

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61934; File No. SR-BX-2010-028)

April 16, 2010

Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Certain Rules to Reflect Changes to Corresponding FINRA Rules

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 5, 2010, NASDAQ OMX BX, Inc. (the “Exchange” or “BX”) 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 Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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 is filing this proposed rule change to delete Rule 3130 and IM-3130, to adopt a new Rule 4000A series, and to amend Rules 9552, 9554, 9557 and 9559 to conform BX's rules to recent changes to the rules of the Financial Industry Regulatory Authority (“FINRA”). The Exchange will implement the proposed rule change thirty days after the date of the filing. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com>, at the Exchange's principal office, and at the Commission's Public Reference Room.

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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> 17 CFR 240.19b-4(f)(6).

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

BX proposes certain conforming changes to the rules concerning members' financial responsibilities and the rules concerning expedited hearings in light of changes made to the analogous rules of FINRA. BX based much of its rules on those of The NASDAQ Stock Market LLC ("NASDAQ"). Similarly, many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, BX also has initiated a process of modifying its rulebook to ensure that BX rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it is not possible for the rule numbers of BX rules to mirror corresponding FINRA rules, because existing or planned BX rules make use of those numbers. However, wherever possible, BX plans to update its rules to reflect changes to corresponding FINRA rules.

As part of this rule consolidation process, FINRA recently made several changes to its financial responsibility rules, which are largely incorporated by reference in BX's rules.<sup>4</sup> In addition, FINRA also recently amended certain rules under its Rule 9000 Series concerning expedited proceedings, which are closely mirrored in BX's Rule 9000 Series.<sup>5</sup> Accordingly, BX is proposing to amend its analogous rules consistent with the changes made by FINRA, as discussed below.

### *Financial Responsibility Rules*

FINRA's new consolidated financial responsibility rules establish criteria that promote the permanency of member's capital, requiring the review and approval of material financial transactions and establishing criteria intended to identify member firms approaching financial difficulty and to monitor their financial and operational condition. FINRA's new financial responsibility rules incorporate many of the provisions of the prior NASD and NYSE rules, but streamlined and reorganized the provisions. FINRA also tiered many provisions to apply only to those firms that clear or carry customer accounts.

Currently, BX Rule 3130 and IM-3130 incorporate by reference old NASD Rule 3130 and IM-3130. These rules concerned FINRA's authority to regulate the activities of members experiencing financial or operational difficulties. In adopting the new financial responsibility rules, FINRA eliminated NASD Rule 3130 and IM-3130, and replaced them with several rules that represented a consolidation of the old NASD and NYSE rules concerning financial responsibility. As a consequence, BX is also deleting Rule 3130 and IM-3130, and replacing

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<sup>4</sup> Securities Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009) (SR-FINRA-2008-067).

<sup>5</sup> Securities Exchange Act Release No. 61242 (December 28, 2009), 75 FR 167 (January 4, 2010) (SR-FINRA-2009-076).

them with new rules found under a new Rule 4000A series.<sup>6</sup> These new BX rules incorporate by reference the analogous newly-adopted financial responsibility rules of FINRA found in FINRA Rules 4110, 4120, 4140 and 4521. Consistent with current BX Rule 3130(b), BX is proposing to make clear in proposed Rules 4110A, 4120A and 4140A that references to Rule 9557 are to BX's Rule 9557.

FINRA also revised FINRA Rule 9557 (Procedures for Regulating Activities Under FINRA Rules 4110, 4120 and 4130 Regarding a Member Experiencing Financial or Operational Difficulties) and FINRA Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series). FINRA Rules 9557 and 9559 address service of notice to member firms that are experiencing financial or operational difficulties and the related hearing procedures. FINRA made a number of conforming revisions to Rules 9557 and 9559 in light of several of the new financial responsibility rules. BX Rules 9557 and 9559 mirror the analogous rules of FINRA in substance, with only minor technical differences.<sup>7</sup> As such, BX is proposing to make the same changes Rules 9557 and 9559 as FINRA made to its Rules 9557 and 9559, with minor technical differences.

