

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75904; File No. SR-BX-2015-056)

September 11, 2015

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 7018

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 September 1, 2015, 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 to amend the fee schedule under Exchange Rule 7018(a) with respect to execution and routing of orders in securities priced at \$1 or more per share and to amend a credit under BX Rule 7018(e).

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on September 1, 2015.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend the fee schedule under BX Rule 7018(a), relating to charges and credits provided for orders in securities priced and \$1 or more per share that execute on BX, as well as to reduce a credit provided in connection with the Retail Price Improvement ("RPI") program under BX Rule 7018(e).

Under BX Rule 7018(a), the Exchange provides credits to member firms that access certain levels of liquidity on BX per month. The Exchange is proposing to amend several of the credit tiers for orders that access liquidity (excluding orders with midpoint pegging and excluding orders that receive price improvement and execute against an order with midpoint pegging), as well as modify the criteria for receiving certain of the credits. The Exchange also proposes a few minor changes made for the purposes of clarity and conformity.

Specifically, the Exchange proposes to add a new credit tier of \$0.0016 per share executed, which will be provided for orders that access liquidity, excluding orders with midpoint

pegging³ and orders that receive price improvement and execute against an order with midpoint pegging, entered by a member that accesses liquidity equal to or exceeding 0.15% of total consolidated volume⁴ (“Consolidated Volume”) during a month. Additionally, the Exchange proposes to amend the credit tier of \$0.0015 per share executed, which is provided for orders that access liquidity, excluding orders with midpoint pegging and orders that receive price improvement and execute against an order with midpoint pegging, entered by a member that accesses liquidity equal or exceeding 0.10% of Consolidated Volume by reducing the Consolidated Volume threshold to 0.09%.

BX also proposes to eliminate the credit tier of \$0.0012 per share executed, which currently is provided for orders that access liquidity, excluding orders with midpoint pegging and orders that receive price improvement and execute against an order with midpoint pegging, entered by a member that accesses liquidity equal to or exceeding 0.10% [sic] of total Consolidated Volume during a month.

Next, the Exchange proposes to revise the criteria for a member to qualify for the credit tier of \$0.0008 per share executed, which will be provided for orders that access liquidity, excluding orders with midpoint pegging and orders that receive price improvement and execute

³ A Midpoint Peg order has its priced based upon the national best bid and offer, excluding the effect that the Midpoint Peg Order itself has on the inside bid or inside offer. Primary Pegged Orders with an offset amount and Midpoint Pegged Orders will never be displayed. A Midpoint Pegged Order may be executed in sub-pennies if necessary to obtain a midpoint price. A new timestamp is created for the order each time it is automatically adjusted.

⁴ Consolidated Volume is defined as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member’s trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member’s trading activity. See Rule 7018(a).

against an order with midpoint pegging, entered by a member that accesses (rather than adds as is currently stated) liquidity equal to or exceeding 0.05% (rather than 0.02% that is the current level), of total Consolidated Volume during a month.

BX is also proposing to slightly increase the charge for providing liquidity through the NASDAQ OMX BX Equities System (“System”) for a displayed order entered by a member that (i) adds liquidity equal to or exceeding 0.25% of total Consolidated Volume during a month; and (ii) adds and accesses liquidity equal to or exceeding 0.50% of total Consolidated Volume during a month from \$0.0014 per share executed to \$0.0016 per share executed.

Currently, a firm may become a Qualified Market Maker (“QMM”) by being a member that provides through one or more of its BX System MPIDs more than 0.15% of Consolidated Volume during the month. For a member qualifying under this method, the member must have at least one Qualified MPID, that is, an MPID through which, for at least 200 securities, the QMM quotes at the national best bid and offer (“NBBO”) an average of at least 50% of the time during regular market hours (9:30 a.m. through 4:00 p.m.) during the month. The Exchange is proposing to increase the Consolidated Volume requirement from 0.15% to 0.20% during the month and to eliminate the additional requirement that the member must also provide an average daily volume of 1.5M shares or more of non-displayed liquidity during the month.

