

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63171; File No. SR-BX-2010-071)

October 25, 2010

Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BX Rules 2270 and 2910 to Reflect Changes to Corresponding FINRA Rule 2261

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 October 20, 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 and II below, which Items have been prepared primarily 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,³ 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 amend BX Rules 2270 and 2910 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority (“FINRA”), which will result in consolidating BX Rules 2270 and 2910 into BX Rule 2261. The Exchange proposes to implement the proposed rule change immediately. The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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2261. Disclosure of Financial Condition

Exchange Members shall comply with FINRA Rule 2261 as if such Rule were part of the Rules of the Exchange.

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[2270. Disclosure of Financial Condition to Customers

Exchange Members shall comply with NASD Rule 2270 as if such Rule were part of the Rules of the Exchange.

FINRA is in the process of consolidating certain NASD rules into a new FINRA rulebook. If the provisions of NASD Rule 2270 are transferred into the FINRA rulebook, then Equity Rule 2270 shall be construed to require Exchange members to comply with the FINRA rule corresponding to NASD Rule 2270 (regardless of whether such rule is renumbered or amended) as if such rule were part of the Rules of the Exchange.]

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[2910. Disclosure of Financial Condition to Other Members

Any Exchange member who is a party to an open transaction or who has on deposit cash or securities of another member shall furnish upon written request of the other member a statement of its financial condition as disclosed in its most recently prepared balance sheet.]

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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

Many of Exchange'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, the Exchange initiated a process of modifying its rulebook to ensure that the Exchange rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. The Exchange proposes to update its rules to reflect changes BX Rules 2270 and 2910 which corresponds to FINRA Rule 2261.

BX Rule 2270 (Disclosure of Financial Condition to Customers) and BX Rule 2910 (Disclosure of Financial Condition to Other Members) formerly corresponded to NASD Rule 2270 (Disclosure of Financial Condition to Customers) and NASD Rule 2910 (Disclosure of Financial Condition to Other Members). In SR-FINRA-2009-081,⁴ FINRA re-designated NASD Rules 2270 and 2910 as FINRA Rule 2261 and made substantive amendments to strengthen and simplify the rules.

More specifically, the current BX Rule 2270, which incorporates NASD Rule 2270 by reference, requires that the members make information relative to a member's financial condition, as disclosed in its most recent balance sheet, available for inspection by any bona fide

⁴ Securities Exchange Act Release No. 61540 (February 18, 2010), 75 FR 8771 (February 25, 2010) (SR-FINRA-2009-081).

regular customer upon request. In FINRA SR-2009-081, FINRA provided members the option of delivering their balance sheet, in paper or electronic form, to customers who request it. Additionally, if the delivery is electronic, the requesting customer must provide consent to receive the balance sheet in electronic form to ensure that such information is accessible to the customer.

This proposed filing also addresses BX Rule 2910, which compares to the former NASD Rule 2910. BX Rule 2910 requires that any member that is a party to an open transaction or who has on deposit cash or securities of another member to furnish, upon the written request of the other member, a statement of its financial condition as disclosed in its most recently prepared balance sheet. In SR-FINRA-2009-081,⁵ FINRA amended NASD Rule 2910 and consolidated it within FINRA Rule 2261 to require that members provide to other members the balance sheet that was prepared in accordance with the member's usual practice or as required by state or federal securities laws or any corresponding rule or regulation. Also, FINRA amended the provision to require that members be permitted to provide their balance sheet to other members in paper or electronic form; however, this does not require obtaining consent of the other members for delivery.

The Exchange believes that BX Rule 2270 and 2910 should be consolidated and amended to reflect the provisions in the new FINRA 2261. For clarification, this results in deleting BX Rules 2270 and 2910. This will allow customers and other members to continue to have access to a copy of the member's most recent balance sheet at any time upon request while simplifying the provisions. The Exchange is adopting the new FINRA rule in full by incorporating by reference FINRA Rule 2261 into the proposed BX Rule 2261.

⁵ See supra note 4.

2. Statutory Basis

The Exchange 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. The proposed changes will conform BX Rules 2270 and 2910 to recent changes made to corresponding FINRA Rule 2261 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6)⁹ thereunder in that it effects a change that: (i) does not significantly

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). In addition, BX has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the

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.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹⁰ However, Rule 19b-4(f)(6)¹¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange notes that the changes are identical to changes made by FINRA approved by the Commission, because the Exchange is incorporating those changes.¹² BX proposes to incorporate the FINRA rule by reference. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.¹³

At any time within 60 days of the filing of such 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.

proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change.

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

¹¹ Id.

¹² See supra note 4.

¹³ For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 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-2010-071 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-2010-071. 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 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-2010-071 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.¹⁴

Florence E. Harmon
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).