

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

NASDAQ 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. Specifically, NASDAQ believes that the rule change does not affect the availability or pricing of goods or services offered by the Exchange, and therefore does not impact competition between the Exchange and others. Rather, the change is designed to simplify and clarify existing rules in a manner that does not restrict the ability of members to enter and update trading interest in NASDAQ.

### *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**

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.

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-NASDAQ-2013-068 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-NASDAQ-2013-068. 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-NASDAQ-2013-068 and should be submitted on or before May 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69436; File No. SR-NYSEARCA-2013-40]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.11 Clarifying the Exchange's Treatment of Discretionary Orders That Have Discretionary Prices Outside of the Limit Up-Limit Down Price Bands**

April 23, 2013.

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 April 10, 2013, NYSE Arca, Inc. ("NYSE Arca" 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 amend NYSE Arca Equities Rule 7.11 to clarify the Exchange's treatment of Discretionary Orders that have discretionary prices outside the Price Bands. 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.

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

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

<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 200.30-3(a)(12).

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

1. Purpose

The Exchange is proposing to amend new NYSE Arca Equities Rule 7.11 ("New Rule 7.11" or the "New Rule"), which implements the Limit Up-Limit Down Plan,<sup>3</sup> the first phase of which becomes effective on April 8, 2013, to clarify the Exchange's treatment of Discretionary Orders that have discretionary prices outside the Price Bands. Under New Rule 7.11, buy or sell interest that is priced or could be executed above or below the Price Bands, as that term is used in the New Rule, would be canceled, with one exception. That exception, set out in sub-paragraph (a)(6) of the New Rule, permits an ETP Holder to instruct the Exchange to reprice eligible limit orders that are priced above or below the Price Bands, rather than cancel such orders. Eligible limit orders would be repriced to the Price Bands.

The Exchange is proposing to amend New Rule 7.11 to clarify its treatment of Discretionary Orders, including Discretion Limit Orders and Passive Discretionary Orders,<sup>4</sup> in certain circumstances. A Discretionary Order is an order to buy or sell securities at a specified, undisplayed price, called the "discretionary price," as well as at a specified, displayed price. Pursuant to New Rule 7.11(a)(6)(C), an ETP Holder can enter an instruction to re-price Discretionary Orders rather than cancel them. However, if a Discretionary Order includes a discretionary price that is priced outside the Price Bands, the Exchange would cancel the order because it would be unexecutable at the discretionary price, even if the displayed price of the order is repriced to the Price Bands. Accordingly, the Exchange proposes to clarify in the Rule that in this scenario, the Exchange would cancel a Discretionary Order rather than reprice it.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the

"Act"),<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>6</sup> 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposal would clarify to ETP Holders how the Exchange would treat Discretionary Orders with discretionary prices outside the Price Bands. The Exchange believes that the clarifying change removes impediments to and perfects the mechanism of a free and open market because it makes clear that an order with a discretionary price that is outside the Price Bands, and therefore unexecutable, would be cancelled.

*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 Exchange believes that the proposed amendment will not impose any burdens on competition because the proposal would clarify to ETP Holders how Discretionary Orders with discretionary prices outside the Price Bands would be treated, which would provide ETP Holders with more information in setting discretionary prices for such orders.

*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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup> Because the

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 prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>9</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>10</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 Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange immediately to clarify its treatment of Discretionary Orders that may be affected by the Limit Up-Limit Down Plan, which was implemented on April 8, 2013. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.<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.

**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

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of 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 Commission has waived the five-day prefiling requirement in this case.

<sup>3</sup> As defined in New Rule 7.11, "Plan" means the Plan to Address Extraordinary Market Volatility Submitted to the Securities and Exchange Commission Pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934, Exhibit A to Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012), as it may be amended from time to time.

<sup>4</sup> "Discretionary Order," "Passive Discretionary Order," and "Discretion Limit Order" are defined in paragraph (h) of Arca Equities Rule 7.31.

• Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–NYSEARCA–2013–40 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–NYSEARCA–2013–40. 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 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 publicly available. All submissions should refer to File Number SR–NYSEARCA–2013–40 and should be submitted on or before May 22, 2013.

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

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–69456; File No. SR–BX–2013–031]

### **Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Rule Governing Cancellation of Orders in the Event of an Issuer Corporate Action Related to a Dividend, Payment or Distribution, and To Make Related Clarifications to Rule Text**

April 25, 2013.

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 April 17, 2013, NASDAQ OMX BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) a 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 adopt a rule governing cancellation of orders in the event of an issuer corporate action related to a dividend, payment or distribution, and to make related clarifications to rule text.

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**

BX is proposing to adopt Rule 4761 to address the treatment of quotes/orders in securities that are the subject of issuer corporate actions related to a dividend, payment or distribution (a “corporate action”). The rule will apply to any trading interest that is carried on the BX Equities Market book overnight.<sup>4</sup> The proposed BX rule would provide that in the event of any corporate action, BX will cancel open quote/orders on the ex-date of the action, thereby imposing on the member that entered the order the responsibility for determining whether it wishes to reenter the order and if so, at what price and size. The cancellation would occur immediately prior to the opening of the BX Equities Market at 7 a.m. on the ex-date of the corporate action, and the member would receive a cancellation notice, so that it could, if it desired, reenter the order at the commencement of trading on the ex-date.

In addition, BX is proposing to amend Rule 4756(b) to make it clear that quotes do not necessarily remain open overnight and to address several other issues. First, BX is modifying a description of open quotes, the original intent of which is unclear and that accordingly may result in confusion.<sup>5</sup> The sentence in question appears to reflect the idea that an open quote (*i.e.*, a quote designated to remain open at the end of the trading day) would be processed in the same manner as a System Hours GTC Order. While accurate, this statement does not reflect the fact that a quote may also accurately be described as an Attributable Order entered by an Equities Market Maker or Equities ECN (*i.e.*, trading interest that is identified as having been entered by a particular market participant). Moreover, although an Attributable Order may be entered with a time-in-force of good-'till-cancelled and thereby remain open overnight, such orders have not historically been used by BX

<sup>4</sup> BX notes that its market participants have not historically made use of such good-'till-cancelled trading interest, but believes that a rule should be adopted to ensure that the treatment of such orders is clearly specified by its rules.

<sup>5</sup> It should be noted that although BX rules permit members to register and trade as Equities Market Makers or Equities ECNs, no member is currently registered with such a status. Accordingly, the following discussion regarding the use and processing of quotes should be understood as not having a direct impact on any current BX market participants. Rather, the proposed rule change is intended to ensure that the rules that would govern such matters are clear.

<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>12</sup> 17 CFR 200.30–3(a)(12).