Lastly, the Exchange is proposing to amend a credit provided under the Retail Price Improvement (“RPI”) program in BX Rule 7018(e). The Exchange’s RPI program provides incentives to member firms (or a division thereof) approved by the Exchange to participate in the program (a “Retail Member Organization”) to submit designated “Retail Orders”⁵ for the

⁵ A Retail Order is defined in BX Rule 4780(a)(2), in part, as “an agency or riskless principal order that satisfies the criteria of FINRA Rule 5320.03, that originates from a natural person and is submitted to the Exchange by a Retail Member Organization,

purpose of seeking price improvement. The Exchange is proposing to decrease the credit of \$0.0002 per share executed to \$0.0000 per share executed that is provided for a Retail Order that receives price improvement (when the accepted price of an order is different than the executed price of an order) and accesses non-RPI order with midpoint pegging.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁷ 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, and 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the new and amended credit tiers for orders that access liquidity (excluding orders with midpoint pegging and excluding orders that receive price improvement and execute against an order with midpoint pegging), as well as the modified

provided that no change is made to the terms of the order with respect to price (except in the case that a market order is changed to a marketable limit order) or side of market and the order does not originate from a trading algorithm or any other computerized methodology.”

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4) and (5).

criteria for receiving certain of the credits based on Consolidated Volume together, as well as related clarifying changes, under BX Rule 7018(a) are reasonable because they provide additional opportunities for market participants to receive credits for participation on BX.

Specifically, the Exchange is proposing a new of [sic] \$0.0016 per share executed credit tier, which requires liquidity accessed of 0.15% or more of Consolidated Volume during the month. The Exchange is also proposing a [sic] eliminate the \$0.0012 per share executed credit tier, which currently requires liquidity accessed of 0.05% or more of Consolidated Volume during the month. Additionally, the Exchange is modifying the existing credit tier of \$0.0008 per share executed by increasing the minimum total Consolidated Volume required from 0.02% to 0.05% and making it applicable to members that access rather than add liquidity. As such, the Exchange is generally providing increased credits for member firms that remove increasing amounts of liquidity from the Exchange. With respect to the accesses Consolidated Volume requirement to receive the \$0.0008 credit, the Exchange believes this is reasonable because for firms to receive the increased credit they must remove a certain amount of Consolidated Volume, which will improve market quality for all participants.

The Exchange believes that the proposed credits noted above are equitably allocated and are not unfairly discriminatory as they are provided to all member firms that achieve the minimum level of Consolidated Volume required by the tier, with the member firms that remove the greatest level of Consolidated Volume receiving the greatest credit. Additionally, the Exchange believes that this proposed rule change being changed from a member that adds liquidity to being applicable to a member that accesses liquidity is reasonable because the Exchange desires to further incentivize member firms to participate in the Exchange by removing liquidity.

The Exchange believes that elimination of the \$0.0012 per share executed credit tier is reasonable because the Exchange has added a \$0.0016 credit tier per share executed, discussed above, and the Exchange desires to further incentivize member firms to participate in the Exchange by removing liquidity, generally. The Exchange believes that the proposed addition of the \$0.0016 credit tier per share executed and elimination of the \$0.0012 per share executed credit tier, are both an equitable allocation and are not unfairly discriminatory because the \$0.0012 per share executed credit tier is a no longer needed incentive for [sic] market participant and member firms will continue to have the opportunity to qualify for a higher credit based on their participation in BX by removing liquidity.

Additionally, the Exchange believes reducing the Consolidated Volume threshold for the credit tier of \$0.0015 per share executed, which is provided for orders that access liquidity (excluding orders with midpoint pegging and orders that receive price improvement and execute against an order with midpoint pegging) and that is entered by a member that accesses liquidity, from equal or exceeding 0.10% of Consolidated Volume to 0.09%, is reasonable because it will make it easier for members to receive a rebate at that level and encourage market participant activity and will also support price discovery and liquidity provision. The Exchange also believes this proposed rule change is an equitable allocation and is not unfairly discriminatory because it will apply uniformly to all member firms that so qualify.

