

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62969; File No. SR-BX-2010-064)

September 22, 2010

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change to Establish Pricing for 10Gb Direct Circuit Connections and to Codify Pricing for Direct Circuit Connections Capable of Supporting Up to 1Gb for Customers Who Are Not Co-Located in the Exchange's Datacenter

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 10, 2010, The 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 and II 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, and is approving the proposal on an accelerated basis.

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

The Exchange is filing with the Commission a proposed rule change to establish pricing for 10Gb direct circuit connections and to codify pricing for direct circuit connections capable of supporting up to 1Gb for customers who are not co-located in the Exchange's datacenter. The text of the proposed rule change is below. Proposed new language is underlined and proposed deletions are in brackets [sic].³

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7051. Direct Connectivity to BX

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Changes are marked to the rule text that appears in the electronic manual of BX found at <http://nasdaqomxbx.cchwallstreet.com>.

<u>Description</u>	<u>Installation Fee</u>	<u>Ongoing Monthly Fee</u>
<u>Direct Circuit Connection to BX (10Gb)</u>	<u>\$1,000</u>	<u>\$5000</u>
<u>Direct Circuit Connection to BX (supports up to 1Gb)</u>	<u>\$1000</u>	<u>\$1000</u>
<u>Optional Cable Router</u>	<u>\$925</u>	

(b) and (c) Not applicable [sic].

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 III 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

a. Purpose

The Exchange is re-proposing to establish fees for direct 10Gb circuit connections, and to codify fees for direct circuit connections capable of supporting up to 1Gb, for customers who are not co-located at the Exchange’s datacenter.⁴ Currently, the Exchange already makes available to co-located customers a 10Gb circuit connection and charges for each a \$1000 initial

⁴ The Exchange filed SR-BX-2010-043 seeking to establish and codify the fees set forth in this filing. That proposal was published for comment and approved by the Commission. The approval, however, pre-dated the BX Board’s approval of the proposal. As such, BX is re-filing the proposal and seeking accelerated approval.

installation charge as well as an ongoing monthly fee of \$5000. The Exchange is establishing the same fees for non co-located customers with a 10Gb circuit.⁵

The Exchange also already makes available to both co-located and non co-located customers direct connections capable of supporting up to 1Gb, with per connection monthly fees of \$500 for co-located customers and \$1000 for non co-located customers. Monthly fees are higher for non co-located customers because direct connections require BX to provide cabinet space and middleware for those customers' third-party vendors to connect into the datacenter and, ultimately, to the trading system. Finally, for non co-located customers the Exchange charges an optional installation fee of \$925 if the customer chooses to use an on-site router.

b. 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)(5) of the Act,⁷ 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. In particular, the proposal will provide greater transparency into the connectivity options available to market participants.

⁵ BX provides an additional 1Gb copper connection option to the Exchange for co-located customers. Given the technological constraints of copper connections over longer distances, the Exchange does not offer a copper connection option to users outside of its datacenter.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general, and with Section 6(b)(4) of the Act,⁹ 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. The filing codifies and makes transparent the fees imposed for direct connections to non co-located customers. These fees are uniform for all such customers and are either comparable to fees charged to co-located customers or vary due to different costs associated with providing service to the two customer types.

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.

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

Written comments on the proposed rule change were neither solicited nor received.

III. 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

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

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2010-064 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-BX-2010-064. 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 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-2010-064 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements

of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,¹² which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposed fees for 10Gb and 1Gb direct circuit connections are reasonable and equitably allocated insofar as they are applied on the same terms to similarly-situated market participants. In addition, the Commission believes that the connectivity options described in the proposed rule change are not unfairly discriminatory because BX makes the 10Gb and 1Gb direct circuit connections uniformly available to all non-co-located customers who voluntarily request them and pay the fees as detailed in the proposal. As represented by BX, these fees are uniform for all such customers and are either the same as fees charged to co-located customers, or vary due to different costs incurred by BX associated with providing service to the two different customer types. Finally, the Commission believes

¹⁰ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(5).

that the proposal will further the protection of investors and the public interest because it will provide greater transparency regarding the connectivity options available to market participants.

The substance of the proposed rule has already been subject to full notice and public comment, and no comments were received.¹³ Moreover, similar pricing is already in effect for these same services being offered by BX's sister markets, the NASDAQ Stock Market, LLC and NASDAQ OMX PHLX, Inc.¹⁴ Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register.

¹³ See supra note 4.

¹⁴ See Securities Exchange Act Release Nos. 62663 (August 9, 2010), 75 FR 49543 (August 13, 2010) (SR-NASDAQ-2010-77) (order approving a NASDAQ Stock Market, LLC proposed rule change relating to pricing for direct circuit connections); 62639 (August 4, 2010), 75 FR 48391 (August 10, 2010) (SR-Phlx-2010-89) (order approving a NASDAQ OMX PHLX, Inc. proposed rule change relating to pricing for direct circuit connections).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-BX-2010-064) be, and hereby is, approved on an accelerated basis.

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

Florence E. Harmon
Deputy Secretary

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).