

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69280; File No. SR-BX-2013-029)

April 2, 2013

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change Relating to Board of Director Qualifications

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 March 27, 2013, NASDAQ OMX BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 By-Law Article IV, Section 4.3 to amend the calculation of Non-Industry Directors in the Exchange’s By-Laws with respect to Qualification of Board Members.

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaqomxbx.cchwallstreet.com>, at the principal office of the Exchange, 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 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

¹ 15 U.S.C. 78s(b)(1).

² 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 purpose of this filing is to amend BX By-Law Article IV, Section 4.3 entitled “Qualifications” to amend the number of Public Directors³ required to be included in the calculation of Non-Industry Directors⁴ from three Public Directors to one Public Director for purposes of determining the number of Non-Industry Directors that may serve on the Exchange board. The Exchange recently filed to amend its By-Laws because the Boston Options Exchange LLC (“BOX”) ceased to operate as an options trading facility of the Exchange⁵ and terminated the Regulatory Services Agreement (“RSA”) between BX and BOX effective June 1, 2012.⁶ In that filing the Exchange noted that the BOX Trading Rules will no longer be operative to permit

³ Pursuant to BX By-Law Article I(gg) a Public Director is a Director who has no material business relationship with a broker or dealer, the Corporation or its affiliates, or FINRA.

⁴ Pursuant to BX By-Law Article I(bb) a Non-Industry Director is a Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry Director.

⁵ BOX was a facility of the Exchange under Section 39(a)(2) of the Act. See Securities Exchange Act Release Nos. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (SR-BSE-2003-17); 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (SR-BSE-2003-04) (“BOXR Order”); and 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2002-15). See also Release No. 58324; 73 FR 46936 (August 7, 2008) (File Nos. SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01) (“Order Approving the Acquisition of the Boston Stock Exchange, Incorporated by The NASDAQ OMX Group, Inc.”).

⁶ The RSA specified, among other matters, that BX would terminate its responsibility for fulfilling certain obligations and cease performing certain regulatory functions as of the effective date of June 1, 2012, or sooner if BOX satisfies all of the conditions required for BOX to operate as a national securities exchange (“the facility termination effective date”).

options trading on BX as of the facility termination effective date.⁷ At that time, the Exchange filed to amend its By-Laws to remove references to BOX which were no longer necessary.⁸ Specifically, Article I of the BX By-Laws was amended to reflect that BOX will no longer be a facility of the Exchange and Article IV, Section 4.3(a) regarding qualifications for the Board of Directors was amended to remove the requirement that one Industry Director shall represent BOX Participants, because the Exchange explained those provisions were no longer needed.⁹ The Exchange also separately filed to dissolve the BOX Committee of the BX Board of Directors.¹⁰

At the time the Exchange filed to remove BOX references from its By-Laws and dissolve the BOX Committee, the Exchange inadvertently did not amend its By-Laws to correct the number of Public Directors required to be included in the calculation of Non-Industry Directors for purposes of determining the number of Non-Industry Directors that may serve on the Exchange board. Section 4.3 currently states, "...The number of non-Industry Directors, including at least three Public Directors and at least one Director representative of issuers and

⁷ See Securities Exchange Act Release No. 67009 (May 17, 2012), 77 FR 30566 (May 23, 2012) (SR-BX-2012-036).

⁸ Id.

⁹ Id. In addition, By-Law Article IV, Section 4.14, entitled Committees Not Composed Solely of Directors, was amended to remove the manner in which an Industry Director who is a representative of BOX Participants is nominated to the Board as it is no longer needed.

¹⁰ See Securities Exchange Act Release No. 67102 (June 4, 2012), 77 FR 34107 (June 8, 2012) (SR-BX-2012-039). After The NASDAQ OMX Group, Inc. acquired the Boston Stock Exchange, Inc., the Exchange adopted resolutions to establish a committee of its Board of Directors, referred to as the BOX Committee. See Securities Exchange Act Release No. 58324 (August 7, 2008); 73 FR 46936 (August 12, 2008) (File Nos. SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01) ("Order approving the Acquisition of the Boston Stock Exchange, Incorporated by The NASDAQ OMX Group, Inc.").

investors shall equal or exceed the sum of the number of Industry Directors¹¹ and Member Representative Directors.”¹² The number of Public Directors was set at three directors to accommodate the additional interests of the BOX Industry Director and the BOX Committee¹³ that were also proposed to be part of the new Boston Stock Exchange board at that time.

¹¹ Pursuant to BX By-Law Article I(t) an Industry Director is a Director (excluding any two officers of the Corporation, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the "Staff Directors")), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute twenty percent or more of the professional revenues received by the Director or twenty percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns fifty percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute twenty percent or more of the professional revenues received by the Director or twenty percent or more of the gross revenues received by the Director's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Corporation or any affiliate thereof or to FINRA or has had any such relationship or provided any such services at any time within the prior three years.

¹² Pursuant to BX By-Law Article I(x) a Member Representative Director is a Director who has been elected by the stockholders after having been nominated by the Member Nominating Committee or voted upon by Exchange Members pursuant to these By-Laws (or elected by the stockholders without such nomination or voting in the case of the Member Representative Directors elected pursuant to Section 4.3(b)). A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange Member.

