

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76915; File No. SR-BX-2016-001)

January 14, 2016

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 7018

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 January 4, 2016, NASDAQ OMX BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 the fee schedule under Exchange Rule 7018(a) with respect to execution and routing of orders in securities priced at \$1 or more per share.

The text of the proposed rule change is also available on the Exchange’s Website at <http://nasdaqomxbx.cchwallstreet.com>, at the principal office of the Exchange, 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

¹ 15 U.S.C. 78s(b)(1).

² 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 is proposing to amend the fee schedule under BX Rule 7018(a), relating to fees and credits provided for orders in securities priced and \$1 or more per share that execute on BX.

Under BX Rule 7018(a), the Exchange provides credits to member firms that access liquidity on BX. The Exchange is proposing to add a new credit tier for orders that access liquidity (excluding orders with midpoint pegging and excluding orders that receive price improvement and execute against an order with midpoint pegging). The new credit tier will be for a member that adds and accesses liquidity equal to or exceeding 0.50% of total consolidated volume during a month. The proposed credit for the tier will be \$0.0017 per share executed.

The Exchange also proposes to amend a fee for providing liquidity through the NASDAQ OMX BX Equities System (the "System"), by eliminating one of the criteria applicable to the fee and decreasing the fee. Specifically, the current fee for a displayed order entered by a member that (i) adds liquidity equal to or exceeding 0.25% of total Consolidated Volume during a month; and (ii) adds and accesses liquidity equal to or exceeding 0.50% of total Consolidated Volume during a month is \$0.0016 per share executed. The Exchange proposes to eliminate criteria (i) and decrease the fee to \$0.0014 per share executed.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁴ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other fees among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, for example, the Commission indicated that market forces should generally determine the price of non-core market data because national market system regulation “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁵ Likewise, in NetCoalition v. NYSE Arca, Inc.⁶ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.⁷ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(4) and (5).

⁵ Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) (“Regulation NMS Adopting Release”).

⁶ NetCoalition v. NYSE Arca, Inc. 615 F.3d 525 (D.C. Cir. 2010).

⁷ See NetCoalition, at 534.

requirements' play a role in determining the market data . . . to be made available to investors and at what cost."⁸

Further, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'"⁹

The Exchange believes that the proposed new credit tier for orders that access liquidity (excluding orders with midpoint pegging and excluding orders that receive price improvement and execute against an order with midpoint pegging), entered by a member that adds and accesses liquidity equal to or exceeding 0.50% of total consolidated volume during a month is reasonable because it provides an additional opportunity for market participants to receive credits for participation on BX and the Exchange desires to further incentivize member firms to participate in the Exchange by removing liquidity. The Exchange also believes that the proposed rule change is an equitable allocation and is not unfairly discriminatory because the Exchange will provide the same credit to all similarly situated members that achieve the level of total consolidated volume required by the tier.

BX believes that the proposed fee decrease from \$0.0016 per share executed to \$0.0014 per share executed, as well as the elimination of the first criteria below (criteria (i)), for a displayed order entered by a member that (i) adds liquidity equal to or exceeding 0.25% of total Consolidated Volume during a month; and (ii) adds and accesses liquidity equal to or exceeding

⁸ Id. at 537.

⁹ Id. at 539 (quoting ArcaBook Order, 73 FR at 74782-74783).

0.50% of total Consolidated Volume during a month are reasonable because decreasing the fee and eliminating the first criteria will provide firms more flexibility in attaining the tier and further incentivize participation in the market.

The Exchange also believes that this proposed rule change is an equitable allocation and is not unfairly discriminatory because it will further encourage market participant activity and will also support price discovery and liquidity provision. The Exchange also believes this proposed rule change is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee and credit to all similarly situated members.

Finally, BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or credit opportunities available at other venues to be more favorable. In such an environment, BX must continually adjust its fees and credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. The changes reflect this environment because they reflect changes to both credits and fees designed to incentivize changes in market participant behavior to the benefit of the market overall.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.¹⁰ In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or credit opportunities available at other

¹⁰ 15 U.S.C. 78f(b)(8).

venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, both the proposed new credit tier and the modification to the fee are subject to extensive competition both from other exchanges and from off-exchange venues.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and paragraph (f) of Rule 19b-4¹² thereunder. 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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f).

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 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-2016-001 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-BX-2016-001. 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-2016-001, 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.¹³

Robert W. Errett
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).