

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68909; File No. SR-BX-2013-011)

February 12, 2013

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify BX's Fee Schedule Governing Order Execution

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 31, 2013, NASDAQ OMX BX, Inc. ("BX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a 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 the Substance of the Proposed Rule Change

BX proposes to modify BX's fee schedule governing order execution. BX will implement the proposed change on February 1, 2013. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com/>, at BX'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 self-regulatory organization 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 those statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

places specified in Item III [sic] below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX is amending its fee schedule governing order execution. All of the changes pertain to securities priced at \$1 or more per share. Currently, BX pays no credit with respect to orders that execute against a midpoint pegged order; a credit of \$0.0014 per share executed for routable orders that access liquidity in BX (other than orders that execute against a midpoint pegged order); a credit of \$0.0014 per share executed for orders that access liquidity if entered through a BX MPID through which the member (i) accesses an average daily volume of 3.5 million or more shares of liquidity during the month, or (ii) provides an average daily volume of 25,000 or more shares of liquidity during the month (other than orders that execute against a midpoint pegged order); and a credit of \$0.0005 per share executed for all other orders that access liquidity in BX. BX is making the following changes to these fees:

- modifying the pricing tier that currently requires providing an average daily volume of 25,000 or more shares of liquidity, such that providing an average daily volume of 1 million or more shares of liquidity would be required;
- instituting a new pricing tier under which a member would receive a credit of \$0.0010 per share executed for an order (other than an order that executes against a midpoint pegged order) entered through an MPID through which the member provides an average daily volume of at least 25,000, but less than 1 million, shares of liquidity during the month;

- decreasing the credit applicable to orders to which no special credit applies from \$0.0005 to \$0.0004 per share executed.

As a result of the changes, the requirements for one of the means by which a member may receive a credit of \$0.0014 per share executed will be increased. However, the remaining means of receiving this credit, including use of routable orders, will remain unchanged. Moreover, a new pricing tier is being created so that members that have received this credit due to their levels of liquidity provision but that do not qualify for the higher requirements will still receive a credit of \$0.0010 per share executed, a credit that is more than twice as high as the base credit of \$0.0004 per share executed.

Second, with respect to orders that provide liquidity, BX currently charges \$0.0015 per share executed for a displayed order entered by a Qualified Liquidity Provider through a Qualified MPID;³ and \$0.0018 per share executed for all other orders. BX is making the following changes to these fees:

- For a midpoint pegged order that provides liquidity, BX will charge \$0.0015 per share executed. Midpoint pegged orders are non-displayed orders that execute at the midpoint between the national best bid and offer (“NBBO”), thereby providing price improvement to orders that execute against them.
- For other types of non-displayed orders, BX will charge \$0.0025 per share executed.

This change is similar in structure to pricing on The NASDAQ Stock Market, where members that provide liquidity using midpoint pegged orders receive a higher credit than with

³ A Qualified Liquidity Provider is required to meet certain standards with regard to volumes of liquidity accessed and provided. A Qualified MPID is an MPID through which a Qualified Liquidity Provider achieves certain requirements with respect to quoting at the NBBO. See Rule 7018(a)(1) and (2).

respect to other forms of non-displayed orders. This pricing approach reflects the view that although displayed orders are generally preferred to non-displayed orders because they assist in price discovery, the use of midpoint orders should also be encouraged through pricing incentives because they provide price improvement.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Sections 6(b)(4) and (5) of the Act,⁵ in particular, 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 BX operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

BX believes that the modifications to pricing for members providing significant liquidity (i.e., the creation of a new \$0.0010 per share executed credit tier and the increase in the requirements for participation in the \$0.0014 per share executed tier) are reasonable because the resulting decrease in credits for a member that provides an average daily volume of at least 25,000, but less than 1 million, shares of liquidity will be a modest \$0.0004 per share executed, and a member affected by the change may still qualify for the \$0.0014 per share executed credit through other means. BX believes that the change is consistent with an equitable allocation of fees because the change is consistent with a goal of encouraging liquidity provision through pricing incentives, because it provides a credit that is more than twice as high as the base credit for members that provide a relatively modest level of liquidity (an average daily volume of at least 25,000 shares) and a credit more than three times higher than the base credit for members

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4) and (5).

that provide a significant level of liquidity (an average daily volume of at least 1 million shares). Finally, BX believes that the change is not unreasonably discriminatory, because liquidity provision benefits all market participants by dampening price volatility and because alternative means of earning a \$0.0014 per share credit remain available.

BX believes that the decrease in the credit for orders not qualifying for any pricing tier is reasonable because it is a decrease of only \$0.0001 per share executed. BX further believes that it is consistent with an equitable allocation of fees and is not unreasonably discriminatory, because it is consistent with the practice of all national securities exchanges of providing financial incentives to members to provide liquidity or make significant use of an exchange's facilities, while charging higher fees and/or providing lower credits to less committed users.

BX believes that the proposed fee decrease for midpoint pegged orders and price increase for other forms of non-displayed orders is reasonable because in the first instance, fees are being reduced, and in the second instance, the increase is only \$0.0007 per share executed. Moreover, the increase is reasonable because members may readily avoid it by using displayed orders or midpoint pegged orders. BX believes that the changes are consistent with an equitable allocation of fees, and are not unreasonably discriminatory, because the fees reflect a policy of using fees to encourage greater use of displayed orders, which benefit all market participants by promoting greater price discovery, as well as the use of midpoint pegged orders, which benefit other market participants by providing price improvement. Accordingly, BX believes that it is equitable to charge the highest fees to non-displayed, non-midpoint orders, which provide the least benefits to other market participants, while charging lower fees to displayed orders, which benefit the entire market by revealing the price and size of trading interest, and midpoint orders, which

benefit other participants by offering price improvement. This approach is not unfairly discriminatory because the variation in fees is reasonably related to valid market structure goals.

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. In such an environment, BX must continually adjust its fees 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 although they reflect price increases, the price increases are minor and are designed to incentivize changes in market participant behavior (*i.e.*, encouraging greater use of BX's router, increased liquidity provision, and more use of displayed and/or midpoint pegged orders) rather than to impose significantly higher costs on market participants.

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

BX 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. Because the market for order execution is extremely competitive, members may readily opt to disfavor BX's execution and routing services if they believe that alternatives offer them better value. Although the proposed changes increase fees or decrease credits in certain respects, BX believes that these changes do not impose any burden on competition, since members may readily favor other trading venues if they wish to avoid these pricing changes. Moreover, within the context of BX pricing schedule, members may also readily avoid the effect of the changes by modifying the order types that they use. Accordingly, the impact on the fees actually paid by members is expected to be minimal, and the change will not 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

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) of the Act⁶ and paragraph (f) of Rule 19b-4 thereunder.⁷ 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-2013-011 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.

⁶ 15 U.S.C. 78s(b)(3)(a).

⁷ 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-BX-2013-011. 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 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 offices 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-2013-011, 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.⁸

Kevin M. O'Neill
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).