¹³ An independent committee of the Exchange's Board of Governors that reviewed BOX rule changes and certain other BOX-related regulatory matters. See Securities Exchange Act Release No. 34-58324 (August 7, 2008); 73 FR 46936 (August 12, 2008) (File Nos. SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01. See also Securities Exchange Act Release No. 67102 (June 4, 2012), 77 FR 34107 (June 8, 2012) (SR-BX-2012-039).

The Exchange proposes to amend its By-Laws similar to the By-Laws of NASDAQ OMX PHLX LLC (“Phlx”) which requires the number of Non-Industry Directors, including at least one Public Director and at least one Director representative of issuers and investors shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors...”¹⁴ Also, The NASDAQ Stock Market LLC (“NASDAQ”) requires the number of Non-Industry Directors, including at least one Public Director and at least one issuer representative (or if the Board consists of ten or more Directors, at least two issuer representatives), shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors.¹⁵ The amendment reflects the recent elimination of BOX representatives from the Board and the reduction of the number of Public Directors from the computation of qualifying Non-Industry Directors is consistent with the removal of the BOX representatives from the Board. Today, notwithstanding the increased number of Public Directors in the Non-Industry director calculation, the Exchange meets the requirements of the Non-Industry Director requirement in By-Law Article IV, Section 4.13.

The Exchange’s annual meeting will take place on or around the end of May 2013. The Exchange anticipates utilizing the revised Non-Industry Director calculation for the upcoming election of directors. The Exchange does not believe that this calculation will impact the board composition as twenty percent of the Directors will continue to be Member Representative Directors as required in By-Law Article IV, Section 4.3(a). Also, the Board will continue to have three Public Directors serving on the Regulatory Oversight Committee as required by By-Law Article IV, Section 4.13. The requirement that the number of Non-Industry Directors equal or exceed the sum of Industry Directors and Member Representative Directors will continue to

¹⁴ See Phlx By-Law Article III, Section 3-2(a).

¹⁵ See NASDAQ By-Law Article III, Section 2(a).

be met, but only one Public Director will be included in the calculation similar to Phlx and NASDAQ.¹⁶

2. Statutory Basis

BX believes that its proposal to amend BX Article IV, Section 4.3 entitled “Qualifications” to correct the number of Public Directors required to be included in the calculation of Non-Industry Directors that are permitted to serve on the Exchange Board is consistent with Section 6 of the Act,¹⁷ in general, and with Sections 6(b)(1) and (b)(5) of the Act,¹⁸ in particular, in that the proposal enable BX to be so organized and to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members with provisions of the Act, the rules and regulations thereunder, BX rules, and 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The composition and selection of the BX Board of Directors will continue to satisfy the requirement in Section 6(b)(3) of the Act¹⁹ that the rules of the Exchange provide for the fair representation of members in the selection of directors and administration of the Exchange. The

¹⁶ BX confirmed that BX will continue to have at least three Public Directors on its Board of Directors, as required by its By-Laws, because the BX Regulatory Oversight Committee must consist of three Public Directors. See e-mail from Angela Dunn, BX, to Adam Moore, Special Counsel, and Dhawal Sharma, Attorney Advisor, Division of Trading and Markets, Commission, dated March 29, 2013.

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(1), (5).

¹⁹ 15 U.S.C. 78f(b)(3).

Exchange believes that its By-Laws continue to assure fair representation of the Exchange's members in the selection of its directors and administration of its affairs and provide that, among other things, one or more directors shall be representative of investors and not be associated with the exchange, or with a broker or dealer. Twenty percent of the Directors will continue to be Member Representative Directors as required by BX Article IV, Section 4.3(a).

The number of Public Directors that are required to be included in the calculation of Non-Industry Directors will be the same as the number required on the Phlx and NASDAQ Boards.²⁰ The BX board requirements today are otherwise similar to the requirements at Phlx and NASDAQ. The Exchange believes that this proposal is consistent with the previous filing which eliminated BOX related references from its By-Laws.²¹ The number of Public Directors in the Non-Industry Director calculation was directly related to the BX Board composition with BOX representation and the elimination of the BOX representation from the BX Board no longer necessitates the increased number of Public Directors. The Exchange believes that amending the By-Laws to reflect a similar board composition to NASDAQ and Phlx would continue to assure fair representation of the Exchange's members in the selection of its directors and administration of its affairs.

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

BX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposal will continue to provide for the fair representation of members in the selection of directors and administration of the Exchange. The amendment to amend By-Law Article IV, Section 4.3 to

²⁰ See Phlx By-Law Article III, Section 3-2(a) and NASDAQ By-Law Article III, Section 2(a).

²¹ See note 7.

modify the number of Public Directors in the Non-Industry calculation is similar to by-laws on other exchanges.²²

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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. Please include File Number SR-BX-2013-029 on the subject line.

²² See Phlx By-Law Article III, Section 3-2(a) and NASDAQ By-Law Article III, Section 2(a).

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-2013-029. 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, D.C. 20549, 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-2013-029, 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.²³

Kevin M. O'Neill
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).