

Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>7</sup> in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated Members will be subject to the same fee structure, and access to the Exchange's market is offered on fair and non-discriminatory terms. In other words, the proposed rule change will treat similarly situated Members in the same manner by allocating the same quoting allowance to all Members. The Exchange further believes that its proposal to lower the quote allowance per each login is both equitable and reasonable as it will help the Exchange manage quote message traffic. The Exchange believes that Market Makers are generally quoting more efficiently on the Optimise trading platform and does not believe that lowering the quoting allowance will impact Market Makers adversely from conducting their activity on the Exchange. Further, the Exchange's proposal does not preclude Members from obtaining additional logins if they have a need beyond the quoting allowance allocated per each login.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange 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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.<sup>8</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 Exchange 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 Exchange 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-ISE-2012-12 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-ISE-2012-12. 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 a.m. and 3 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-ISE-2012-12 and should be submitted on or before April 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66592; File No. SR-BX-2012-018]

### **Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate the 100MB Connectivity Option and Fee**

March 14, 2012.

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 March 6, 2012, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 eliminate 100MB connectivity between the Exchange and co-located servers, as well as associated fees, as set forth in Exchange Rule 7034(b). The Exchange will implement the proposed change on April 1, 2012. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com/>, at the Exchange's principal office, 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

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</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.

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 proposes to modify Rule 7034(b) to eliminate 100MB connectivity between the Exchange and co-located servers, as well as associated fees.<sup>3</sup> The Exchange currently offers each co-located customer one 100MB connection to the Exchange at no charge; additional connections are available for a \$50 one-time installation fee and a monthly fee of \$100.<sup>4</sup> Due to the continuous growth of the size of consolidated and proprietary market data feeds, use of 100MB connectivity to the Exchange may result in high data transmission latencies, a loss of data packets, and a reduction in client service satisfaction. As a result, the Exchange proposes to eliminate the 100MB connection option to the Exchange. The proposal to eliminate the 100MB connection option will eliminate potential latencies and loss of data that could occur with lower bandwidths, issues that are potentially damaging to investors.<sup>5</sup>

Currently, there are three co-located customers that utilize 100MB connectivity to the Exchange. All three customers also have larger bandwidth connections to the Exchange. While these customers will need to assess the adequacy of their bandwidth and may need to make adjustments, the Exchange strongly believes that these changes will be beneficial to these customers because they will decrease the risk of latency and data loss. In addition, as the number of customers making use of

100MB connectivity to the Exchange dwindles, maintaining the option would require the Exchange to impose associated fixed costs on a smaller customer base, or upon customers that are not themselves using this legacy connectivity option. The Exchange believes that it is reasonable and equitable to avoid this result by eliminating the option and helping customers migrate to more suitable connections.

To provide all affected customers sufficient time to [sic] from their 100MB connections to larger bandwidths, the Exchange has proposed (in a separate filing) to waive installation fees for 10Gb and 40Gb connectivity until May 31, 2012.<sup>6</sup>

The Exchange also proposes to eliminate the word "additional" from the fee schedule in several instances to reflect the elimination of the 100MB connection that was previously offered at no charge.

2. Statutory Basis

The Exchange believes the proposal is consistent with the provisions of Section 6 of the Act<sup>7</sup> in general, and with the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, in that it is designed 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 is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

*Removes Impediments and Perfects Mechanism of a Free and Open Market*

The Exchange's proposal is designed to eliminate data transmission latencies and loss of data risks that are associated with 100MB connectivity, and thereby provide a more efficient mechanism for trading. Since the migration to a higher bandwidth option will reduce the potential disruption and consequently provide greater efficiency of trading in the marketplace, the effects of this proposal will remove impediments to and perfect the mechanism of a free and open market and a national market

system, which in turn will protect investors and the public interest.

*Not Unfairly Discriminatory*

The proposal to eliminate the 100MB connectivity option applies to all Exchange members that have voluntarily elected this service option. Currently, there are three co-located customers that utilize 100MB connectivity to the Exchange. All three clients also have larger bandwidth connections to the Exchange. While these customers will need to assess the adequacy of their bandwidth and may need to make adjustments, the Exchange strongly believes that these changes will be beneficial to these customers because they will decrease the risk of latency and data loss. In addition, as the number of customers making use of 100MB connectivity to the Exchange dwindles, maintaining the option would require the Exchange to impose associated fixed costs on a smaller customer base, or upon customers that are not themselves using this legacy connectivity option.

