

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64028; File No. SR-BX-2010-059)

March 3, 2011

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Designation of Longer Period for Commission Action on Proceedings to Determine Whether to Disapprove Proposed Rule Change, as Modified by Amendment No. 1, to Create a Listing Market on the Exchange

On August 20, 2010, NASDAQ OMX BX, Inc. (the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to create a listing market on the Exchange. The proposed rule change was published for comment in the Federal Register on September 8, 2010.³ The Commission received three comment letters on the proposal.⁴ The Commission subsequently extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to December 7, 2010.⁵ On December 6, 2010, the Exchange filed Amendment No. 1 to the proposed rule change.⁶ On December 7, 2010, the Commission instituted proceedings to determine whether to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 62818 (September 1, 2010), 75 FR 54665 (“Notice”).

⁴ See Letters to Elizabeth M. Murphy, Secretary, Commission, from William F. Galvin, Secretary of the Commonwealth, Commonwealth of Massachusetts, dated September 28, 2010; Michael R. Trocchio, Bingham McCutchen LLP, on behalf of Pink OTC Markets Inc., dated October 3, 2010; and Tom A. Alberg, Managing Director and Founder, Madrona Venture Group, dated December 1, 2010.

⁵ See Securities Exchange Act Release No. 63105 (October 14, 2010), 75 FR 64772 (October 20, 2010) (“Extension”).

⁶ See Securities Exchange Act Release No. 63597 (December 22, 2010), 75 FR 82098 (December 29, 2010) (“Amendment No. 1”).

disapprove the proposed rule change, as modified by Amendment No. 1.⁷ The Commission thereafter received seven comments on the proposal.⁸ The Exchange responded to these comments on February 17, 2011.⁹

Section 19(b)(2) of the Act¹⁰ provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the Federal Register on September 8, 2010. March 7, 2011 is 180 days from that date, and May 6, 2011 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change, the issues raised in the comment letters that have been

⁷ See Securities Exchange Act Release No. 63448 (December 7, 2010), 75 FR 77036 (December 10, 2010) (“Order Instituting Proceedings”).

⁸ See Letters to Elizabeth M. Murphy, Secretary, Commission, from James J. Angel, Ph.D., CFA, dated January 14, 2011; K. Richard B. Niehoff, Chairman and CEO, United States OTC Markets, Inc., dated January 20, 2011; Mark G. Heesen, President, National Venture Capital Association, dated January 21, 2011; Alan F. Eisenberg, Executive Vice President, Emerging Companies and Business Development, Biotechnology Industry Organization, dated January 24, 2011; Michael R. Trocchio, Bingham McCutchen LLP, on behalf of OTC Markets Group Inc., dated January 24, 2011; Rey Ramsey, President and CEO, TechNet, dated January 24, 2011; and William F. Galvin, Secretary of the Commonwealth, Commonwealth of Massachusetts, dated January 26, 2011.

⁹ See Letter to Elizabeth M. Murphy, Secretary, Commission, from Joan C. Conley, Senior Vice President and Corporate Secretary, The NASDAQ OMX Group, dated February 17, 2011.

¹⁰ 15 U.S.C. 78s(b)(2).

submitted in connection with this proposed rule change, and the Exchange's response to such issues in its response letter. Specifically, while the Exchange noted a number of benefits to the proposal,¹¹ as the Commission noted in the Order Instituting Proceedings, the proposal raises issues such as whether BX-listed securities could be more prone to manipulation, and whether investors will understand that BX-listed securities could pose substantially more risk than those listed on other markets.¹²

¹¹ The Exchange believes that a BX listing could help companies that are being delisted from another national securities exchange for failure to meet its quantitative listing standards and companies with smaller market capitalization contemplating an initial exchange listing to raise capital, and in turn promote job creation within the United States. See Amendment No. 1, supra note 6 at 82100. The Exchange further believes that the proposed listing venue will provide a transparent, well-regulated marketplace for these companies and their investors. See id. at 82099.

¹² See Order Instituting Proceedings, supra note 7 at 77040.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹³ designates May 6, 2011, as the date by which the Commission should either approve or disapprove the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Cathy H. Ahn
Deputy Secretary

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(57).