

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65175; File No. SR-BX-2011-057)

August 19, 2011

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish and Adopt Fees for the new BX Pre-Trade Risk Management Service

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 August 16, 2011, NASDAQ OMX BX, Inc. (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 establish and adopt fees for the new BX Pre-Trade Risk Management service (“PRM”). The Exchange will implement the fee effective September 1, 2011.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

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7016. [Reserved] BX Pre-Trade Risk Management

(a) Users of BX Pre-trade Risk Management (“PRM”) will be assessed a monthly fee based on the following table, and such fees will not exceed \$25,000 per member firm, per month:

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

<u>Port Tiers</u>	<u>Number of PRM-Enabled Ports</u>	<u>Monthly Fee</u>
<u>Tier 1</u>	<u>50 or more</u>	<u>\$400 per port, per month</u>
<u>Tier 2</u>	<u>20 to 49</u>	<u>\$500 per port, per month</u>
<u>Tier 3</u>	<u>5 to 19</u>	<u>\$550 per port, per month</u>
<u>Tier 4</u>	<u>1 to 4</u>	<u>\$600 per port, per month</u>

(b) Users of PRM services specified below will be assessed the following charges in addition to the applicable PRM-enabled port charges:

PRM Modules No charge

Aggregate Total Checks No charge

PRM Workstation Add-ons to an existing Workstation or WeblinkACT 2.0 \$100 per each PRM Workstation Add-on per month

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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

The Exchange is proposing to adopt BX Pre-trade Risk Management under Rule 7016. PRM provides member firms with the ability to set a wide range of parameters for orders to facilitate pre-trade protection by creating a PRM module defined to represent checks desired. Using PRM, member firms can increase controls on their trading activity and the trading activity of their clients and customers at the order level, including the opportunity to prevent potentially erroneous transactions. PRM validates orders entered on PRM-enabled ports prior to allowing those orders into its matching engine and, using parameters set by the subscriber, determines if the order should be sent for fulfillment. If PRM rejects an order, it alerts the member firm and provides it with clearly-defined reasons for the rejection.³ These alerts are sent on Execution and Order/Message DROP copy lines/reports. The Exchange believes that PRM will be a useful tool to assist members in complying with the Commission’s new market access rule⁴ and related Exchange requirements.

PRM users may choose to set PRM Order Checks, Aggregate Total Checks within a PRM Module, and subscribe to PRM Workstation Add-ons to an existing Workstation or WeblinkACT 2.0. PRM manages risk by checking each order, before it is accepted into the system, against certain parameters pre-specified by the user within a module, such as maximum

³ For example, PRM provides a “Fat Finger Check,” which allows a user to compare price instructions on incoming orders against the current displayed size and price in the market. If the order is not in line with the displayed price and size, the order will be rejected before it can execute. Users can set order limits at several levels to ensure that clearly erroneous orders never execute.

⁴ 17 CFR 240.15c3–5. See Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010).

order size or value, order type restrictions, market session restrictions (pre/post market), security restrictions, including per-security limits, restricted stock list, and certain other criteria. These checks are in addition to the Fat Finger Check, which is available for all orders submitted through a RASH/FIX PRM-enabled port.⁵ In order for a member firm to subscribe, at least one PRM Module per market participant ID (“MPID”) is required, but a user may have multiple PRM Module subscriptions per MPID, depending on the type and number of ports designated as PRM ports.⁶ A PRM Module is created to validate individual orders against pre-specified parameters. Aggregate Total Checks allow users to limit overall daily trading activity based on Buy, Sell, and/or Net trading limits. These daily trading activity limits may be established at an aggregate limit and/or security specific limit per PRM Module. Member firms may subscribe to the PRM Workstation Add-on to an existing Workstation or WeblinkACT 2.0 for a fee.

The Exchange is proposing to assess a per-port fee for PRM under Rule 7016(a). This monthly port-based fee is tiered, decreasing as the number of PRM-enabled ports subscribed increase and the next tier is reached. The Exchange is also proposing to limit the fees assessed a member firm under the tiered fee structure to a total of \$25,000 per month. Rule 7016(b) sets forth fees assessed for PRM Modules and Aggregate Total Check, which will be available to subscribers at no cost, and a monthly fee of \$100 per each PRM Workstation Add-on to an existing Workstation or WeblinkACT 2.0 per month.

The NASDAQ Stock Market (“NASDAQ”) has offered Pre-trade Risk Management to its members for many years, and the Exchange is now proposing to offer member firms the

⁵ Id.

⁶ A member firm using FIX or Rash ports can configure its PRM Module to pre-trade-manage a subscriber’s order flow for a specified MPID and PRM-enabled port, or for an account within an MPID. A member using OUCH ports can configure its PRM Module to pre-trade-manage a subscriber’s order flow for a specified port.

identical service offered at the same fee levels.⁷ A member firm that is an existing subscriber of NASDAQ PRM, however, must subscribe separately to BX PRM to receive the service for its Exchange order flow.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act⁸ in that it 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, and it does not unfairly discriminate between customers, issuers, brokers or dealers. The new PRM fee schedule applies to all subscribers equally based on the number of ports subscribed. The proposed fees will cover the costs associated with separately offering the service, responding to customer requests, configuring Exchange systems, programming to user specifications, and administering the service, among other things, and may provide the Exchange with a profit to the extent costs are covered.

The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act⁹ because it 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. PRM is designed to assist member firms in avoiding entry of erroneous orders by screening out those that exceed pre-determined limits, which otherwise may harm both the

⁷ The Exchange notes that NASDAQ recently amended the fees assessed for PRM and its services. See Securities Exchange Act Release No. 65020 (August 3, 2011), 76 FR 48193 (August 8, 2011) (SR-NASDAQ-2011-099).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(5).

member firm and the quality of the markets. As such, PRM is an important compliance tool that members may use to help maintain the regulatory integrity of the markets.

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 significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not 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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Such a waiver will allow the Exchange to offer the PRM service, which a member may use as a tool that could assist compliance with certain regulatory

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

obligations and enhance market integrity, as soon as possible. Accordingly, the Commission designates the proposal operative upon filing.¹²

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.

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-2011-057 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-2011-057. 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

¹² For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2011-057 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

Elizabeth M. Murphy
Secretary

¹³ 17 CFR 200.30-3(a)(12).