

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69549; File No. SR-BX-2013-035)

May 9, 2013

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Correct BX Rule 2140(c)

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 May 6, 2013, NASDAQ OMX BX, Inc. (the “Exchange” or “BX”) 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 correct BX Rule 2140(c) to reference NASDAQ Options Services LLC (“NOS”).

The text of the proposed rule change is below; proposed new language is underlined.

\* \* \* \* \*

NASDAQ OMX BX

Equity Rules

\* \* \* \* \*

2140. Restrictions on Affiliation

(a) – (b) No change.

---

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

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

(c) The NASDAQ OMX Group, Inc., which is the holding company owning [both] the Exchange,<sup>2</sup> [and] NASDAQ Execution Services, LLC, and NASDAQ Options Services LLC, shall establish and maintain procedures and internal controls reasonably designed to ensure that neither NASDAQ Execution Services, LLC nor NASDAQ Options Services LLC [does not] develop<sub>s</sub> or implement<sub>s</sub> changes to its system on the basis of non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange in connection with the provision of inbound routing to the Exchange.

\* \* \* \* \*

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 purpose of the proposal is to correct Rule 2140(c) to refer to NOS, in addition to NASDAQ Execution Services, LLC ("NES").

NOS is owned by The NASDAQ OMX Group, Inc., which also owns three registered securities exchanges – the Exchange, The NASDAQ Stock Market LLC ("NASDAQ") (and its

facility, the NASDAQ Options Market), and NASDAQ OMX PHLX LLC (“PHLX”).<sup>3</sup>

Therefore, NOS is an affiliate of these exchanges. The Exchange adopted Rule 2140(c) to prevent potential informational advantages resulting from the affiliation between BX and NES, as related to NES’s authority to route equities orders from PHLX’s PSX facility and NASDAQ. The Exchange intended to add NOS to this rule, as related to NOS’ authority to route options orders from PHLX and NOM to BX Options. This intention was expressed in the proposed rule change where BX received approval to permit BX Options to receive inbound routes of options orders by NOS in its capacity as an order routing facility of PHLX and NOM, as part of the approval of the proposed rule change establishing BX Options, but the rule text was inadvertently not amended accordingly.<sup>4</sup> In that proposed rule change, BX agreed to certain conditions and obligations, which it has adopted. Specifically, it stated that the Exchange has in place BX Rule 2140(c), which requires NASDAQ OMX, as the holding company owning both the Exchange and NOS, to establish and maintain procedures and internal controls reasonably designed to ensure that NOS does not develop or implement changes to its system, based on nonpublic information obtained regarding planned changes to the Exchange’s systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange. Although the Exchange did not have that provision in place, the Exchange intended to and has complied with it as though it had properly been included at the time of adoption.

---

<sup>3</sup> See Securities Exchange Act Release Nos. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01) (order approving NASDAQ OMX’s acquisition of BX); and 58179 (July 17, 2008) (SR-PHLX-2008-31), 73 FR 42874 (July 23, 2008) (order approving NASDAQ OMX’s acquisition of PHLX).

<sup>4</sup> Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030).

## 2. Statutory Basis

BX believes that its proposal is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> in particular, in that it is designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, by correcting the rule text, consistent with the intention and description in a prior proposed rule change.

### 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. It does not raise any issues of intra-market competition because it involves correcting a rule pertaining to inbound routing from an affiliated exchange. Nor does it result in a burden on competition among exchanges, because there are many competing exchanges that provide routing services, including through an affiliate.

### 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

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

---

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Doing so will allow the proposal to become operative immediately in order to avoid confusion, consistent with the protection of investors and the public interest.<sup>9</sup> Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>10</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 under Section 19(b)(2)(B)<sup>11</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning

---

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 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.

<sup>9</sup> The Commission notes that it previously approved the condition (See Securities Exchange Act Release No. 67256, 77 FR 39277), and that the Exchange represents that it has complied with the terms of such condition.

<sup>10</sup> 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).

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

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-2013-035 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-2013-035. 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-2013-035 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>12</sup>

Kevin M. O'Neill  
Deputy Secretary

---

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