

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71286; File No. SR-BX-2013-065)

January 10, 2014

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fee Schedule under Exchange Rule 7018(a) with Respect to Transactions in Securities Priced at \$1 per Share or More

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 December 30, 2013, NASDAQ OMX BX, Inc. (“BX” or “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 amend the fee schedule under Exchange Rule 7018(a) with respect to transactions in securities priced at \$1 per share or more. The Exchange will implement the proposed rule change on January 2, 2014.

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 to adopt a new tier with respect to the rebates it pays for orders that access liquidity in securities priced at \$1 or more. The new tier applies to members that are active in both the NASDAQ OMX BX Equities System (the "BX Equities System") and BX Options. As such, the tier is similar to various tiers that have previously been introduced by the NASDAQ Stock Market for members of that exchange that are active in both the NASDAQ Market Center and the NASDAQ Options Market, as well as a tier with respect to charges of providing liquidity that was introduced by the Exchange in December 2013.<sup>3</sup> Under the proposed tier, a member will receive a credit of \$0.0013 per share executed when accessing liquidity<sup>4</sup> if the member (i) has a daily average volume of liquidity accessed in all securities during the month of 6 million or more shares through one or more of its BX Equities System market participant identifiers ("MPIDs"), and (ii) adds and/or removes liquidity of 40,000 or more contracts per day during the month through BX Options.

The proposed tier recognizes the prevalence of trading in which members simultaneously trade different asset classes within the same strategy. Because cash equities and options markets

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<sup>3</sup> See NASDAQ Rule 7018(a); Securities Exchange Act Release No. 71055 (December 12, 2013), 78 FR 76689 (December 18, 2013) (SR-BX-2013-059).

<sup>4</sup> As with other rebate tiers, the proposed tier does not apply to an order that executes against a midpoint pegged order, because the accessing order receives price improvement.

are linked, with liquidity and trading patterns on one market affecting those on the other, the Exchange believes that a pricing incentive that encourages market participant activity in BX Options will also support price discovery and liquidity provision in the BX Equities System.

## 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 Sections 6(b)(4) and (b)(5) of the Act,<sup>6</sup> in particular, because 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 that the Exchange operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The change with respect to a new tier for members active in both the BX Equities System and BX Options is reasonable because it reflects the availability of a price reduction for members that support liquidity on both markets. The change is consistent with an equitable allocation of fees because the pricing tier requires significant levels of activity in both markets, and is therefore consistent with volumetric pricing tiers at BX and many other exchanges, which offer better pricing to members that make significant use of an Exchange's services. The change is also consistent with an equitable allocation of fees because activity in BX Options also supports price discovery and liquidity provision in the BX Equities System due to the increasing propensity of market participants to be active in both markets and the influence of each market on the pricing of securities in the other. Moreover, the new tier has the potential to reduce fees for a wider range of market participants by introducing a new means of qualifying for a higher credit for accessing liquidity. The change is not unreasonably discriminatory because market

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

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

participants may qualify for a comparable credit without participating in BX Options through another volumetric pricing tier that BX offers.

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.<sup>7</sup> 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, the change with respect to a new pricing tier for members active in the Exchange's cash equities and options markets enhances the Exchange's competitiveness by reducing fees. However, because competitors may readily change their own prices in response, 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

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<sup>7</sup> 15 U.S.C. 78f(b)(8).

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and paragraph (f) of Rule 19b-4<sup>9</sup> thereunder. 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-2013-065 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-2013-065. 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>).

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

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

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-2013-065 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>

Kevin M. O'Neill  
Deputy Secretary

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