

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63448; File No. SR-BX-2010-059)

December 7, 2010

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Instituting Proceedings to Determine Whether to Disapprove Proposed Rule Change, as Modified by Amendment No. 1, to Create a Listing Market on the Exchange

I. Introduction

On August 20, 2010, NASDAQ OMX BX (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to create a new listing market. The proposed rule change was published for comment in the Federal Register on September 8, 2010.³ The Commission received three comments on the proposal.⁴ The Commission subsequently extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to December 7, 2010.⁵ On December 6, 2010, BX submitted Amendment No. 1 to the proposed rule change.⁶ This

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 62818 (September 1, 2010), 75 FR 54665 (“Notice”).

⁴ See Letters to Elizabeth M. Murphy, Secretary, Commission, from Tom A. Alberg, Managing Director and Founder, Madrona Venture Group, dated December 1, 2010 (“Madrona Letter”); Michael R. Trocchio, Bingham McCutchen LLP, dated October 3, 2010 (“Pink OTC Markets Letter”); and William F. Galvin, Secretary of the Commonwealth, Commonwealth of Massachusetts, dated September 28, 2010 (“MSD Letter”).

⁵ See Securities Exchange Act Release No. 63105 (October 14, 2010), 75 FR 64772 (October 20, 2010).

⁶ See infra Section II for a description of Amendment No. 1.

order institutes proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1. Institution of disapproval proceedings, however, does not indicate that the Commission has formulated any conclusions with respect to any of the issues involved.

II. Description of the Proposal⁷

The Exchange proposes to create a new listing market, to be called the “BX Venture Market.”⁸ The Exchange has stated that it expects that the securities listed on BX would not be classified as national market system (“NMS”) securities.⁹ As a result, BX-listed securities would not be subject to an NMS plan and would not be subject to Regulation NMS under the Act.¹⁰ BX-listed securities would trade on the Exchange and also could trade over-the-counter (“OTC”).¹¹ Further, BX-listed securities would be considered penny stocks under Exchange Act Rule 3a51-1, unless they qualify for an exemption from the definition of a penny stock.¹² No “blue sky” exemption would be available under Section 18 of the Securities Act of 1933 or the

⁷ This description does not review every rule proposed by BX that has been filed as part of its proposed rule change; rather, it focuses on the most prominent rules considered in review of the BX’s proposal. See Notice, supra note 3, for a description of the proposed rule change. See also Exhibit 5 to the Form 19b-4 for all the rules proposed by BX, available at <http://www.sec.gov/rules/sro/bx/2010/34-62818-ex5.pdf>.

⁸ See Amendment No. 1. As originally proposed, the proposed rule change provided that a BX-listed company should refer to its listing as on the “BX.”

⁹ See Notice, supra note 3.

¹⁰ See 17 CFR 242.600 et seq.

¹¹ OTC trades of BX-listed securities would be reported to the Financial Industry Regulatory Authority (“FINRA”) OTC Reporting Facility. See Notice, supra note 3.

¹² See 17 CFR 240.3a51-1.

rule adopted thereunder,¹³ so companies would be required to satisfy state law registration requirements and other state laws that regulate the sale and offering of securities. In addition, BX would not list any company that meets the quantitative (e.g., financial) requirements for listing on The NASDAQ Stock Market LLC (“Nasdaq”).

To qualify for initial listing on BX, a company must be registered under Section 12(b) of the Act¹⁴ and be current in its periodic filings with the Commission. The company would also be required to have a fully independent audit committee comprised of at least three members and comply with the requirements of Rule 10A-3 under the Exchange Act.¹⁵ The company would be required to have its independent directors make compensation decisions for executive officers (either by having the independent directors meet in executive session or by having them sit on a compensation committee), and independent directors would be required to meet on a regular basis in executive sessions.¹⁶ The company’s audit committee would be required to have a

¹³ 15 U.S.C. 77r; Securities Act Rule 146. In addition, some state laws and regulations may provide an exemption from certain registration or “blue sky” requirements for companies listed on the Boston Stock Exchange, based on the higher listing standards previously applied by the former Boston Stock Exchange. The proposed listing rules would provide that the Exchange will take action to delist any company listed on BX that attempts to rely on such an exemption. Companies would also agree not to rely on any such exemption as a provision of the BX Listing Agreement.

