

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64940; File No. SR-BX-2011-036)

July 21, 2011

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Increase the Application and Annual Fees for the BX Venture Market

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 July 14, 2011, NASDAQ OMX BX, Inc. (“Exchange”) 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 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 modify the application and annual fees payable by a company listing on the BX Venture Market. The Exchange will implement the proposed rule immediately.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.<sup>3</sup>

**5910. Listing Fees**

**(a) Application Fee**

A Company that submits an application to list any class of its securities on the Exchange, shall pay to the Exchange a non-refundable application fee of [\$7,500] \$10,000, which must be submitted with the Company’s application. However, if a Company is listed on another national securities exchange and has received notice that it is subject to being delisted from that exchange for failure to comply with a quantitative listing requirement, the application fee

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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> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaqomxbx.cchwallstreet.com>.

does not have to be paid to the Exchange until the other exchange issues a final decision to delist the Company's securities or the Company is listed on the Exchange, whichever occurs first.

**(b) Annual Fee**

(1) Each issuer shall pay an annual fee of [\$15,000] \$20,000 for the first class of securities listed on the Exchange and \$5,000 for each additional class of securities listed on the Exchange.

(2) - (4) No change.

**(c) – (d)** No change.

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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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently received approval for the BX Venture Market, a new listing venue for the Exchange. Under the approved rules, a company that submits an application to list any class of its securities on the BX Venture Market must pay a non-refundable application fee of \$7,500<sup>4</sup> and a listed company must pay an annual fee of \$15,000 for the first class of securities listed on the BX Venture Market and \$5,000 for each additional listed class of securities.<sup>5</sup>

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<sup>4</sup> Exchange Rule 5910(a).

<sup>5</sup> Exchange Rule 5910(b).

The listing fees for the BX Venture Market were originally proposed in August 2010.<sup>6</sup> Following that original proposal, and in connection with seeking approval for the BX Venture Market, the Exchange committed to substantial enhancements to its regulatory process.<sup>7</sup> Among these enhancements are rules requiring the Exchange to engage independent qualified third party investigative firms to assist in its public interest review process in specified situations and on a random basis.<sup>8</sup> The Exchange may also engage independent qualified third party investigative firms in reviewing listed companies in certain situations, including where there may be potential public interest concerns.<sup>9</sup> The Exchange has also committed to enhanced surveillance of the trading of listed securities, including by FINRA and through the use of technology by the SMARTS Group.

These enhancements were not envisioned when the Exchange originally proposed the fees for the BX Venture Market and the fees were not previously adjusted in response to these changes. As such, the Exchange now proposes to increase the application fee for the BX Venture Market from \$7,500 to \$10,000 and the annual fees for the first class of securities from \$15,000 to \$20,000.

The Exchange notes that the proposed fees remain substantially lower than the fees for other markets. For example, the initial listing fees for listing common stock on the NASDAQ Capital Market range from \$50,000 to \$75,000 and the annual fees are \$27,500;<sup>10</sup> the initial

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<sup>6</sup> Securities Exchange Act Release No. 62818 (September 1, 2010), 75 FR 54665 (September 8, 2010) (proposing SR-BX-2010-059).

<sup>7</sup> Securities Exchange Act Release No. 64437 (May 6, 2011), 76 FR 27710 (May 12, 2011) (approving SR-BX-2010-059 as amended).

<sup>8</sup> Exchange Rule 5205(d).

<sup>9</sup> Exchange Rule 5205(e).

<sup>10</sup> Nasdaq Rule 5920(a)(1) and (c)(1)(A).

listing fees for listing common stock on NYSE Amex range from \$50,000 to \$70,000 and the annual fees range from \$27,500 to \$40,000;<sup>11</sup> and the initial listing fees for listing common stock on the New York Stock Exchange range from \$125,000 to \$250,000 and the annual fees range from \$38,000 to \$500,000.<sup>12</sup>

In addition, the fees remain comparable to those charged by OTC Markets Group for companies to appear on its OTCQX tier. While OTC Markets Group does not operate a national securities exchange, and does not undertake a regulatory review similar to that required by the Exchange's rules, it claims to have "listings"<sup>13</sup> and charges a \$5,000 application fee and \$15,000 annual fee for marketplace services that it describes as "formerly available only on a U.S. exchange."<sup>14</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,<sup>15</sup> in general, and with Section 6(b)(4) of the Act,<sup>16</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 the Exchange operates or controls. The proposed rule change, which increases the application and annual fees to listed companies, proposes a reasonable allocation of the Exchange's costs, as it will allow the Exchange to recoup the costs of the additional regulatory steps the Exchange has agreed to in connection with the BX Venture Market. Moreover, the fees remain substantially lower than fees on other national securities

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<sup>11</sup> NYSE Amex Listed Company Guide Sections 140 and 141.

<sup>12</sup> NYSE Listed Company Manual 902.03

<sup>13</sup> <http://www.otcqx.com/qx/otcqx/listing> (June 15, 2011).

<sup>14</sup> <http://www.otcqx.com/qx/otcqx/overview> (June 15, 2011).

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

<sup>16</sup> 15 U.S.C. 78f(b)(4).

exchanges, and comparable to the fees for OTCQX.<sup>17</sup> In addition, the Exchange believes that the fees are equitable, inasmuch as they are charged to all companies that chose to apply and list on the BX Venture Market; and reasonable, inasmuch as these companies will receive the benefits commensurate with a listing on a national securities exchange, including heightened regulatory oversight.

The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act<sup>18</sup> because 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. As noted above, the Exchange believes the proposed fee increases will help allow it to recoup the costs of performing its regulatory responsibilities. As such, the Exchange believes that the proposed rule change promotes just and equitable principles of trade and removes impediments to the mechanism of a free and open market and a national market system.

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

The Exchange 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.

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.

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<sup>17</sup> The Exchange notes that the fees charged by OTCQX have not been filed with the Commission.

<sup>18</sup> 15 U.S.C. 78f(b)(5).

### 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.<sup>19</sup> 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 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-2011-036 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-2011-036. 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

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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 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-BX-2011-036 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>20</sup>

Elizabeth M. Murphy  
Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).