

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61514; File No. SR-BX-2010-013)

February 12, 2010

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Modify Fees for Members Using the NASDAQ OMX BX Equities System

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 January 29, 2010, NASDAQ OMX BX, Inc. (“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 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 is filing a proposed rule change to modify pricing for BX members using the NASDAQ OMX BX Equities System. BX will implement the proposed rule change on February 1, 2010. The text of the proposed rule change is attached as Exhibit 5³ and is available at <http://nasdaqomxbx.cchwallstreet.com>.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that Exhibit 5 is not attached to this Notice which is being published in the Federal Register, however it will be posted on the Commission’s web site.

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 is proposing to modify its fees to execute transactions on the NASDAQ OMX BX Equities System. BX is modifying its fee structure for securities that execute at prices below \$1. For these securities, BX currently charges members accessing liquidity a fee equal to 0.1% (10 basis points) of the total transaction cost and provides no credit to members providing liquidity. Under the new fee structure, members accessing liquidity will be charged 0.3% (30 basis points) of the total transaction cost, and members providing liquidity will be provided a credit equal to 0.25% (25 basis points) of the total transaction cost. The change is intended to provide a competitive response to another trading venue that has adopted a similar “maker-taker” pricing structure for securities priced below \$1.⁴ The proposal is consistent with the provisions of Rule 610 under Regulation NMS⁵ that govern access fees.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Section 6(b)(4) 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 or system which BX operates or controls. BX is adapting

⁴ See <http://www.directedge.com/SubscriberInfo/FeeSchedule.aspx>.

⁵ 17 CFR 242.610.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

the “maker-taker” pricing model that is prevalent across most U.S. transaction venues for securities priced at \$1 or higher and applying it [sic] securities priced below \$1. This change is a competitive response to another trading venue that has already introduced this pricing model for low-priced securities. The change will result in a fee increase for firms when they access liquidity in these securities and a fee reduction for firms when they provide liquidity in these stocks. The proposed fee change applies uniformly to all BX members.

The impact of the changes upon the net fees paid by a particular market participant will depend upon the types of stocks that it trades, the order types that it uses, and the prices of its quotes and orders (i.e., its propensity to add or remove liquidity). BX notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. BX believes that its fees remain competitive with other venues and are reasonable and equitably allocated to those members on the basis of whether they opt to direct orders to BX.

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

BX 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder.⁹ 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.

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-2010-013 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-2010-013. 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

⁸ 15 U.S.C. 78s(b)(3)(a)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

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 Web site 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2010-013 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.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).