¹⁴ 15 U.S.C. 78l(b).

¹⁵ 17 CFR 240.10A-3. Certain companies listing on BX will be permitted to phase in compliance with the audit committee and compensation committee requirements following their listing. With respect to the audit committee requirements, a company listing in connection with its initial public offering would be required to have one independent director on the committee at the time of listing; a majority of independent members within 90 days of the date of effectiveness of the company’s registration statement; and all independent members within one year of the date of effectiveness of the company’s registration statement.

¹⁶ With respect to the compensation committee requirement, a company listing in connection with its initial public offering, upon emerging from bankruptcy, or that

charter setting out its responsibilities. The audit committee, or another independent body of the board, would also be required to conduct appropriate review and oversight of any related party transactions.

BX has proposed the following quantitative listing standards for the initial listing of securities that were not previously listed on a national securities exchange: (1) \$1 million of stockholders' equity or \$5 million total assets; (2) 200,000 publicly held shares; (3) 200 public shareholders, at least 100 of which must be round lot holders; (4) \$2 million market value of listed securities; (5) \$1.00 minimum bid price per share; (6) one year operating history; and (7) two registered and active market makers. In addition, the company would also be required to demonstrate that it has a plan to maintain sufficient working capital for its planned business for at least twelve months after the first day of listing.

BX has proposed the following quantitative listing standards for the initial listing of securities that have previously been listed on a national securities exchange: (1) 200,000 publicly held shares; (2) 200 public shareholders, at least 100 of which must be round lot holders; (3) \$2 million market value of listed securities; (4) \$0.25 minimum bid price per share; and (5) two registered and active market makers. A company would be considered to have been previously listed on another national securities exchange if it was listed on such exchange at any time during the three months before its listing on BX, or, until September 30, 2011, if the

otherwise was not subject to a substantially similar requirement prior to listing (such as a company only traded in the OTC market) would be required to have one independent director on the committee at the time of listing; a majority of independent members within 90 days of listing; and all independent members within one year of listing.

company was listed on another national securities exchange at any time between January 1, 2008 and September 30, 2011.¹⁷

The Exchange would have the discretionary authority to deny listing to any otherwise qualified security when it is necessary to preserve and strengthen the quality of, and public confidence in, its market.¹⁸ The Exchange would conduct a public interest review of the company and significant persons associated with it.¹⁹ In that regard, the Exchange stated that it intends to conduct background investigations of officers and directors and other significant people associated with a company in connection with its review of applications for initial listing.²⁰ In addition, the Exchange would not approve for listing or allow the continued listing of “shell” companies.

For continued listing on BX, a security would be required to satisfy the following listing standards: (1) at least 200,000 publicly held shares; (2) at least 200 public shareholders; (3) market value of listed securities of at least \$1 million; (4) minimum bid price of at least \$0.25²¹ per share; and (5) at least two registered and active market makers. If the security does not

¹⁷ See Amendment No. 1. As originally proposed, a company would be considered to have been previously listed on another national securities exchange if it was listed on such exchange at any time during the three months before its listing on BX, or until March 31, 2011, if the company was listed on another national securities exchange at any time between January 1, 2008 and March 31, 2011.

¹⁸ See infra Section II for examples of circumstances under which the Exchange would exercise such discretionary authority, as set out in Amendment No. 1.

¹⁹ See infra Section II for a more detailed discussion of public interest reviews, as set out in Amendment No. 1.

²⁰ See id.

