

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64840; File No. SR-BX-2011-043)

July 8, 2011

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7034 to Extend the Waiver of Certain Co-Location Installation Fees For An Additional Month

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 July 1, 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 to extend the waiver of fees assessed for the installation of certain co-location services for an additional month. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com>, at the Exchange’s principal office, at the Commission’s Public Reference Room, and at the Commission’s website at [www.sec.gov](http://www.sec.gov).

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 to extend for a one-month period the initial waiver of fees assessed for the installation of certain co-location services, in order to provide its existing and potential new customers a full opportunity to avail themselves of the waiver. The initial waiver of fees for the installation of certain co-location services commenced June 1, 2011 and ended June 30, 2011.<sup>3</sup> Since the initial waiver, there has been significant demand for the select co-location services by existing customers, as well as new customers. However, the Exchange has become aware that a significant number of new and existing customers are unable to complete their requests by June 30, 2011 due to the need for additional time to order new equipment to be housed in the cabinets, or, to complete the internal approval process for the ongoing monthly fees that will be incurred as part of the service. Therefore, the Exchange proposes to extend the waiver of fees until July 29, 2011 (the “extended period”). Beginning August 1, 2011, the above-referenced waived fees will revert to the amount in effect prior to June 1, 2011. The Exchange proposes to extend the waiver of the following installation fees during the extended period:

1. Rule 7034(a): installation fees for new cabinets with power.
2. Rule 7034(b): installation fees for external telecommunication, inter-cabinet connectivity, connectivity to The Nasdaq Stock Market LLC and market data

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<sup>3</sup> See Securities Exchange Act Release No. 64631 (June 8, 2011), 76 FR 34785 (June 14, 2011)(SR-BX-2011-032).

connectivity related to an order for a new cabinet. However, the one-time telecommunication connectivity expedite fee<sup>4</sup> will not be waived during the extended period.

3. Rule 7034(c): installation fees for cabinet power related to an order for a new cabinet.
4. Rule 7034(d): installation fees for cooling fans, perforated floor tiles and fiber downspouts, which are necessary items to support a higher density cabinet and fiber cross connects, relating to an order for a new cabinet placed during the extended period. Installation fees for other items that are customized or options are not waived during the extended period.

The following requirements must be met to receive the waiver of the installation fee:

1. the new cabinet order must be placed in the CoLo Console<sup>5</sup> during the extended period; and
2. the new cabinet must be live within 90 days of the date of the order.<sup>6</sup>

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Section 6(b)(4) of the Act,<sup>8</sup> in particular, in that it

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<sup>4</sup> The one-time telecommunication connectivity expedite fee is a fee for an optional request to complete the installation in a shorter time period than the install timeframes.

<sup>5</sup> The “CoLo Console” is web-based ordering tool that is utilized by NASDAQ to place co-location orders.

<sup>6</sup> Exchange staff generally installs and makes operational a new cabinet within 90 days of the date of the order (the “live date”). The estimated live date is communicated to the customer. However, there may be instances where the customer desires the live date to be later than the estimated live date provided by Exchange staff. In such instances, the live date cannot extend beyond 90 days of the date of the order.

<sup>7</sup> 15 U.S.C. 78f.

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 the Exchange operates or controls. The proposed fee waiver is reasonable because it provides an opportunity for all new customers and all existing customer [sic] that desire additional cabinet space to obtain that space without incurring fees. This decrease in fees provided a savings of over \$100,000 to customers that took advantage of the fee waiver during the month of June. In addition, the Exchange believes that the fee waiver results in an equitable allocation of fees among the members of the Exchange. Specifically, the Exchange believes that by encouraging new and existing co-location customers to increase their presence in the Exchange's data center, the Exchange will generate additional order execution and data consumption activity. If it materializes, such an increase in activity would assist the Exchange in controlling the charges it imposes on members generally for their use of a variety of Exchange services. The waiver of fees is also equitably allocated since all existing and potential co-location customers may avail themselves of the waiver during the period of availability. Notably, during June 2011, the preponderance of customers availing themselves of the waiver were existing, rather than new customers, demonstrating the benefit of the program to a variety of members. Finally, extending the program for a month will ensure that several customers that have expressed an interest in expanding their data center presence but that have not yet been able to do so will have the opportunity to benefit from the waiver.

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

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<sup>8</sup> 15 U.S.C. 78f(b)(4).

amended. The Exchange believes that the extension of the waiver of fees for certain co-location services is equitable because all customers may avail themselves of the waiver.

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>9</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 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-2011-043 on the subject line.

Paper comments:

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

- 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-2011-043. 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-2011-043 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>10</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).