

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60826; File No. SR-BX-2009-062)

October 14, 2009

Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 7015 Governing Access Services to Add an Additional Service and Related Fee, and to Make a Technical Change.

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 October 5, 2009, NASDAQ OMX BX, Inc. (“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 BX. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

BX proposes to amend Rule 7015 to make a new service, TradeInfo BX, available to members and charge a related fee. The text of the proposed rule change is below. Proposed new language is italicized and proposed deletions are in brackets.

**7015. Access Services**

The following charges are assessed by the Exchange for ports to establish connectivity to the NASDAQ OMX BX Equities Market, as well as ports to receive data from the NASDAQ OMX BX Equities Market:

- \$400 per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is \$1000 per month. [Additional OUCH port pairs beyond 15 are at no cost for the months of May, June and July 2009. For August 2009, OUCH port pairs beyond 15 will be

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

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

assessed a pro rata charge on the basis of the number of trading days during the month during which the anti-internalization functionality introduced by Equity Rule 4757(a)(3) is available to market participants.]

- Internet Ports: An additional \$200 per month for each Internet port that requires additional bandwidth.
- TradeInfo BX is available to Members for a fee of \$95 per user per month.

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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, BX 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. BX 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

BX proposes to amend Rule 7015 to initiate fees of \$95 per month per user for its Web-based TradeInfo BX product. Through a secure Web connection, TradeInfo BX allows subscribing members to scan for their orders submitted to BX. Members can scan for all orders in a particular security or all orders of a particular type, regardless of their status (open, canceled, executed, etc.). Members are also able to cancel open orders at the order, port or MPID level. For example, after scanning for open orders, the member is then able to select an open order and cancel the order. TradeInfo BX also allows members to scan other order statuses, such as

executed, cancelled, broken, rejected and suspended orders. TradeInfo BX enables members to generate reports of execution, order or cancel information, which can be exported into a spreadsheet for review. Under the proposed rule, TradeInfo BX will be available solely to BX members.

The Nasdaq Stock Market (“Nasdaq”) TradeInfo product is currently offered to Nasdaq members and BX is proposing to offer the same functionality to BX members with respect to BX equity orders as is provided to Nasdaq members with respect to their Nasdaq equity orders. BX notes that in December 2006, Nasdaq filed with the Commission a rule change to charge subscribing Nasdaq members \$95 per month, per user for the Nasdaq-based TradeInfo product.<sup>3</sup> Because the TradeInfo BX product provides the same functionality with respect to BX members’ equity orders on BX as is provided by the Nasdaq TradeInfo product with respect to Nasdaq equity orders, BX is proposing to offer TradeInfo BX for the same fee of \$95 per month, per user as is currently charged by Nasdaq.

BX is also proposing to eliminate language from Rule 7015 that discusses temporary pricing for additional OUCH port pairs beyond 15, which has since expired. BX suspended fees for OUCH port pairs for the months of May, June and July 2009 so that BX could implement an anti-internalization function, the absence of which was causing members to purchase additional OUCH ports that they would otherwise not need solely to avoid unwanted execution against their customer orders.<sup>4</sup> With the anticipated August 2009 implementation of the anti-internalization function, BX adopted a pro-rated fee for the month of August 2009 based on the number of

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<sup>3</sup> Securities Exchange Act Release No. 55135 (January 19, 2007), 72 FR 3893 (January 26, 2007)(SR-NASDAQ-2006-062).

<sup>4</sup> Securities Exchange Act Release No. 59894 (May 8, 2009), 74 FR 23000 (May 15, 2009)(SR-BX-2009-023); see also Securities Exchange Act Release No. 60257 (July 7, 2009), 74 FR 34060 (July 14, 2009)(SR-BX-2009-036).

trading days the anti-internalization function was available in that month.<sup>5</sup> The anti-internalization function was implemented on August 3, 2009. Accordingly, BX is eliminating reference in Rule 7015 to the temporary pricing.

## 2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(4) of the Act,<sup>7</sup> 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 or system which BX operates or controls. The proposed fee change applies uniformly to all BX members and is equal to the fee charged to Nasdaq members for the same functionality provided with respect to Nasdaq orders.

BX also believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act<sup>8</sup> in that it 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 proposed rule change amends Rule 7015 to add TradeInfo BX, a new Web-based product available to BX members to assist them with their management of BX orders, a Nasdaq version of which is currently offered to Nasdaq members for their Nasdaq orders. In addition, BX is proposing to offer the new product to BX members for the same fee as

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<sup>5</sup> Securities Exchange Act Release No. 60503 (August 14, 2009), 74 FR 42346 (August 21, 2009)(SR-BX-2009-046).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

is currently charged to Nasdaq members for the analogous Nasdaq product. Last, BX is proposing to eliminate rule text that had a limited timeframe during which it applied, which has since expired. The elimination of the expired rule text will serve to avoid potential confusion that may be caused by keeping such text in the rules.

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 Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>11</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>12</sup> permits

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 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.

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. BX requests that the Commission waive the 30-day operative delay so that this proposed rule change to implement TradeInfo BX will immediately assist BX members in the management of their orders. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow BX members the capability to scan their orders, cancel open orders (e.g., should the member experience technical difficulties with its systems or connections), and reconcile its record of orders against data provide in the TradeInfo BX reports.<sup>13</sup> Additionally, this product will allow subscribing members to immediately take advantage of the different types of TradeInfo BX open order cancellation capabilities: either canceling a single open order, canceling all open orders associated with a particular connection, or canceling all open orders associate with a particular MPID. Application of the new rule should help foster consistency among those exchanges that adopt rules substantially similar to those previously approved by the Commission.<sup>14</sup> For these reasons, the Commission designates that the proposed rule change become immediately operative.

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> See supra note 3 and accompanying text.

#### 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-2009-062 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-2009-062. 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-2009-062 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>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).