

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59337; File No. SR-BX-2009-004)

February 2, 2009

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change to Establish Fees for Members

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 January 14, 2009, NASDAQ OMX BX, Inc. (the “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 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new member fee schedule for the resumption of its cash equities trading business. The text of the proposed rule change is available from the principal office of the Exchange and from the Commission, and is also available at <http://www.nasdaqtrader.com/Trader.aspx?id=BSEIERules2008>.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 29, 2008, the Exchange was acquired by The NASDAQ OMX Group, Inc. (“NASDAQ OMX”). At the time of this acquisition, the Exchange was not operating a venue for trading cash equities. Pursuant to SR-BSE-2008-48, the Exchange has adopted a new rulebook with rules governing membership, the regulatory obligations of members, listing, and equities trading.³ The new rules, which are designated as the “Equity Rules,” are based to a substantial extent on the rules of The NASDAQ Stock Market LLC (the “NASDAQ Exchange”). The Equity Rules leave in effect the Exchange’s pre-existing rules (the “Options Rules”) for the purpose of governing trading on the Exchange’s Boston Options Exchange facility (“BOX”).

In this filing, the Exchange is proposing new fees to be charged to members in connection with the resumption of its cash equities trading business. The fee schedules are structurally similar to those of the NASDAQ Exchange, but with the omission of many fees that are not pertinent to the Exchange’s planned business and with several differences in the level of certain fees.

Membership Fees

As provided in proposed Equity Rule 7001, the Exchange will charge a \$2,000 membership application fee, a \$3,000 annual membership fee, and a \$500 monthly trading rights fee.⁴ In recognition of the Exchange’s temporary cessation of equities trading, the trading rights fee will be waived for the first month during which the

³ Securities Exchange Act Release No. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48).

⁴ The fees are identical to the comparable fees of the NASDAQ Exchange.

Exchange's new equities trading system, the NASDAQ OMX BX Equities Market, operates, and for each month prior to that time; the annual membership fee will be waived for all of 2008 and will be reduced pro rata with respect to any months of 2009 during which the trading rights fee is waived;⁵ and the application fee will be waived for applicants for membership that apply prior to the time that the NASDAQ OMX BX Equities Market commences operations.

As provided in Equity Rule 7002, the Exchange will charge a Sales Fee to offset the fees that the Exchange must pay to the Commission under Section 31 of the Act.⁶ Equity Rule 7003(a) will cover registration and processing fees collected by the Financial Industry Regulatory Authority ("FINRA") with respect to registration of associated persons of Exchange members, while Equity Rule 7003(b) will provide for the registration fees collected by the Exchange. In the latter case, the fees are being kept at the levels previously set by the Exchange, rather than at the levels in effect at the NASDAQ Exchange. Thus, the fees will be \$60 for each initial Form U4 filed for the registration of a representative or principal; \$40 for each transfer or re-licensing of a representative of principal; and an annual fee of \$50 for each registered representative or principal. However, in recognition of the fact that the relaunch of equities trading by the Exchange may cause additional firms to become members of the Exchange and may cause pre-existing members to register additional representatives or principals, the Exchange is waiving these fees for a period of time. In the case of the fees for initial registration and transfer or re-licensing, the fees will be waived for the period from

⁵ Thus, if as expected, the NASDAQ OMX BX Equities Market commences operations on January 16, 2009, the trading rights fee would be waived for January 2009 and the membership fee for 2009 would be \$2750.

⁶ 15 U.S.C. 78ee.

January 1, 2009 to July 1, 2009. Registration events occurring after July 1, 2009 would be subject to the fees. The annual fee, which has historically been collected in December of a year to cover the succeeding year, will be waived for the period from January 1, 2009 until such time as the Exchange submits a proposed rule change to reinstate it. The Exchange expects that it would not submit such a filing until at least 2010. Thus, the Exchange would not collect the annual fee in December 2009.