²¹ See Amendment No. 1. As originally proposed, a BX-listed company would have been required to maintain a minimum bid price of at least \$0.05 per share.

maintain the minimum \$0.25 per share bid price for twenty consecutive trading days,²² Exchange staff would issue a Staff Delisting Determination and the security would be suspended from trading on BX. A company could appeal that determination to a Hearings Panel; however, such an appeal would not stay the suspension of the security. During the Hearings Panel process, the security could regain compliance by achieving a \$0.25²³ per share minimum bid price while trading on another venue, such as the OTC market, for ten consecutive days. However, if the company has received three or more Staff Delisting Determinations for failure to comply with the minimum bid price requirement in the prior twelve months, the company could only regain compliance by achieving a closing bid price of \$0.25 per share or more for at least twenty consecutive trading days.²⁴

Description of Amendment No. 1

Amendment No. 1 makes the following modifications to the proposed rule change:

- Renames the market from “BX” to “BX Venture Market” to distinguish the BX Venture Market from Nasdaq, provides that the Exchange will monitor press releases issued by BX-listed companies and annually review their websites to determine how a company is referring to its listing, and provides that the Exchange will include

²² See Amendment No. 1. As originally proposed, if a BX-listed security does not maintain a minimum bid price of \$0.05 per share for ten consecutive trading days, Exchange staff would issue a Staff Delisting Determination and the security would be suspended from trading on BX.

²³ See Amendment No. 1. As originally proposed, a BX-listed company could regain compliance by achieving a \$0.05 per share minimum bid price while trading on another venue for ten consecutive trading days.

²⁴ See Amendment No. 1. As originally proposed, a BX-listed company could only regain compliance by achieving a closing bid price of \$0.25 per share for at least ten consecutive trading days.

- information on its website describing the differences between the BX Venture Market and other national securities exchanges, including Nasdaq;
- Provides that BX will disseminate quotation and transaction information about BX-listed securities and that this information will include a market center identifier;
 - Provides that BX will require data vendors to identify when the BX Venture Market is the listing market for a security and clearly differentiate those securities from securities listed on Nasdaq or other exchanges or traded OTC when displaying information to external users on their single security quotation screens;
 - States that listings and delistings will be processed by the staff in Nasdaq's Listing Qualifications Department, who, according to the Exchange, are extremely experienced in regulatory analysis; states that BX will hire additional staff if the workload from the new BX Venture Market proves "sufficiently high"; and notes that the staff within the Listing Qualifications Department is now, and will continue to be, reviewed regularly by Nasdaq's Chief Regulatory Officer and Regulatory Oversight Committee, and will also be reviewed by BX's Regulatory Oversight Committee;
 - Prohibits the initial or continued listing of a company if any executive officer or director was involved in any event that occurred during the prior five years that is required to be disclosed under Items 401(f)(2) – (8) of Regulation S-K and that, in the case of a listed company, the company would be provided 30 days to remove the executive officer or director or be issued a delisting notification;
 - Provides that the Exchange would use its discretionary authority, where appropriate, to deny initial or continued listing in cases where: (1) an executive officer or director

- has reported misconduct that occurred between five and ten years before the disclosure or misconduct not required to be disclosed under Item 401 of Regulation S-K; or (2) an individual who is not an executive officer or director, but who has significant influence or importance to the company such as a control person or significant shareholder, has a history of regulatory misconduct;
- Indicates that in connection with initial listing applications and when a new executive officer or director becomes associated with a BX-listed company, BX will conduct background investigations of executive officers, directors, and other significant associated people using public databases, and will retain outside firms to assist it in its review as needed, including investigative, accounting, and law firms, and provides that BX's listing application will solicit information about certain legal or administrative proceedings against the company and its officers, directors, and 10% or greater shareholders;
 - Provides that the head of the Exchange's Listing Department will be involved in all decisions concerning whether to permit or deny listing to a company based on a public interest concern and that the Exchange's Chief Regulatory Officer will be required to approve the initial or continued listing of any company that has disclosed information about an executive officer, director, or control person under Items 401(f)(2) – (8) of Regulation S-K that does not trigger the automatic bar described above;
 - Increases the continued listing price from \$0.05 to \$0.25 per share and provides that the Exchange will issue a Staff Delisting Determination and suspend a BX-listed

