

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60793; File No. SR-BX-2009-059)

October 6, 2009

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Potential Payment Amounts Available Under Rule 4626

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 September 25, 2009, 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, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. 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

The Exchange is filing with the Commission a proposed rule change to modify potential payment amounts available under Rule 4626. BX will implement the proposed rule change effective November 1, 2009. The text of the proposed rule change is below. Proposed new language is underlined and proposed deletions are in brackets.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

4626. Limitation of Liability

(a) No Change.

(b) The Exchange, subject to the express limits set forth below, may compensate users of the NASDAQ OMX BX Equities Market for losses directly resulting from the System's actual failure to correctly process an order, Quote/Order, message, or other data, provided the NASDAQ OMX BX Equities Market has acknowledged receipt of the order, Quote/Order, message, or data.

[(1) For one or more claims made by a single market participant related to the use of the NASDAQ OMX BX Equities Market on a single trading day, the Exchange's liability shall not exceed the larger of \$100,000, or the amount of any recovery obtained by the Exchange under any applicable insurance policy.]

[(2) For the aggregate of all claims made by all market participants related to the use of the NASDAQ OMX BX Equities Market on a single trading day, the Exchange's liability shall not exceed the larger of \$250,000, or the amount of the recovery obtained by the Exchange under any applicable insurance policy.]

[(3)] (1) For the aggregate of all claims made by all market participants related to the use of the NASDAQ OMX BX Equities Market during a single calendar month, the Exchange's liability shall not exceed the larger of \$500,000, or the amount of the recovery obtained by the Exchange under any applicable insurance policy.

[(4)] (2) In the event all of the claims arising out of the use of the NASDAQ OMX BX Equities Market cannot be fully satisfied because in the aggregate they exceed the maximum amount of liability provided for in this Rule, then the maximum amount will be

proportionally allocated among all such claims arising [on a single trading day, or] during a single calendar month [, as applicable].

(5) All claims for compensation pursuant to this Rule shall be in writing and must be submitted no later than [the opening of trading] 12:00 P.M. ET on the next business day following the day on which the use of the NASDAQ OMX BX Equities Market gave rise to such claims. Nothing in this rule shall obligate the Exchange to seek recovery under any applicable insurance policy.

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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

Currently, BX provides a limited exception to its general limitation of liability rules that allows for the payment of claims to users for order processing failures in the NASDAQ OMX BX Equities Market. BX proposes to modify its process for allocating such payments and extend the time period for users to submit such claims. Under the proposal, BX will eliminate the \$100,000 and \$250,000 daily caps on liability and consider all such claims on a monthly basis subject to the already existing \$500,000 monthly liability cap. If the total amount of all claims

from all users in calendar month exceeds the \$500,000 monthly liability cap, the \$500,000 maximum monthly dollar amount will be proportionally allocated among all such claims as set forth in the current rule.

BX is also proposing to extend, until 12:00 noon ET on the next business day following the day on which the use of the Nasdaq OMX BX Equities Market gives rise to a claim, the time period during which claims seeking compensation must be submitted.

As BX analyzes total eligible liability claims on a per-month look-back basis, the proposal, in effect, would allow BX an increased capability to compensate a market participant(s) up to the monthly cap of \$500,000 even though the losses occurred on a single day or were across multiple days for a single participant. The expansion of time to make such compensation claims likewise increases the ability of market participants to submit claims in a timely manner. Finally, BX notes that other market centers have rules in place to provide limited compensation for system malfunctions.⁴

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Sections 6(b)(5) of the Act,⁶ in particular, in that the proposal 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. As BX analyzes total

⁴ See NYSE Arca Equities Rule 13.2. and ISE Rule 705.

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

eligible liability claims on a per-month look-back basis, the proposal, in effect, would allow BX an increased capability to compensate a market participant(s) up to the monthly cap of \$500,000 even though the losses occurred on a single day or were across multiple days for a single participant. The expansion of time to make such compensation claims likewise increases the ability of market participants to submit claims in a timely manner.

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

The Exchange 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.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6)⁸ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. BX has satisfied this requirement.

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-2009-059 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-2009-059. 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 Web site (<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 inspection and copying 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 such 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 publicly available. All submissions should refer to File Number SR-BX-2009-059 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.⁹

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).