

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71197; File No. SR-BX-2013-063)

December 30, 2013

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Extranet Access Fee

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 December 19, 2013, NASDAQ OMX 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 the Substance of the Proposed Rule Change

The Exchange [sic] to modify the extranet access fee (“Extranet Access Fee”) set forth in BX Rule 7025, as well as to clarify its applicability. BX will implement the proposed revised fee on January 2, 2014.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are bracketed.<sup>3</sup>

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**7025. Extranet Access Fee**

Extranet providers that establish a connection with the Exchange to offer direct access connectivity to market data feeds shall be assessed a monthly access fee of \$1,000[750] per

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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> Changes are marked to the rules of NASDAQ OMX BX, Inc. found at <http://nasdaqomxbx.cchwallstreet.com>.

client organization Customer Premises Equipment ("CPE") Configuration. If an extranet provider uses multiple CPE Configurations to provide market data feeds to any client organization, the monthly fee shall apply to each such CPE Configuration. For purposes of this Rule 7025, the term "Customer Premises Equipment Configuration" shall mean any line, circuit, router package, or other technical configuration used by an extranet provider to provide a direct access connection to the Exchange market data feeds to a recipient's site. No extranet access fee will be charged for connectivity to market data feeds containing only consolidated data. For purposes of this rule, consolidated data includes data disseminated by the UTP SIP.

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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

The Exchange is proposing a change to modify the Extranet Access Fee as set forth in BX Rule 7025, as well as to clarify its applicability. BX Rule 7025 currently provides that for extranet providers that establish a connection with the Exchange to offer direct access

connectivity to market data feeds they [sic] will be assessed a monthly access fee of \$750 per recipient Customer Premises Equipment (“CPE”) Configuration.<sup>4</sup>

Specifically, the Exchange proposes to increase this Extranet Access Fee from \$750 per month to \$1,000 per month. This increase represents the first price change since its introduction in 2009.<sup>5</sup> This fee increase will be used to help support the Exchange’s costs associated with maintaining multiple extranet connections with multiple providers. These costs include those associated with overhead and technology infrastructure, administrative, maintenance and operational costs. Since the inception of this fee there have been numerous network infrastructure improvements and administrative controls enacted. The Exchange has additionally implemented compressed TCP/IP options, which allows [sic] customers reduced bandwidth and lower carrying costs. Additionally, the Exchange has implemented automated retransmission facilities for most of its data clients that benefit extranet clients by reducing operational costs associated with retransmissions.

As the number of extranets has increased, the management of the downstream customers has expanded and the Exchange has had to ensure appropriate reporting and review processes, which has resulted in a greater cost burden on the Exchange over time. The increased fee will also help to ensure that the Exchange is better able to closely review reports and uncover reporting errors via audits thus minimizing reporting issues. The network infrastructure has increased in order to keep pace with the increased number of products, which, in turn, has caused

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<sup>4</sup> As defined in BX Rule 7025, a “Customer Premises Equipment Configuration” means any line, circuit, router package, or other technical configuration used by an extranet provider to provide a direct access connection to the Exchange market data feeds to a recipient’s site.

<sup>5</sup> See Securities Exchange Act Release No. 59615 (March 20, 2009), 74 FR 14604 (March 31, 2009) (SR-BX-2009-005).

an increased administrative burden and higher operational costs associated with delivery via extranets.

Additionally, BX Rule 7025 will be clarified by stating that no extranet access fee will be charged for connectivity to market data feeds containing only consolidated data.<sup>6</sup> This clarification should serve to reduce any confusion as to the applicability of this fee.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and with Section 6(b)(4) of the Act,<sup>8</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 the Exchange operates or controls.

All similarly situated extranet providers, including the Exchange operating its own extranet, that establish an extranet connection with the Exchange to access market data feeds from the Exchange are subject to the same fee structure. The increased fee will help the Exchange offset some of the rising overhead and technology infrastructure, administrative, maintenance and operational costs it incurs in support of the service. If such costs are covered, the service may provide the Exchange with a profit. As such, the Exchange believes that the proposed fee increase is reasonable and notes that this increase represents the first price change since its introduction in 2009. The extranet costs are separate and different from the colocation facility that is able to recoup these fees by charging for servers within the associated data centers.

Additionally, BX Rule 7025 will be clarified by stating that no extranet access fee will be

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<sup>6</sup> For purposes of BX Rule 7025, “consolidated data” is defined to include data disseminated by the UTP SIP.

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

charged for connectivity to market data feeds containing only consolidated data. This clarification should serve to reduce any confusion as to the applicability of this fee.

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.

The fees are applied uniformly among extranet providers, which are not compelled to establish a connection with the Exchange to offer access connectivity to market data feeds. For these reasons, any burden arising from the fees is necessary in the interest of promoting the equitable allocation of a reasonable fee. Additionally, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with the Exchange or other exchanges and, of course, the extranet access fee is but one factor in a total platform analysis.

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.<sup>9</sup> 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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

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

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](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2013-063 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-2013-063. 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 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 offices 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-2013-063, 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>10</sup>

Elizabeth M. Murphy  
Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).