



The Commonwealth of Massachusetts
Secretary of the Commonwealth
State House, Boston, Massachusetts 02133

William Francis Galvin
Secretary of the Commonwealth

September 28, 2010

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing
of Proposed Rule Change to Create Listing Market on the Exchange
Release Nos. 34-62818; File No. SR-BX-2010-059

Dear Ms. Murphy,

The Massachusetts Securities Division (the “Division”) welcomes this opportunity to comment on the proposed rule change filed by the NASDAQ OMX BX, Inc. (the “Exchange”) to create a listing market, which will be called BX or the BX Market.

The Massachusetts Securities Division is a department within the Office of the Secretary of the Commonwealth of Massachusetts. The Securities Division is charged with the responsibility to implement and enforce the Massachusetts securities laws. As such, the Secretary of the Commonwealth is the chief securities regulator for Massachusetts.

Background

Following the NASDAQ’s acquisition of the Boston Stock Exchange (“BSE”), the exchange shut down its listing market and de-listed the BSE-listed securities. Since January 2009, the exchange has operated as a trading venue only, where participants may trade securities listed on other exchanges pursuant to unlisted trading privileges.

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Pursuant to the new Rule Proposal, the BX Market will be a listing market for the kinds of small stocks that do not meet the listing standards of the existing exchanges, and that currently trade only in over-the-counter markets.

While the BX Market will require qualitative listing standards for listed companies that resemble NASDAQ standards, the quantitative listing standards will be far lower: listed stocks that formerly were over-the-counter stocks will be required to have a minimum listing price of \$1.00 per share, while stocks that formerly were listed on a national exchange will be required to have a minimum listing price of just \$0.25. In essence, the BX Market will be a listing market for penny stocks.

Listing on the BX Market Will Confer a Non-Issuer Registration Exemption under Several States' Securities Laws

The Massachusetts, along with 11 other states, has a registration exemption for securities listed on the Boston Stock Exchange¹. We believe this exemption was predicated on the protections provided by the listing standards of the exchange, which assured that the stocks listed on the exchange would meet certain quality criteria before such stocks could be listed.

The Rule Proposal states that the BX Market will not be a recognized exchange, and that therefore securities listed on the BX will not be preempted securities under Section 18(b) of the Securities Act of 1933. The Rule Proposal also states that the BX Market will require its listed companies to agree not to claim any state's exchange-listing exemption for its securities, and that the BX may de-list companies that claim the exemption.

In spite of these measures, the Securities Division is concerned that the safeguards that the BX Market plans to put into place will not prevent unscrupulous penny stock promoters or boiler room brokerages from asserting that securities they are offering and selling are exempt from state registration because the securities listed on the Boston Stock Exchange.

¹ Section 402(a)(8) of M.G.L. c.110A provides an exemption from the securities registration requirement for "any security that is listed or approved for listing upon notice of issuance on . . . the Boston Stock Exchange."

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History of Fraud Relating to Penny Stocks

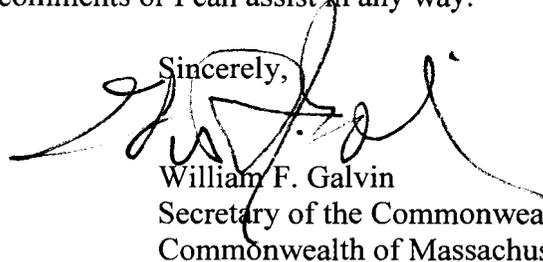
The Massachusetts Securities Division, along with other regulators, has seen significant problems in the penny stock segment of the market, including boiler room sales practices by brokerages and market manipulation (including the spreading of false rumors) by stock promoters and brokerages that hold a block of a given stock. Based on these problems, extreme caution is warranted when any party proposes to establish a new market to trade penny stocks.

The Securities Division is also concerned that because the BX Market is owned by, and under the supervision of the NASDAQ, it will inappropriately borrow some of the prestige of the NASDAQ, despite the steps the NASDAQ may take to promote the BX as a separate market.

We urge the BX Market to revise its proposal to address the issues that may arise from the BX Market becoming a market for penny stocks, particularly the potential for brokers and stock promoters to assert that the BX Market stocks they are trading will qualify for state exchange-listing exemptions. In the alternative, we suggest that if the NASDAQ wishes to have a market for the trading of low-priced stocks, it should establish that market through some other venue than the Boston Stock Exchange, since that exchange confers a registration exemption in many states.

We appreciate the opportunity to comment on this important issue. Please contact me or Bryan Lantagne, Director of the Massachusetts Securities Division, at (617) 727-3548, if you have questions about these comments or I can assist in any way.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Galvin', is written over the typed name and title. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

William F. Galvin
Secretary of the Commonwealth
Commonwealth of Massachusetts