

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60863; File No. SR-BX-2009-055)

October 22, 2009

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving a Proposed Rule Change to Retroactively Correct an Error in Rule 7018

On August 28, 2009, NASDAQ OMX BX, Inc. (the "Exchange" or "BX") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to apply retroactively to the period from April 1, 2009 through August 16, 2009 the correction made by SR-BX-2009-049<sup>3</sup> of an error formerly in Rule 7018. BX believes that all of its members that trade on the NASDAQ OMX BX Equities System are cognizant of the correct fee. BX has been billing members in accordance with the correct fee since the effective date of April 1, 2009 in a previous BX proposed rule change,<sup>4</sup> but due to an error the credit incorrectly appeared as "\$0.006" in Exhibit 5 to the BX Fee Filing. Notice of the proposed rule change was published for comment in the Federal Register on September 17, 2009.<sup>5</sup> The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

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

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

<sup>3</sup> See Securities Exchange Act Release No. 60603 (September 1, 2009), 74 FR 46266 (September 8, 2009) (SR-BX-2009-049).

<sup>4</sup> See Securities Exchange Act Release No. 59682 (April 1, 2009), 74 FR 16015 (April 8, 2009) (SR-BX-2009-018) ("BX Fee Filing").

<sup>5</sup> See Securities Exchange Act Release No. 60634 (September 8, 2009), 74 FR 47849.

securities exchange.<sup>6</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>7</sup> which requires, among other things, that the rules of a national securities exchange remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission believes the proposed rule change matches both the original intent of the BX Fee Filing and the fee BX currently charges its members. The proposed rule change will retroactively correct the error by assessing the fees pursuant to the now accurate Rule 7018. The Commission believes it is important for BX's rules to be accurate and applied correctly in order to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-BX-2009-055), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Elizabeth M. Murphy  
Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).