



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

William Francis Galvin
Secretary of the Commonwealth

January 26, 2011

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 No. 34-63597; File No. SR-BX-2010-059

Dear Ms. Murphy:

The Massachusetts Securities Division (the "Division") welcomes this opportunity to provide additional comments on the proposed rule change (as revised) filed by the NASDAQ OMX BX, Inc. (the "Exchange" or "OMX BX") to create a listing market, which will be called BX or the BX Venture Market. This letter follows up our initial comment letter of September 28, 2010.

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.

We acknowledge that the NASDAQ OMX BX has taken some steps to address concerns raised by the Division and others about establishing a new market for the trading of penny stocks. Nonetheless, we continue to have serious concerns. Based on these concerns, we ask the Commission to turn down the application from the OMX BX to establish this market.

We do not share the view of the OMX BX that the proposed venture market will provide a transparent and well-regulated market for the trading of penny stocks. Many of the measures that the OMX BX proposes to implement to guarantee the integrity of the listed companies focus on corporate governance --through measures such as requiring independent directors and board committees. History has demonstrated that, for some companies, such formal governance measures can simply be window dressing. For example, Enron Corporation had a detailed, plain-English, code of ethics, and all Enron employees were required to sign a certificate of compliance stating that they would follow that code. This did not stop Enron from being synonymous with corporate fraud.

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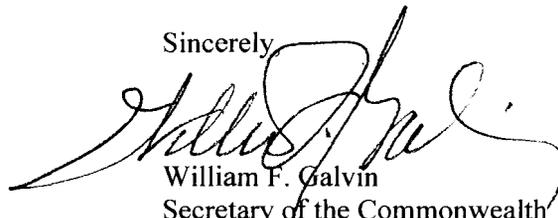
The Division, along with other regulators, has seen significant problems in the penny stock segment of the market, including boiler room sales practices by brokerages and market manipulation (including the spreading of false rumors) by stock promoters and brokerages that hold a block of a given stock.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

Boiler rooms and penny stock manipulation have not gone away. In fact, new technologies give stock manipulators around the world powerful tools to distort the markets and swindle retail investors. This has been demonstrated through ongoing enforcement actions by state and federal securities regulators.¹

Based on these fundamental concerns, we urge the Commission to disapprove the proposed rule change filed by the OMX BX. The United States does not need yet another market to facilitate the trading of penny stocks, particularly one that may gain an appearance of safety and legitimacy from its affiliation with the NASDAQ.

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



William F. Galvin
Secretary of the Commonwealth
Commonwealth of Massachusetts

¹ See, for example, "SEC Charges Investment Firm with Illegally Dumping Billions of Penny Stock Shares," Litigation Rel. No. 21798, SEC v. Gendarme Capital Corp, et al. (January 6, 2011) <http://www.sec.gov/litigation/litreleases/2011/lr21798.htm> and "SEC Charges N.Y.-Based Penny Stock Promoter with Fraud," Press Release 2011-12, SEC v. Christopher Wheeler and OTCSTOCKEXCHANGE.COM (Jan 14, 2011), <http://www.sec.gov/news/press/2011/2011-12.htm>