously filed with the Commission.<sup>8</sup>

## 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

Because the foregoing proposed rule 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 if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given 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,<sup>9</sup> the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

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>12</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>14</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The

Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that adding the description of the categories of market data recipients for non-display use to the Market Data Fee Schedule is consistent with the protection of investors and the public interest because it will provide more transparency in the Exchange's Market Data Fee Schedule regarding the existing definitions in that schedule. The Commission agrees and has determined to waive the 30-day operative date so that the proposal may take effect upon filing.<sup>15</sup>

## 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-2014-58 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-2014-58. 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.,

<sup>8</sup> See *supra* n. 4.

<sup>9</sup> The Exchange has fulfilled this requirement.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>15</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>7</sup> See *supra* n. 4.

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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-2014-58 and should be submitted on or before December 3, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73516; File Nos. SR-BSECC-2014-001; SR-BX-2014-045; SR-NASDAQ-2014-093; SR-Phlx-2014-61; SR-SCCP-2014-01]

### Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; NASDAQ OMX BX, Inc.; the NASDAQ Stock Market LLC; NASDAQ OMX PHLX LLC; Stock Clearing Corporation of Philadelphia; Order Approving Proposed Rule Changes To Amend the Restated Certificate of Incorporation and By-Laws of the NASDAQ OMX Group, Inc.

November 5, 2014.

#### I. Introduction

On September 10, 2014, Boston Stock Exchange Clearing Corporation ("BSECC"), NASDAQ OMX BX, Inc. ("BX"), the NASDAQ Stock Market LLC ("NASDAQ"), NASDAQ OMX PHLX LLC ("Phlx"), and the Stock Clearing Corporation of Philadelphia ("SCCP" and, together with BSECC, BX, NASDAQ and Phlx, the "SROs" or "Self-Regulatory Subsidiaries"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> proposed rule changes with respect to amendments to the Amended and Restated Certificate of Incorporation ("Charter") and By-Laws

("By-Laws") of the NASDAQ OMX Group, Inc. ("NASDAQ OMX"), the parent company of the SROs.<sup>4</sup> The proposed rule changes by BSECC and SCCP were published for comment in the **Federal Register** on September 25, 2014 <sup>5</sup> and the proposed rule changes by BX, NASDAQ and Phlx were published for comment in the **Federal Register** on September 29, 2014.<sup>6</sup> The Commission received no comment letters on the proposals.

## II. Discussion

### A. Background

Article Fourth, Paragraph C of NASDAQ OMX's Charter includes a voting limitation that generally prohibits a stockholder from voting shares beneficially owned, directly or indirectly, by such stockholder in excess of 5% of the then-outstanding shares of capital stock of NASDAQ OMX entitled to vote as of the record date in respect of any matter. Pursuant to Article Fourth, Paragraph C(6) of the Charter, NASDAQ OMX's Board may grant exemptions to this limitation prior to the time a stockholder beneficially owns more than 5% of the outstanding shares of stock entitled to vote on the election of a majority of directors at such time. Article Fourth, Paragraph C(6) of the Charter and Section 12.5 of the By-Laws limit the Board's authority to grant the exemption. The SROs note that these provisions, which are intended to be substantively identical, currently contain some language differences. Therefore, the SROs

<sup>4</sup> Certain provisions of NASDAQ OMX's Charter and By-Laws are rules of a self-regulatory organization if they are stated policies, practices, or interpretations, as defined in Rule 19b-4 under the Act, of the self-regulatory organization, and must be filed with the Commission pursuant to Section 19(b) of the Act and Rule 19b-4 thereunder. See Securities Exchange Act Release Nos. 58183 (July 17, 2008), 73 FR 42850 (July 23, 2008) (File No. SR-NASDAQ-2008-035); 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (File Nos. SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01); and 58180 (July 17, 2008), 73 FR 42890 (July 23, 2008) (File No. SR-SCCP-2008-01) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the By-Laws of the NASDAQ OMX Group, Inc. in Connection With the Acquisitions of Boston Stock Exchange, Incorporated and Philadelphia Stock Exchange, Inc.). Accordingly, the SROs have filed with the Commission proposed changes to the NASDAQ OMX Charter and By-Laws.

<sup>5</sup> See Securities Exchange Act Release Nos. 73144 (September 19, 2014), 79 FR 57624 (September 25, 2014) (SR-BSECC-2014-001) and 73145 (September 19, 2014), 79 FR 57648 (September 25, 2014) (SR-SCCP-2014-01).

<sup>6</sup> See Securities Exchange Act Release Nos. 73195 (September 23, 2014), 79 FR 58397 (September 29, 2014) (SR-BX-2014-045); 73193 (September 23, 2014), 79 FR 58388 (September 29, 2014) (SR-NASDAQ-2014-093); and 73194 (September 23, 2014), 79 FR 58393 (September 29, 2014) (SR-Phlx-2014-61).

propose that NASDAQ OMX adopt the amendments described below to the Charter and By-Laws to conform these provisions and remove any ambiguity that may exist.

### B. Proposed Amendments to the Charter

First, the SROs propose to add a statement to Article Fourth, Paragraph C(6) of the Charter that for so long as NASDAQ OMX shall control, directly or indirectly, any Self-Regulatory Subsidiary, a resolution of the Board to approve an exemption for any person under Article Fourth, Paragraph C(6) of the Charter shall not be permitted to become effective until such resolution has been filed with and approved by the SEC under Section 19 of the Act. In addition, the SROs propose to define "Self-Regulatory Subsidiary," which is currently not a defined term in the Charter, as any subsidiary of NASDAQ OMX that is a "self-regulatory organization" as defined under Section 3(a)(26) of the Act.<sup>7</sup> These changes would conform the Charter to language currently in the By-Laws.

Second, the SROs propose to add an additional language to the current provision in Article Fourth, Paragraph C(6) of the Charter that states the Board may not approve an exemption to the 5% voting limitation for: (i) A registered broker or dealer or an affiliate thereof or (ii) an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Act. Specifically, the SROs propose to add a proviso to Article Fourth, Paragraph C(6) of the Charter stating that for these purposes, an "affiliate" shall not be deemed to include an entity that either owns 10% or less of the equity of a broker or dealer, or receives 1% or less of its consolidated gross revenues from a broker or dealer. This change would conform the Charter to language currently in the By-Laws.

Third, the SROs propose to change a reference in Article Fourth, Paragraph C(6) of the Charter from The NASDAQ Stock Market LLC to "the Self-Regulatory Subsidiaries." This change would conform the Charter to language currently in the By-laws and would also include the other Self-Regulatory Subsidiaries in addition to the NASDAQ Stock Market LLC.

Fourth, the SROs propose to add a requirement to Article Fourth,

<sup>7</sup> Under Section 3(a)(26) of the Act, a "self-regulatory organization" is defined as "any national securities exchange, registered securities association, or registered clearing agency . . . ." 15 U.S.C. 78c(a)(26). At present, this defined term would include NASDAQ, BX and Phlx, which are national securities exchanges, and BSECC and SCCP, which are registered clearing agencies that are currently dormant.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.