

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81138; File No. SR-BX-2017-031)

July 13, 2017

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7018

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 June 30, 2017, NASDAQ 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 the Exchange’s transaction fees at Rule 7018 to assess a new charge for adding displayed liquidity for members that equal or exceed a specified monthly volume threshold, as described further below.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqbx.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 the proposed rule change is to amend the Exchange's transaction fees at Rule 7018 to assess a new charge for adding displayed liquidity for members that equal or exceed a specified monthly volume threshold.

The Exchange operates on the "taker-maker" model, whereby it pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange assesses three fees to members that provide liquidity on BX through displayed orders if the member meets certain volume requirements. First, the Exchange assesses a charge of \$0.0014 per share executed for a displayed order entered by a member that adds liquidity equal to or exceeding 0.25% of total Consolidated Volume during a month. Second, the Exchange assesses a charge of \$0.0017 per share executed for a displayed order entered by a member that adds liquidity equal to or exceeding 0.15% of total Consolidated Volume during a month. Third, the Exchange assesses a charge of \$0.0018 per share executed for a displayed order entered by a member that adds liquidity equal to or exceeding the member's Growth Target.³ A member that does not meet any of these categories will be assessed a charge of \$0.0020 per share executed for adding displayed liquidity.⁴

³ The Growth Target is the liquidity the member added in January 2017 as a percent of total Consolidated Volume plus 0.04% of total Consolidated Volume. See Rule 7018.

⁴ As set forth in Rule 7018, the Exchange also assesses other charges for adding other kinds of liquidity, such as non-displayed orders and specific order types.

The Exchange now proposes to assess a charge of \$0.0013 per share executed for a displayed order entered by a member that adds liquidity equal to or exceeding 0.55% of total Consolidated Volume during a month. As with the other charges and credits in Rule 7018, Consolidated Volume shall be defined as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot.⁵

By assessing a lower charge on displayed orders for members that add increased liquidity, the Exchange is incentivizing members to add greater liquidity on BX, to the benefit of all BX market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁷ 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining

⁵ As set forth in Rule 7018(a), for purposes of calculating Consolidated Volume and the extent of a member's trading activity, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁸

Likewise, in NetCoalition v. Securities and Exchange Commission⁹ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹⁰ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data ... to be made available to investors and at what cost.”¹¹

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’....”¹²

The Exchange believes that the proposed charge and its attendant volume requirement is reasonable. In reducing the charge to add displayed liquidity if the volume threshold is met, the proposed charge and its volume requirement is designed to incentivize members to add greater

⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁹ NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).

¹⁰ See NetCoalition, at 534 - 535.

¹¹ Id. at 537.

¹² Id. at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

liquidity to the Exchange. Accordingly, the amount of the charge is less than other charges for adding displayed liquidity, and the volume requirement is correspondingly more stringent than volume requirements for higher charges, e.g., \$0.0013 per share executed for adding liquidity equal to or exceeding 0.55% of total Consolidated Volume versus \$0.0014 per share executed for adding liquidity equal to or exceeding 0.25% of total Consolidated Volume. The Exchange also notes that Bats BYX Exchange, Inc. assesses a fee of \$0.0013 for displayed orders that add liquidity where the member has an average daily add volume that equals or exceeds 0.40% of the Total Consolidated Volume.¹³ The Exchange also believes that the amount of the new charge is closely aligned to the requirement for qualifying for that charge, especially in comparison to the other charges for adding liquidity offered by the Exchange and their attendant requirements.

The Exchange believes that the proposed change is equitably allocated among members, and is not designed to permit unfair discrimination. BX notes that participation on the Exchange, and eligibility for this charge, is voluntary, and that the Exchange continues to offer other charge [sic] for which members may attempt to qualify instead of the proposed charge. The proposed charge applies to all members that otherwise qualify for the charge by meeting its volume requirement. The Exchange believes that it is equitable and not unfairly discriminatory to adopt this charge and its volume requirement because the Exchange is attempting, through this charge and its volume requirement, to incentivize members to add greater liquidity to the Exchange, which may benefit all BX market participants.

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

The Exchange 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. In terms of

¹³ See Bats BYX Exchange, Inc. fee schedule.

inter-market competition, the Exchange 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, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange 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. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed charge for adding displayed liquidity does not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The new charge applies equally to all members that otherwise meet the requirement, i.e., adding liquidity equal to or exceeding 0.55% of total Consolidated Volume during a month, and all similarly situated members are equally capable of qualifying for the charge if they choose to meet the requirement. The Exchange believes that the proposed charge will incentivize members to add greater liquidity to the Exchange, which may benefit all BX market participants. The Exchange also notes that Bats BYX Exchange, Inc. assesses the same fee for adding displayed liquidity with a comparable volume requirement.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will 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

No written comments were either solicited or 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)(ii) of the Act.¹⁴

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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-2017-031 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-BX-2017-031. 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-2017-031 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.¹⁵

Jill M. Peterson
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).