

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69053; File No. SR-BX-2013-019)

March 7, 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 Routing

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 February 27, 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 Substance of the Proposed Rule Change

BX proposes to amend BX's fee schedule governing order routing. BX will implement the proposed change on February 27, 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 places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 routing to establish fees for routing orders using its two new order routing strategies, BDRK and BCST.<sup>3</sup> All of the changes pertain to securities priced at \$1 or more per share.

With respect to BDRK and BCST orders that access liquidity in the BX Equities System, members will receive a credit of \$0.0014 per share executed. With respect to BDRK and BCST orders that execute on a venue other than the BX Equities System, members will be charged \$0.0010 per share. With respect to BDRK and BCST orders that provide liquidity in the BX Equities System, members will be charged no differently than other orders that provide liquidity. Specifically, members will be charged \$0.0015 or \$0.0018 per share for orders that provide displayed liquidity (based on the MPID’s eligibility for the Qualified Liquidity Provider rate), \$0.0025 per share for orders that provide non-displayed liquidity, or \$0.0015 per share for midpoint orders that provide liquidity.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>5</sup> in particular, in that it

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<sup>3</sup> BDRK orders, pursuant to Rule 4758(a)(1)(A)(viii), check the System for available shares and simultaneously route to certain destinations on the System routing table that are not posting Protected Quotations within the meaning of Regulation NMS (i.e. “dark venues” or “dark pools”). BCST orders, pursuant to Rule 4758(a)(1)(A)(ix), check the System for available shares and simultaneously route to select dark venues and to certain low cost exchanges. See Securities Exchange Act Release No. 68840 (February 6, 2013), 78 FR 9961 (February 12, 2013) (SR-BX-2013-008).

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(4) and (5).

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.

The proposed pricing for BDRK and BCST orders executed on BX is reasonable because it is the same as the current pricing for other routed order types, namely BSTG, BSCN, BMOP, BTFY and BCRT orders, executed on BX. The proposed fee for BDRK and BCST orders that execute on a venue other than BX is slightly more (\$0.0003) than BTFY orders that execute on venues other than BX and much less than the fees for BSTG, BSCN and BMOP orders, which is reasonable because BDRK and BCST orders are routed only to low cost venues. Although BX will incur different costs depending upon the venues on which these routed orders are executed, BX is adopting a flat rate structure. Taking its costs into account, BX may operate at a slight gain or a slight loss for orders routed to and executed at other venues. BX believes that its proposed fees are reasonable because they are an approximation of the maximum fees BX will be charged for such executions, including its own costs. As a general matter, BX believes that the proposed fees will allow it to recoup and cover its costs of providing routing services and the value that [sic] provides to its participants who choose routing services.

The proposed pricing for BDRK and BCST orders is consistent with an equitable allocation of fees and is not unfairly discriminatory because the pricing, which is the same for all BX participants applies solely to members that opt to route BDRK and BCST orders. Moreover, the lower cost of these routing strategies as compared with other existing routing strategies is not unfairly discriminatory because it is consistent with the lower costs associated with routing to the venues that are accessed by the new strategies.

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. BX believes that the proposed rule change reflects this competitive environment because it is designed to ensure that the charges for use of the BX routing facility to route reflect changes in the cost of such routing.

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 routing is extremely competitive, members may readily opt to disfavor BX's routing services if they believe that alternatives offer them better value. Moreover, by introducing new routing options and charging fees that BX believes to be reasonable, BX believes that it is increasing its competitiveness vis-à-vis other trading venues. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, BX does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. BX also does not believe that the proposal raises issues of competition among its own market participants, because the proposal applies fee and credits equally to all participants.

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 is effective upon filing pursuant to Section 19(b)(3)(A)<sup>6</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder, because it establishes a due, fee, or other charge imposed by BX.

At any time within 60 days of the filing of such 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](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2013-019 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-2013-019. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

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, D.C. 20549-1090, 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-2013-019, 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>8</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).