The Exchange believes that the proposed change to slightly increase the charge assessed a member for entering a displayed order is reasonable because the exchange must balance the cost of credits provided for orders removing liquidity and the desire to provide QMMs with incentives to provide displayed orders. The Exchange notes that the proposed charge continues to be lower than the default charge assessed for all other displayed orders that do not otherwise

qualify for a lower charge, and as such continues to act as an incentive to market participants to provide such liquidity. The Exchange believes that the proposed change is both equitably allocated and is not unfairly discriminatory because the slightly increased charge applies uniformly to all member firms that previously had qualified to receive such a credit.

The Exchange believes that the proposed increase to the monthly Consolidated Volume requirement from 0.15% to 0.20% for a firm to become a QMM is reasonable because member firms are being required to provide through one or more of its BX System MPIDs increased Consolidated Volume to qualify, which will increase liquidity in the market overall. Additionally, for a member qualifying under this method, the member must have at least one Qualified MPID, that is, an MPID through which, for at least 200 securities, the QMM quotes at the NBBO an average of at least 50% of the time during regular market hours (9:30 a.m. through 4:00 p.m.) during the month. BX also believes it is reasonable to eliminate the additional requirement that the member must also provide an average daily volume of 1.5M shares or more of non-displayed liquidity during the month because the Exchange believes removing this criteria will allow QMMs to focus on making better markets.

The Exchange also believes that the proposed increase to the monthly Consolidated Volume requirement from 0.15% to 0.20% for a firm to become a QMM is both equitably allocated and is not unfairly discriminatory because it [sic] the slightly higher Consolidated Volume requirement applies uniformly to firms seeking to qualify as a QMM. The Exchange also believes that the proposed changes to the criteria for a firm to qualify as a QMM expands the opportunity for firms to qualify as a QMM and further perfects the mechanism of a free and open market by making it easier to qualify for this beneficial, market improving program and bolster displayed liquidity by eliminating the additional requirement that the member must also

provide an average daily volume of 1.5M shares or more of non-displayed liquidity during the month.

BX believes that the proposed change to decrease the credit of \$0.0002 per share executed to \$0.0000 per share executed that is provided for a Retail Order that receives price improvement (when the accepted price of an order is different than the executed price of an order) and accesses non-RPI order with midpoint pegging is reasonable because this incentive is no longer needed to improve the market for retail order flow. Also, the Exchange must continually adjust its incentives to remain competitive with other exchanges. The Exchange also believes the reduced credit is equitably allocated and is not unfairly discriminatory because it applies uniformly to all firms.

Finally, 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. 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. The changes reflect this environment because although they reflect changes to both credits and charges, with the price increases being minor, while [sic] the amended credits are designed overall to incentivize changes in market participant behavior to the benefit of the market overall.

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

The Exchange does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.⁸ BX notes that it operates in a highly competitive market in which market participants

⁸ 15 U.S.C. 78f(b)(8).

can readily favor dozens of different competing exchanges and alternative trading systems 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. 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 modification to the fee schedule, as well as modifications to the criteria to become a QMM, do not impose a burden on competition because it is optional and is the subject of competition from other exchanges. The Exchange does not believe that the proposed change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because there are numerous competitive alternatives to the use of the Exchange, it is likely that BX will lose market share as a result of the changes if they are unattractive to market participants.

Accordingly, BX does not believe that the proposed rule change 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 change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹

⁹ 15 U.S.C. 78s(b)(3)(A).

and paragraph (f) of Rule 19b-4¹⁰ 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. 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. Please include File Number SR-BX-2015-056 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2015-056. 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

¹⁰ 17 CFR 240.19b-4(f).

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 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-2015-056, 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.¹¹

Brent J. Fields
Secretary

¹¹ 17 CFR 200.30-3(a)(12).