- security from trading on the Exchange if such security does not maintain the minimum continued listing price of \$0.25 per share for twenty consecutive trading days, rather than for the originally proposed ten consecutive trading days;
- Shortens the periods that a non-compliant company may remain listed by, for example, providing that a Hearings Panel would only be permitted to grant 90 calendar days for a company to regain compliance with a listing standard, instead of the 180 calendar days available on Nasdaq and providing that a company that falls below the market value of listed securities requirement would be provided a 90 calendar day compliance period, instead of the 180 days available to a Nasdaq-listed company;
 - Undertakes to provide the Commission with: (1) monthly reports describing developments on the BX Venture Exchange, including a list of companies added or removed from the market; and (2) quarterly reports from the Exchange's Chief Regulatory Officer describing the listing and surveillance activities of the Exchange;
 - Requires listed companies to provide the Exchange with copies of any "blue sky memoranda" prepared in connection with the issuance of shares, provides that BX will review these memoranda to assure that the company is not inappropriately relying on such a state blue sky exemption, agrees to take action to delist any BX-listed company that attempts to rely on such an exemption, and provides that companies will agree to not rely on any such exemption as a provision of the BX listing agreement;

- Represents that FINRA will regulate market activity on the BX and that FINRA will enhance its review process by calibrating its surveillance patterns to detect potential issues that may arise in low priced stocks, noting that FINRA’s review will include the trading of BX-listed securities on the OTC market and that FINRA will review activity of its member firms quoting on the BX when conducting reviews of these firms, which will include “focused exams” concentrated on sales practices and firm oversight;
- States that the SMARTS Group, a Nasdaq OMX company, will create a new suite of quoting and trading patterns to detect suspicious activity in low priced and less widely traded securities; and
- Provides that BX will disseminate quotation and transaction information about BX-listed securities via several market data products to ensure broad dissemination of quotation and last sale information, and states that it is committed to ensuring that quotations and transaction information from BX are consolidated with similar information from OTC quotation and trading supervised by FINRA.

III. Comment Letters

The Commission received three comment letters on the proposal. The Massachusetts Securities Division (“MSD”) noted in its letter that, although BX proposes qualitative listing standards that resemble those of Nasdaq, the proposed quantitative listing standards will be far lower.²⁵ MSD then noted that the laws of Massachusetts and 11 other states exempt securities

²⁵ See MSD Letter, supra note 4, at p. 2.

listed on the “Boston Stock Exchange” from their securities laws registration requirements.²⁶ MSD stated its belief that these exemptions were predicated on exchange-listed companies having met certain minimum quality criteria.²⁷ MSD noted that the proposed rule change states that the BX market is not among the national securities exchanges enumerated in Section 18(b) of the Securities Act of 1933 and that the securities listed on BX will not be preempted securities under that section.²⁸ MSD also noted that the Exchange will require its listed companies to agree not to claim any state’s exchange-listing exemption for their securities and will delist securities of companies that claim such exemption.²⁹ However, MSD expressed concern that these requirements will not prevent unscrupulous penny stock promoters or boiler room brokerages from asserting that the securities they are offering and selling are exempt from state registration because the securities are listed on the Exchange.³⁰ MSD expressed further concern that because the Exchange is owned by and is under the supervision of the parent company of Nasdaq, the BX listing market will inappropriately borrow some of the prestige of Nasdaq, despite the steps that Nasdaq may take to promote BX as a separate listing market.³¹

Pink OTC Markets Inc. (“Pink OTC”) noted that there may be investor confusion with respect to the differences between Nasdaq-listed securities and BX-listed securities.³² Pink OTC further stated its belief that it is important that market data relative to BX-listed securities be

²⁶ See id.

²⁷ See id.

²⁸ See id.

²⁹ See id.

³⁰ See id.

³¹ See id. at p. 3.