Access Services Fees

As provided in proposed Equity Rule 7015, access to the NASDAQ OMX BX Equities Market will be provided through the OUCH, FIX, and RASH access protocols, with drop copies provided through the DROP protocol. Connections will be available through extranets, direct connection, and Internet-based virtual private networks. The fees will be \$400 per month for each port pair, with an additional \$200 per month charged for each Internet port that requires additional bandwidth.⁷ These fees are comparable to the fees charged by the NASDAQ Exchange for comparable access. In contrast to the NASDAQ Exchange, however, which charges certain access fees to persons that are not members of the NASDAQ Exchange – for example, FINRA-only members that use NASDAQ-technology to access the FINRA/NASDAQ Trade Reporting Facility – the Exchange’s fees for ports for market access will be charged only to members.⁸

⁷ See proposed Equity Rule 7015.

⁸ The Exchange also plans to charge for ports used to receive market data from the Exchange. Unlike the access ports that are the subject of this filing, ports used to receive market data will be available to non-members as well as members and therefore will be addressed in a separate filing submitted under Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2). Pending approval of that filing, ports to receive market data will be provided free of charge.

Execution fees

Execution fees will be uniform for all types of securities and members.⁹ Specifically, for securities executed at prices of \$1 or more, the Exchange will charge \$0.0022 per share executed and pay a liquidity provider rebate of \$0.002 per share executed. For executions below \$1, the execution fee will be 0.1% of the total transaction cost, and the rebate will be \$0.

Other Fees

Other fee rules relate to installation, removal or relocation of equipment at a subscriber's premises¹⁰ and administrative reports¹¹ and are comparable to corresponding NASDAQ Exchange rules. Rule 7027, which relates to aggregating the activity of affiliated Exchange members for purposes of volume pricing discounts, would not be immediately operative, since the Exchange will not initially offer such discounts, but is being adopted at this time to address any such discounts adopted in the future.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹² in general and with Section 6(b)(4) of the

⁹ See proposed Equity Rule 7018. By contrast, the NASDAQ Exchange's execution fees range from \$0.0029 to \$0.0035, but rebates range from \$0.0015 to \$0.0031, depending on the type of security traded, the order type, and the market participant's average daily trading volumes.

¹⁰ See proposed Equity Rule 7029. The provision allows the Exchange to pass through any costs it incurs.

¹¹ See proposed Equity Rule 7022. An administrative report is prepared at a member's request regarding its activities to assist the firm in activities such as auditing its internal systems, verifying back-office processing, or projecting monthly costs. The fee is \$25 per month.

¹² 15 U.S.C. 78f.

Act,¹³ as stated above, in that it provides an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange makes all services and products subject to these fees available on a non-discriminatory basis to similarly situated recipients. All fees are structured in a manner comparable to corresponding fees of the NASDAQ Exchange already in effect, and are generally set at levels equal to or lower than the levels of the comparable NASDAQ Exchange fees. Moreover, each proposed fee is set at a level that is uniform for all members.

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. Despite its long history, the Exchange will effectively be entering the competitive markets for equities trading as a start-up venture. Accordingly, its fees must be set at a level that will promote competition in these markets, or potential users of its services will simply continue to obtain services from the Exchange's multiple competitors. If the Exchange sets fees at inappropriately high levels, market participants will seek to avoid using the Exchange. Thus, the products and services introduced by the Exchange will promote competition if they succeed in providing market participants with viable and cost-effective alternatives to existing competitors. Conversely, they will impose no burden on competition if they fail to provide such alternatives.

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.

¹³ 15 U.S.C. 78f(b)(4).

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 Act¹⁴ and subparagraph (f)(2) of Rule 19b-4 thereunder.¹⁵ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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. Please include File Number SR-BX-2009-004 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.

¹⁴ 15 U.S.C. 78s(b)(3)(a)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR–BX-2009-004. 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 Web site (<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 inspection and copying in the Commission’s Public Reference Room, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE, Washington, DC 20549. Copies of such 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–2009-004 and should be submitted on or before [date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).