To assist co-located customers with migration to larger bandwidths, the Exchange has proposed (in a separate filing) to waive installation fees for 10Gb and 40Gb connectivity until May 31, 2012.<sup>9</sup> Given the ever-increasing size of market data, the Exchange decided to apply the waiver of installation fees only to the 10Gb and 40Gb connection instead of offering the waiver for the next available bandwidth, the 1Gb connection. This will provide the clients the opportunity to migrate to a bandwidth that will more efficiently sustain the client's business needs over a longer period of time. The co-located customers that currently have the 100MB connectivity to the Exchange have until March 31, 2012 to migrate from the 100MB connection to a larger bandwidth. Furthermore, eliminating the 100MB connectivity to the Exchange is consistent with the connections offered by other exchanges,<sup>10</sup> and the Exchange does not believe that it would be unfairly discriminatory to eliminate a connectivity option that is not routinely offered by other exchanges.

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

The Exchange does not believe that the proposed rule change will result in

<sup>3</sup> All co-location services are provided by NASDAQ Technology Services LLC and pursuant to agreements with the owner/operator of its data center.

<sup>4</sup> See Exchange Rule 7034(b), Connectivity to Nasdaq.

<sup>5</sup> The 100MB option that is being eliminated—which is used to connect co-located servers to the Exchange—should be contrasted with a recently introduced option for customers to establish 100MB connections between their co-located servers and select external locations. These external connections are generally combined with other bandwidth options and are not utilized to transmit the same volume of data as the 100MB connection between co-located services and the Exchange. For this reason, the Exchange believes that the same latency and data loss considerations that are prompting it to eliminate the 100MB connection to the Exchange do not apply to the 100MB connection to external locations.

<sup>6</sup> See SR-BX-2012-012 (submitted March 2, 2012). The Exchange is not proposing to waive fees for migrating to 1Gb connectivity, since the Exchange is concerned that this bandwidth level will prove inadequate for most members in the near future. Accordingly, rather than creating a scenario in which customers face repeated concerns about the adequacy of their bandwidth, the Exchange believes that it is reasonable to use the fee waiver to encourage customers to move to connectivity options that are likely to be adequate for a more extended period.

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

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

<sup>9</sup> See, *supra* note 6.

<sup>10</sup> See [http://www.nyse.com/pdfs/NYSEArca\\_Equities\\_Fees.pdf](http://www.nyse.com/pdfs/NYSEArca_Equities_Fees.pdf), page 13, for NYSE Equities, Inc. Fee Schedule where the bandwidth starts at 1Gb. See also [http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee\\_schedule.pdf](http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf), page 9, for the International Securities Exchange Fee Schedule where the bandwidth also starts at 1Gb.

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the Exchange believes that eliminating the 100MB connectivity service option will not burden competition since the 100MB connectivity option is not routinely offered by other exchanges. In fact, requiring the Exchange to continue to offer this option would unfairly burden competition by requiring it to incur costs that are not typically incurred by any of its competitors.

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

Written comments were neither solicited nor received.

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

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder.

The Exchange has asked that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii).<sup>13</sup> The Exchange represents that investors and the public interest are best served by waiving the pre-operative delay to minimize potential risks of market disruption associated with the use of lower bandwidth at a time of increasing data traffic. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.<sup>14</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2012-018 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-2012-018. 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 a.m. and 3 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-2012-018 and should be submitted on or before April 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-66595; File No. SR-ISE-2012-11]**

**Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Telemarketing Rules**

March 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 28, 2012, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 substantially 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 ISE Rule 626 (Telephone Solicitation) to revise and add provisions that are substantially similar to Federal Trade Commission ("FTC") rules that prohibit deceptive and other abusive telemarketing acts or practices.<sup>3</sup> The text of the proposed rule change is available on the Exchange's Web site at <http://www.ise.com>, at the principal

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

<sup>12</sup> 17 CFR 240.19b-4(f)(6). 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.

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

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</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.

<sup>3</sup> The proposed rule change is substantially similar in all material respects to Financial Industry Regulatory Authority, Inc. ("FINRA") Rule 3230 (Telemarketing), which the Commission recently approved. See Securities Exchange Act Release No. 66279 (Jan. 30, 2012), 77 FR 5611 (Feb. 3, 2012) (SR-FINRA-2011-59) (approval order of proposed rule change to adopt telemarketing rule). The proposed rule change amends the name of Rule 626 from *Telephone Solicitation* to *Telemarketing*.