³² See Pink OTC Letter, supra note 4.

disseminated in a manner that makes clear that BX-listed securities are not NMS securities, nor do they meet the normally higher listing standards for exchange-listed securities, including those of Nasdaq.³³ To alleviate investor confusion, Pink OTC suggested that ticker symbols for BX-listed securities should differentiate such securities from other securities that meet the higher listing standards typically associated with listing on a national securities exchange.³⁴

Pink OTC also stated its belief that quotation and transaction reports for BX-listed securities should not be disseminated under any NMS plan, nor commingled with NMS data by an NMS plan processor.³⁵ In particular, Pink OTC stated its belief that Nasdaq should not be permitted to disseminate BX-listed securities market data commingled with the Nasdaq market data it disseminates under the Nasdaq UTP Plan.³⁶

With respect to the BX's proposed listing standards, Pink OTC argued that BX should not be permitted to allow phase-in compliance with the independent director requirements of the audit and compensation committees for certain companies.³⁷ Finally, Pink OTC recommended that the Commission consider requiring BX to conduct background checks and other similar reviews of potential listed companies and not merely rely on the documents presented by an issuer during the listing process.³⁸

On the other hand, Madrona Venture Group noted that the BX listing market will have listing requirements and costs that are tailored to the economic reality of smaller companies, and

³³ See id. at p. 2.

³⁴ See id.

³⁵ See id. at p. 3.

³⁶ See id.

³⁷ See id. at p. 6.

³⁸ See id. at p. 6-7.

that this market would be extremely helpful to young, high growth emerging companies by offering an alternative listing market for companies that wish to make an initial public offering, but do not meet the initial quantitative listing standards of the other national securities exchanges.³⁹ Madrona Venture Group also stated its belief that the BX listing market could bolster capital markets and provide opportunities for small companies to transition from private to public ownership, to expand their financial resources, and to raise the capital they need for continued growth.⁴⁰ Additionally, Madrona Venture Group stated its belief that the BX listing market would attract companies and capital that would otherwise be drawn to foreign markets, where regulatory costs and litigation risks are lower.⁴¹

IV. Proceedings to Determine Whether to Disapprove SR-BX-2010-059 and Grounds for Disapproval under Consideration

The Exchange's proposal is presented as providing a transparent, well-regulated marketplace for the listing of companies that are being delisted from another national securities exchange for failure to meet quantitative listing standards (including price or other market value measures) and for companies with smaller market capitalization contemplating an initial exchange listing. The Exchange believes that a BX listing could help such companies raise capital, and in turn promote job creation within the United States. The Exchange also believes that there are benefits from exchange trading and surveillance.

For example, the Exchange believes that a BX listing would allow the securities of companies that are being delisted from another national securities exchange for failure to meet

³⁹ See Madrona Letter, supra note 4, at p. 1.

⁴⁰ See id.

⁴¹ See id. at p. 1-2.

that exchange's quantitative listing requirements to continue to trade on a national securities exchange. This may enable some institutional investors to continue their ownership stake in those companies, which in turn could provide greater stability to the companies' shareholder base.⁴² In addition, the Exchange believes that companies currently traded OTC could view the BX Venture Market as an aspirational step towards a listing on another national securities exchange and that the agreement of such companies to comply with the Exchange's corporate governance standards along with the application of the Exchange's public interest authority will provide additional protections to their investors. Finally, the Exchange believes that the BX Venture Market will be a more attractive alternative for domestic companies that might otherwise have considered a listing on non-U.S. junior markets which, according to the Exchange, generally have less vigorous listing requirements.

The proposed BX listing standards discussed above, however, are significantly lower than the listing standards for other exchange-listed securities.⁴³ These lower listing standards on BX may raise issues as to whether the proposed rule change is consistent with the Act. Among

⁴² According to the Exchange, many institutional investors have investment policies that limit their ownership to securities listed on a national securities exchange, or that prohibit the ownership of securities that only are traded in the OTC market. See Notice, supra note 3.

