

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63617; File No. SR-BX-2010-092)

December 29, 2010

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 22, 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. 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 January 3, 2011. 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

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 trades that execute at prices at or above \$1.

BX has a pricing model under which members are charged for the execution of quotes/orders posted on the BX book (i.e., quotes/orders that provide liquidity), while members receive a rebate for orders that access liquidity. Since BX introduced this pricing model in 2009, several other exchanges have emulated it, including the EDGX Exchange, the BATS-Y Exchange, and the CBOE Stock Exchange (“CBSX”).

Effective November 1, 2010, BX increased the rebate for accessing liquidity to \$0.0002 per share executed and introduced a tiered pricing structure for the fee to add liquidity, under which members adding a daily average of more than 50 million shares of liquidity during a month are charged \$0.00025 per share executed, while members adding a daily average of 50 million or fewer shares during the month are charged \$0.0004 per share executed.

Effective January 3, 2011, BX will revert to non-tiered pricing structure, but will make significant changes to the levels of its rebate for accessing liquidity and its charge for liquidity provision. Specifically, for all market participants, the fee to add liquidity will be \$0.0018 per share executed, and the rebate for accessing liquidity will be \$0.0014 per share executed. The fee changes are reflective of the ongoing intense level of competition for order flow in the cash

equities markets, and specifically among exchanges that provide rebates to market participants accessing liquidity.³

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Section 6(b)(4) of the Act,⁵ 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, and 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). Although the change increases the fee for orders that provide liquidity, it provides an offsetting increase in the rebate for orders accessing liquidity. As a result of the change, BX's fees and rebates for stocks priced above \$1 will match those that have been in effect on a competing venue for several months.⁶

BX notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, if particular market participants object to the proposed fee changes, they can avoid paying the fees by directing orders to other venues. BX believes that its fees continue

³ See, e.g., Securities Exchange Act Release No. 63160 (October 22, 2010), 75 FR 66817 (October 29, 2010) (SR-CBOE-2010-093) (adopting fees identical to the fees proposed in this filing).

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4).

⁶ See supra n.3.

to be reasonable and equitably allocated to members on the basis of whether they opt to direct orders to BX.

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 believe that competitors offer more favorable pricing. The change is a direct competitive response to fee changes implemented at one of BX's 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.⁷ 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

⁷ 15 U.S.C. 78s(b)(3)(a)(ii).

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. Please include File Number SR-BX-2010-092 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-2010-092. 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 website (<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 website 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-2010-092 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.⁸

Florence E. Harmon
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).