

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62080; File No. SR-BX-2010-035)

May 11, 2010

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Fees for Members Using the NASDAQ OMX BX Equities System

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 May 3, 2010, NASDAQ OMX BX, Inc. (“BX”) 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 prepared by BX. Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> BX has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. 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

BX proposes to modify pricing for BX members using the NASDAQ OMX BX Equities System. BX will implement the proposed change on May 3, 2010. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com>, at BX’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

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

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

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

<sup>4</sup> 17 C.F.R. 240.19b-4(f)(2).

In its filing with the Commission, BX 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. BX 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 modify its fees for orders that execute at prices below \$1. Currently, BX charges 0.15% (15 basis points) of the total dollar value of the execution to members accessing liquidity, and provides a rebate of 0.05% (5 basis points) of the total dollar value to members providing liquidity. Through this filing, BX will reduce the fee to access liquidity to 0.10% (10 basis points) of the total dollar value and eliminate the rebate for providing liquidity. The change is a competitive response to several other transaction venues that have made recent changes to fees for securities priced under \$1.<sup>5</sup> The new fees are consistent with the limitations of Regulation NMS, SEC Rule 610(c), for securities with a price of less than \$1.

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<sup>5</sup> See [http://apps.nyse.com/commdata/pub19b4.nsf/docs/50B8C6B6842FEA1E85257700006A989D/\\$FILE/NYSEArca-2010-26.pdf](http://apps.nyse.com/commdata/pub19b4.nsf/docs/50B8C6B6842FEA1E85257700006A989D/$FILE/NYSEArca-2010-26.pdf) (NYSE Arca); <http://www.nsx.com/resources/content/5/1/documents/SR-NSX-2010-04.pdf> (National Stock Exchange); [http://www.ise.com/assets/documents/OptionsExchange/legal/proposed\\_rule\\_changes/2010/SR-ISE-2010-29\\$Proposed Rule Change Relating to Direct Edge%20 ECN Fee Change for ISE Members\\$20100405.pdf](http://www.ise.com/assets/documents/OptionsExchange/legal/proposed_rule_changes/2010/SR-ISE-2010-29$Proposed_Rule_Change_Relating_to_Direct_Edge%20ECN_Fee_Change_for_ISE_Members$20100405.pdf) (Direct Edge).

## 2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls. The impact of the price changes upon the net fees paid by a particular market participant will depend upon a number of variables, including the relative availability of liquidity on BX and other venues, the prices of the market participant's quotes and orders relative to the national best bid and offer (*i.e.*, its propensity to add or remove liquidity), and the types of securities that it trades. BX believes that the proposed changes are reasonable and equitable in that they apply uniformly to all similarly situated members.

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

BX 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. Because the market for order execution and routing is extremely competitive, members may readily direct orders to BX's competitors if they object to the proposed rule change.

### 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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>9</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2010-035 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-2010-035. This file number should be included on the subject line if e-mail 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

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

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2010-035 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Elizabeth M. Murphy  
Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).