#### *Expedited Proceedings Rules*

FINRA recently made certain changes to its Rule 9000 series concerning expedited proceedings. The expedited proceedings rules of FINRA, and in turn BX, address certain types of misconduct more quickly than would be possible under the ordinary disciplinary process,

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<sup>6</sup> FINRA also eliminated NASD Rule 3131 and adopted FINRA Rule 4130 in its place. NASD Rule 3131 concerned the regulation of members registered with the SEC pursuant to Section 15C of the Exchange Act. BX does not have such a class of membership, and as such, did not adopt NASD Rule 3131 and is not proposing to adopt, or incorporate by reference, FINRA Rule 4130.

<sup>7</sup> For example, FINRA Rule 9557(c)(5) references "FINRA staff" whereas proposed BX Rule 9557(c)(5) references instead "Exchange Regulation staff."

while also affording members numerous procedural protections. In its rule change, FINRA modified various time requirements regarding expedited proceedings, added an expedited proceeding for failure to pay restitution, and harmonized a remedy in an expedited procedure with a remedy in the FINRA By-Laws. With respect to modifying time requirements, FINRA amended Rule 9552 to shorten the period before a suspension automatically turns into an expulsion or bar from six to three months. In addition, FINRA amended Rule 9559 to shorten the timeframe within which a hearing must be held from 60 days after a hearing request to 30 days after the request. As consequence of shortening the timeframe for hearings, FINRA also shortened the timeframes under Rule 9559(h) concerning the pre-hearing exchange of documents between the parties to the expedited proceeding. FINRA amended Rule 9554, which contains expedited procedures for failure to pay FINRA arbitration awards, to also permit FINRA to take expedited action for failure to comply with a FINRA order of restitution or a FINRA settlement providing for restitution. FINRA noted that it did not have explicit authority to take expedited action against firms or associated persons who fail to pay restitution to a third party (usually investors who have been harmed), and that its only recourse was to initiate an ordinary disciplinary action, which can take several months to conclude. In adding the new expedited procedure, FINRA stated it believed that firms and associated persons should not be permitted to continue doing business for prolonged periods when they have failed to pay restitution to third parties.

FINRA also eliminated from Rule 9554 the remedy of barring an individual for failure to pay an arbitration award. FINRA noted that it had no such authority under its by-laws, and as such that it was harmonizing the remedy for this misconduct with the remedy provided in its by-

laws. BX is proposing to incorporate all the changes made by FINRA to its expedited proceedings rules into the analogous BX Rules 9552, 9554, and 9559.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and with Sections 6(b)(5) of the Act,<sup>9</sup> in particular, in that the proposal 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. The proposed changes will conform BX rules to recent changes made to corresponding FINRA rules, to promote application of consistent regulatory standards.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

In its guidance on the proposed rules of Self-Regulatory Organizations (“SROs”),<sup>12</sup> the Commission concluded that filings based on the rules of another SRO already approved by the Commission are eligible for immediate effectiveness under Rule 19b-4(f)(6). The Commission noted that “a proposed rule change appropriately may be filed as an immediately effective rule so long as it is based on and similar to another SRO’s rule and each policy issue raised by the proposed rule (i) has been considered previously by the Commission when the Commission approved another exchange’s rule (that was subject to notice and comment), and (ii) the rule change resolves such policy issue in a manner consistent with such prior approval.”<sup>13</sup> The Exchange notes that the changes are virtually identical to changes made by FINRA approved by the Commission. BX proposes to adopt every change adopted by FINRA, with only minor changes or omissions based on the nature of BX or its members.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008).

<sup>13</sup> Id. at 40149.

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-2010-028 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-2010-028. 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 Web site 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 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-2010-028 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>14</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).