

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69522; File No. SR-BX-2013-034)

May 6, 2013

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to its Schedule of Fees and Rebates for Execution of Orders for Securities Priced at \$1 or More under Rule 7018

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 April 30, 2013, NASDAQ OMX BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 changes to its schedule of fees and rebates for execution of orders for securities priced at \$1 or more under Rule 7018. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on May 1, 2013. The text of the proposed rule change is also available on the Exchange’s Website at <http://nasdaqomxbx.cchwallstreet.com>, at the principal office of the Exchange, 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, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

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

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

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing minor adjustments to the fees that it charges members for executed orders that provide liquidity through the NASDAQ OMX BX Equities System.<sup>3</sup> Currently, BX charges \$0.0018 per share executed for displayed orders that provide liquidity unless a more favorable rate applies.<sup>4</sup> Effective May 1, 2013, BX proposes to increase this fee to \$0.0020 per share executed. BX will, however, continue to charge the \$0.0018 per share executed fee for a displayed order that provides liquidity if entered through a BX MPID through which the member provides an average daily volume of 4 million or more shares of liquidity during the month.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>6</sup> in particular, in that it

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<sup>3</sup> Like the EDGA Exchange and the BATS-Y Exchange, BX charges for execution of orders that provide liquidity and provides a credit for execution of orders that access liquidity.

<sup>4</sup> Specifically, the applicable charge is \$0.0015 per share executed for a member entering an order through a market participant identifier ("MPID") that is eligible for the Exchange's Qualified Liquidity Provider program. A member seeking to qualify an MPID for the program must achieve certain requirements pertaining to volume and time at the national best bid/best offer ("NBBO"), as specified in Rule 7018. BX also charges \$0.0015 per share executed for midpoint pegged orders that provide liquidity, but charges \$0.0025 per share executed for other non-displayed orders that provide liquidity.

<sup>5</sup> 15 U.S.C. 78f.

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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The change to introduce a volume requirement with respect to the current \$0.0018 per share executed rate for displayed orders that provide liquidity, and the increase in the applicable rate for displayed orders that do not meet the volume requirement, is reasonable because the applicable increase is only \$0.0002 per share executed, and the volume requirement associated with maintaining the existing fee is a modest 4 million shares per day, or 0.067% of total consolidated volume on a trading day with total consolidated volume of 6 billion shares. Moreover, the Exchange continues to offer an even more favorable charge to members using midpoint pegged orders, which may be used by all members, regardless of volume. The change is consistent with an equitable allocation of fees because it is consistent with the established practice at a number of national securities exchanges of providing more favorable fee economics to members that contribute to market quality and the Exchange's market share by achieving certain volume requirements. In this instance, the Exchange's practice of paying a credit to members accessing liquidity gives liquidity providers a greater assurance of speedy execution. A member that provides a comparatively large volume of liquidity is demonstrating its commitment to the viability of BX's market model by posting orders at prices that attract members seeking liquidity. Accordingly, BX believes that it is equitable for the fees charged to such a member to be more favorable than the fees charged to members providing lower volumes of liquidity. The Exchange further believes that the change is not unfairly discriminatory because the associated volume

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<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

requirements are not very high and because the Exchange provides an alternative means of paying a lower fee for orders that provide liquidity.

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. BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, BX believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, although the proposed change imposes a volume condition on the availability of a fee of \$0.0018 per share executed for displayed orders that provide liquidity and raises the fee for members not meeting the volume condition, the volume condition is not markedly high and the fee increase is only \$0.0002. Moreover, if the changes are unattractive to market participants, it is likely that BX will lose market share as a result. Accordingly, BX does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or 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) of the Act<sup>7</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>8</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.

### 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-2013-034 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-2013-034. This file number should be included on the subject line if e-mail is used.

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f).

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 such filing also will be available for inspection and copying at the principal offices of BX. 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-2013-034, 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>9</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).