

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63432; File No. SR-BX-2010-082)

December 3, 2010

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Fees for the NASDAQ OMX BX Equities System

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 November 24, 2010, NASDAQ OMX BX, Inc. (“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 BX. 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

BX proposes to modify pricing for BX members using the NASDAQ OMX BX Equities System by clarifying that partial trading days will not be counted in the calculation of average daily trading volume for purposes of determining a member’s eligibility for recently adopted pricing tiers in BX’s fee schedule. BX will implement the proposed change immediately [sic]. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com>, at BX’s principal office, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, BX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

change. The text of these statements may be examined at the places specified in Item IV below. BX 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

BX recently modified its fees for trades that execute at prices at or above \$1.<sup>3</sup> Effective November 1, 2010, BX introduced a tiered pricing structure for the fee that it charges to orders that add liquidity, under which members adding a daily average of more than 50 million shares of liquidity during a month are charged \$0.00025 per share executed, while members adding a daily average of 50 million or fewer shares during the month are charged \$0.0004 per share executed.

Through this proposed rule change, BX is adding language to BX Rule 7018 to clarify that any day that the market is not open for the entire trading day will be excluded from the calculation of a member's average daily volume. The change recognizes that many members may have extremely light trading volumes on days such as the day after Thanksgiving, when the markets are not open for an entire trading day. Accordingly, excluding this day from average daily volume calculations provides a more accurate assessment of the member's volume during the month. There have been no partial trading days during the month of November prior to the date of submission of this filing, so the filing is not retroactive in effect.

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<sup>3</sup> Securities Exchange Act Release No. 63285 (November 9, 2010), 75 FR 70310 (November 17, 2010) (SR-BX-2010-074).

## 2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Section 6(b)(4) of the Act,<sup>5</sup> 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 BX operates or controls. The change will clarify the application of a recent pricing change by excluding partial trading days from average daily volume calculations, making it easier for members to achieve more favorable pricing tiers by excluding trading days when their volume is likely to be lower.

### 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 were neither solicited nor received.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>6</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder, because it establishes a due, fee, or other charge imposed by BX on its members.

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

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<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

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](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2010-082 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-2010-082. 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.<sup>8</sup> 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-2010-082 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>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> The text of the proposed rule change is available on the Commission's website at <http://www.sec.gov>.

<sup>9</sup> 17 CFR 200.30-3(a)(12).