

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61495; File No. SR-BX-2010-006)

February 4, 2010

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rules 2848, 3330, and 9810 to Reflect Changes to Corresponding FINRA Rules

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 14, 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, II, and III below, which Items have been substantially prepared 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 the Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to amend BX Rules 2848 (Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants); 3330 (Payment Designed to Influence Market Prices, Other than Paid Advertising); and 9810 (Initiation of Proceeding) to reflect recent changes to corresponding rules of the Financial Industry Regulatory Authority

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

(“FINRA”). The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallasstreet.com>, 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 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

BX based much of its rules on those of The NASDAQ Stock Market LLC (“NASDAQ”). Similarly, many of NASDAQ’s rules are based on rules of FINRA (formerly the National Association of Securities Dealers (“NASD”)). As a consequence, many of BX’s rules closely mirror those of FINRA. 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, BX also proposes to initiate a process of modifying its rulebook to ensure that BX rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it will not be possible for the rule numbers of BX rules to mirror corresponding FINRA rules, because existing or planned BX rules make use of those numbers. However,

wherever possible, BX plans to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses BX Rules 2848 (Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants); 3330 (Payment Designed to Influence Market Prices, Other than Paid Advertising); and 9810 (Initiation of Proceeding) to update cross-references to corresponding rules of FINRA.

In SR-FINRA-2009-078,⁴ FINRA made changes that reflected, among other things, incorporation into the consolidated FINRA rulebook of NASD Rule 3330 as FINRA Rule 5230 (Payments Involving Publications that Influence the Market Price of a Security);⁵ NASD Rule 2330 as FINRA Rule 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts);⁶ and NASD Rule 2220 as FINRA Rule 2220 (Options Communications).⁷

FINRA Rule 2220, like former NASD Rule 2220, sets forth a member's obligations with respect to its options communications with the public and: (a) uses, to

⁴ See Securities Exchange Act Release No. 61087 (December 1, 2009), 74 FR 65190 (December 9, 2009)(SR-FINRA-2009-078)(notice of filing and immediate effectiveness).

⁵ See Securities Exchange Act Release No. 60648 (September 10, 2009), 74 FR 47837 (September 17, 2009)(SR-FINRA-2009-048)(order approving adoption of FINRA Rule 5230).

⁶ See Securities Exchange Act Release No. 60701 (September 21, 2009); 74 FR 49425 (September 28, 2009)(SR-FINRA-2009-014)(order approving adoption of FINRA Rule 2150).

⁷ See Securities Exchange Act Release No. 60534 (August 19, 2009), 74 FR 44410 (August 28, 2009)(SR-FINRA-2009-036)(order approving adoption of FINRA Rules 2124, 2220, 4370, and 5250).

the extent appropriate, the same terminology and definitions as in FINRA's general rules on communications with the public; (b) makes the requirements for principal review of correspondence concerning options the same as for correspondence generally; and (c) updates the standards on the content of communications that precede the delivery of the options disclosure document (ODD).

BX is, by this filing, updating references in its Rule 2848 from NASD Rule 2220 to FINRA Rule 2220.

NASD Rule 3330 prohibits a member from giving, or offering to give, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service, or similar publication, of any matter that has, or is intended to have, an effect upon the market price of any security; and provides an exception for any matter that is clearly distinguishable as paid advertising. As part of transferring NASD Rule 3330 into the consolidated FINRA rulebook as FINRA Rule 5230, FINRA proposed two changes to the rule to modernize its terms and clarify its scope by: (a) updating the list of media to which the rule refers to include electronic and other types of media, including magazines, Web sites, and television programs; and (b) expanding the exceptions in the rule beyond paid advertising to also include compensation paid in connection with research reports and communications published in reliance on Section 17(b) of the Securities Act of 1933 (the "1933 Act").

BX is, by this filing, re-numbering its Rule 3330 to Rule 5230 and amending the text to conform to the changes reflected in FINRA Rule 5230.

NASD Rule 2330 prohibits members and associated persons from: (a) making improper use of a customer's securities or funds; (b) guaranteeing a customer against loss in connection with any securities transaction or in any securities account of the customer; and (c) sharing in the profits or losses in the customer's account except under certain limited conditions specified in the Rule. As part of transferring NASD Rule 2330 into the consolidated FINRA rulebook as FINRA Rule 2150, FINRA proposed minor changes to Rule 2150(c) and added Supplementary Information to the rule that codified existing staff guidance concerning the inapplicability of the rule to certain guarantees, permissible reimbursement by a member of certain losses, correction of bona fide errors, and preservation of written authorizations.⁸

BX has proposed, in a recent immediately effective filing,⁹ to re-number its Rule 2330 and IM-2330 to Rule 2150 and IM-2150, respectively; clarify cross-references in its rule and IM; and reflect the changes to FINRA Rule 2150. BX is, by this filing, clarifying the cross-reference in its Rule 9810 to BX Equity Rule 2150.

⁸ Supplementary Material to FINRA Rule 2150 generally provides that (i) a "guarantee" extended to all holders of a security by an issuer as part of that security generally would not be subject to the prohibition against guarantees; (ii) the rule does not preclude a member from determining on an after-the-fact basis to reimburse a customer for transaction losses, provided however that the member shall comply with all reporting requirements that may be applicable to such payment; (iii) the rule does not preclude a member from correcting a bona fide error; and (iv) a member must preserve the required written authorization(s) for a period of at least six years after the date the account is closed.

⁹ See Securities Exchange Act Release No. 61129 (December 8, 2009), 74 FR 66188 (December 14, 2009) (SR-BX-2009-080) (notice of filing and immediate effectiveness).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁰ in general, and with Sections 6(b)(5) of the Act,¹¹ 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 2848, 3330 and 9810 to recent changes made to several corresponding FINRA rules, 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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

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-2010-006 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.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

All submissions should refer to File Number SR-BX-2010-006. 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 Web site (<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 Web site 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-2010-006, 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).