⁴³ For example, BX would require a BX-listed company to have only 200,000 publicly held shares, which is significantly lower than the number of publicly held shares required by exchanges with active listing programs today. See, e.g., NYSE Amex Company Guide Section 102(a) (requiring a minimum public distribution of 500,000 shares and 800 public shareholders, or a minimum public distribution of 1 million shares and 400 public shareholders); NASDAQ Stock Market Rule 5505(a)(2) (requiring a minimum of 1 million publicly held shares); and NYSE Listed Company Manual Section 102.01A (requiring a minimum of 1.1 million publicly held shares). Even "Tier II" listing standards require listed companies to have at least 250,000 publicly held shares. See, e.g., CBOE Rule 31.6(3) (requiring at least 1 million publicly held shares for initial listing of research and development type issuers).

other things, listing standards must be designed to assure that there is sufficient liquidity for trading on an exchange and to reduce the likelihood of manipulation and fraud.⁴⁴ The Commission believes that the development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange are activities of critical importance to the financial markets and the investing public.⁴⁵ Listing standards serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have, or in the case of an initial public offering will have, sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.⁴⁶ Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market.⁴⁷ Once a security has been approved for initial listing, continued listing standards allow an exchange to monitor the status and trading characteristics of that security to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained, and so that only companies suitable for listing remain listed on a national securities exchange.

The Commission notes that the Exchange has submitted Amendment No. 1 in an effort to address certain potential concerns with the proposed rule change. However, at this time and for the reasons noted below, the Commission is instituting proceedings pursuant to Section

⁴⁴ See, e.g., Exchange Act Section 6(b)(5).

⁴⁵ See, e.g., Securities Exchange Act Release No. 61912 (April 15, 2010), 75 FR 21094, 21094 (April 22, 2010) (SR-NYSE-2010-15).

⁴⁶ See id.

⁴⁷ See id.

19(b)(2)(B) of the Act⁴⁸ to determine whether the proposed rule change should be disapproved. Institution of such proceedings appears appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of the proceedings, however, does not indicate that the Commission has formulated any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to comment on the proposed rule change.

The section of the Act applicable to the proposed rule change that provides the grounds for the disapproval (or approval) under consideration is Section 6(b)(5),⁴⁹ which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. Specifically, the Exchange is proposing initial and continued listing standards that are significantly lower than those of other exchanges with active listing markets.⁵⁰ Among other things, this raises issues as to whether BX-listed securities could be more prone to manipulation by an individual or a few shareholders who acquire a dominant interest in the publicly-held shares compared to other exchange-listed securities. This issue is particularly pronounced with smaller company stocks, which historically have been the targets of manipulative schemes.⁵¹

⁴⁸ 15 U.S.C. 78s(b)(2)(B).

⁴⁹ 15 U.S.C. 78f(b)(5).

⁵⁰ See supra note 43.

⁵¹ See, e.g., Securities Act Release No. 8878 (December 19, 2007), 72 FR 73534, 73536 (December 27, 2007) (S7-10-07) (stating that “[i]t has been observed that the securities of

The proposed rule change also raises issues as to whether investors will understand that BX-listed securities are very different from other exchange-listed securities, and could pose substantially more investment risk than those listed on other markets due, for example, to their size, financial condition, or limited operational history. This potential for investor confusion may be compounded because, as exchange-listed securities, other exchanges could trade them on an unlisted trading privileges (“UTP”) basis.⁵² Because the smaller BX-listed securities may be traded UTP on the same platform as larger companies listed by the primary listings markets, this raises issues as to whether investors could have even more difficulty distinguishing between BX-listed securities and other exchange-listed securities.

