

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64755; File No. SR-BX-2011-037)

June 27, 2011

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7034 Regarding Co-Location Fees For Additional Power and Cable Options

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 June 23, 2011, NASDAQ OMX BX, Inc. (“BX” or “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 change from interested persons.

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

The Exchange proposes to amend Rule 7034 regarding co-location fees for additional power and cable options. 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.

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

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

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

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

The Exchange proposes to amend Rule 7034 regarding co-location fees for additional power and cable options. The Exchange proposes to offer a new choice of a pair of power receptacles (60 amps 208 volts), which would provide enough power for a high density cabinet. The proposed fee for installation of the pair of the 60 amp 208 volt power receptacles is \$3,000. There are ten other power choices already available and this new receptacle choice is being offered as more clients are requesting higher power density cabinets. Additionally, the Exchange proposes to offer a new choice of patch cable, twinaxial (otherwise known as “Twinax”) cables, in lengths of one meter to five meters. The proposed fee for the Twinax cables is \$34 + \$10 per meter. The Exchange is making the Twinax cables available as a convenience to customers, and notes that use of Exchange-provided patch cords is completely voluntary, and that such patch cords may be freely obtained from other vendors for use by customers in the datacenter.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>3</sup> in general, and with Section 6(b)(4) of the Act,<sup>4</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members

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<sup>3</sup> 15 U.S.C. 78f.

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

and issuers and other persons using any facility or system which the Exchange operates or controls.

The Exchange operates in a highly competitive market, in which exchanges offer co-location services as a means to facilitate the trading activities of those members who believe that co-location enhances the efficiency of their trading. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of such members. If a particular exchange charges excessive fees for co-location services, affected members will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including co-locating with a different exchange, placing their servers in a physically proximate location outside the exchange's data center, or pursuing trading strategies not dependent upon co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also revenues associated with the execution of orders routed to it by affected members. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for co-location services.

It should be noted, however, that the costs associated with operating a co-location facility, like the costs of operating the electronic trading facility with which the co-location facility is associated, are primarily fixed costs, and in the case of co-location are primarily the costs of renting or owning data center space and retaining a staff of technical personnel. Accordingly, the Exchange establishes a range of co-location fees with the goal of covering these fixed costs, covering less significant marginal costs, such as the cost of electricity, and providing the Exchange a profit to the extent the costs are covered. Because fixed costs must be allocated among all customers, the Exchange's fee schedule reflects an effort to assess a range of relatively

low fees for specific aspects of co-location services, which, in the aggregate, will allow the Exchange to cover its costs and to the extent the costs are covered, allow the Exchange to earn a profit.

In the case of the proposed fees for a pair of the 60 amp power receptacles and the Twinax cables, the proposed fees cover the marginal costs of establishing and maintaining the electrical installation, the costs of obtaining the cable equipment from the Exchange's vendors, and allow the Exchange to earn a profit; [sic] to the extent the costs are covered. Accordingly, the Exchange believes that it is reasonable to use fees assessed on this basis as a means to recoup a share of fixed costs associated with the proposed power and cable options, provide a convenience for the customers and to the extent the costs are covered, provide a profit to the Exchange.

The Exchange also notes that the fees charged by the Exchange are generally lower or comparable to prices charged by other exchanges or unregulated vendors for similar services. For instance, NYSE Arca, Inc. charges for the power installation by including it in a higher install for the co-location cabinet.<sup>5</sup> With respect to the proposed fees for Twinax cables, the fees charged by the Exchange are generally lower or comparable to prices charged by unregulated vendors for similar products. See

<http://www.google.com/products/catalog?hl=en&biw=1259&bih=813&q=Twinax+cable&um=1&ie=UTF-8&tbm=shop&cid=15023972358025904938&sa=X&ei=8tDfTaOwIcHagQeVu6DUCg&ved=0CDcQ8wIwAw#> .

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<sup>5</sup> See Release No. 63275 (November 8, 2010) at page 4, 75 FR 70048 (November 16, 2010)(SR-NYSEArca-2010-100) [sic].

Furthermore, because the proposed services are available to all members through optional co-location services, the Exchange's fees for proposed co-location services are reasonable and equitably allocated across the membership. All co-location customers are offered the same range of products and services and there is no differentiation among customers with regard to the fees charged for a particular product, service, or piece of equipment.

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)(ii) of the Act.<sup>6</sup> 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 action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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

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

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-2011-037 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-2011-037. 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2011-037 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>7</sup>

Elizabeth M. Murphy  
Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).