At the same time, as noted above, the Commission acknowledges that the BX listing market would be an alternative to the OTC market and could provide important benefits to this market segment, including enhanced regulation and increased price transparency. In particular, BX’s proposed listing standards would be higher than the requirements for quoting on the OTC Bulletin Board, which does not have any listing requirements per se, but only requires issuers to remain current in their filings with the Commission or other applicable regulatory authorities. For example, as the Exchange notes, the agreement of BX-listed companies to comply with the Exchange’s corporate governance standards and the application of the Exchange’s public interest authority could provide additional protections to investors than the protections available at their

smaller public companies are comparatively more vulnerable to price manipulation than the securities of larger public companies”).

⁵² Under Exchange Act Section 12(f)(1)(A) and Rule 12f-5 thereunder, a national securities exchange may trade exchange-listed securities on a UTP basis. See 15 U.S.C. 78l(f)(1)(A) and 17 CFR 240.12f-5. Accordingly, other national securities exchanges would be able to trade BX-listed securities, without obtaining additional Commission approval.

present trading venue. The Commission also notes that trading in BX-listed securities would be subject to regulation through BX's trading rules and surveillance authority. Additionally, the BX listing market could make it easier for companies with smaller market capitalization to raise capital, thereby promoting job creation. Finally, permitting companies with smaller market capitalization to list on BX could provide them with a viable alternative for U.S. listing to listing on non-U.S. markets that may be equivalent to the proposed BX market.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the issues identified above, as well as any others they may have identified with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.⁵³

Interested persons are invited to submit written data, views and arguments regarding whether the proposed rule change should be disapproved by [insert date 45 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's

⁵³ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding -- either oral or notice and opportunity for written comments -- is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

submission must file that rebuttal by [insert date 60 days from publication in the Federal Register].

The Commission is asking that commenters address the merit of BX's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Specifically, the Commission is requesting comment on the following:

- Do commenters agree with BX's belief that the proposed BX listing market will provide a transparent, well-regulated marketplace for companies with smaller market capitalization contemplating an initial exchange listing and companies delisted from another national securities exchange for failure to meet quantitative listing standards? Why or why not?
- Is the proposed vetting and due diligence process of prospective issuers on the BX listing market sufficient to prevent companies that might erode investor confidence (due to potential fraud) in the market from listing? Why or why not?
- Given that BX-listed companies are likely to be smaller than listed companies on other exchanges, should BX undertake any additional measures (including additional surveillances) to reduce the risk of fraudulent and manipulative behavior with respect to the listing and/or trading of BX-listed securities? Why or why not?
- Do commenters believe there is any likelihood of investor confusion regarding the BX listing market? Would investors be inclined to believe that a BX-listed company is listed on Nasdaq? Are the Exchange's proposed actions to reduce or avoid investor confusion sufficient? Why or why not? If not, what additional measures should the Exchange undertake?

- Do the proposed initial and continued listing standards for the BX listing market assure sufficient liquidity in listed securities? Why or why not? Are there other listing criteria that commenters would suggest to better assure sufficient liquidity in listed securities?
- Are the proposed initial and continued listing standards for the BX listing market sufficiently designed to reduce the risk that an individual or small group of shareholders will be in a position to manipulate the listed security? Why or why not?
- Are the proposed initial and continued listing standards and the delisting process for the BX listing market sufficiently designed to prevent stocks that are of a type that historically have been prone to fraudulent schemes from being listed? Why or why not?
- Do commenters believe that the proposed delisting and appeals procedures and timeframes are sufficient and appropriate? Are the timeframes too long or too short? Why or why not?
- Are the proposed corporate governance standards for the BX listing market sufficiently designed to assure an appropriate level of corporate governance? Why or why not?
- Do commenters agree with the Exchange's belief that a BX listing could help companies raise capital and thus promote job creation within the United States? Why or why not?
- Has BX sufficiently addressed how quotations and transactions reports relating to BX-listed securities will be disseminated? Will this result in fragmentation of pricing information relating to these securities? Will this undermine the ability of investors to receive best execution? Why or why not?

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-2010-059 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2010-059. 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 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 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-2010-059 and should be submitted on or before [insert date 45 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁴

Florence E. Harmon
Deputy Secretary

⁵⁴ 17 CFR 200.30-3(a)(57).