

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69753; File No. SR-BX-2013-038)

June 13, 2013

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to its Schedule of Fees and Rebates for Execution of Orders for Securities Priced at \$1 or More under Rule 7018

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 June 3, 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 proposes changes to its schedule of fees and rebates for execution of orders for securities priced at \$1 or more under Rule 7018. These amendments are effective upon filing, and the Exchange has designated the proposed amendments to be operative on June 3, 2013. The text of the proposed rule change is also available on the Exchange’s website at <http://nasdaqomxbx.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 charges a reduced fee for members providing liquidity if they meet the criteria of a "Qualified Liquidity Provider." These criteria include requirements that the member access and provide volumes of liquidity in excess of certain levels, expressed as a percentage of Consolidated Volume.³ The Exchange has determined that it would be beneficial to members to exclude the date of the annual reconstitution of the Russell Investments Indexes (the "Russell Reconstitution") (in 2013, June 28) from calculations of Consolidated Volume. Trades occurring on that date would be excluded from the calculation of total Consolidated Volume and from the calculation of the member's trading activity (i.e., they would be excluded from both the numerator and the denominator of the calculation of a member's percentage).

Trading volumes on the date of the Russell Reconstitution are generally far in excess of volumes on other days during the month. As a result, the trading activity of members that are regular daily participants in BX, expressed as a percentage of Consolidated Volume, is likely to be lower than their percentage of Consolidated Volume on other days during the month. Including the date of the Russell Reconstitution in calculations of Consolidated Volume is therefore likely to make it more difficult for members to achieve particular volume levels during the month. Accordingly, excluding the date of the Russell Reconstitution from these calculations

³ "Consolidated Volume" is the consolidated volume of shares reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month.

will diminish the likelihood of a de facto price increase occurring because a member is not able to reach a volume percentage on that date that it reaches on other trading days during the month. Moreover, excluding the date is very unlikely to result in a price increase for any members, since a member that was not, on other days during the month, trading in BX at volume levels that would allow it qualify for the criteria of a Qualified Liquidity Provider, would be unlikely to achieve percentage volume levels on the date of the Russell Reconstitution that would increase its overall monthly percentage to the required levels, even if it was very active on that date.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,⁵ 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. BX believes that the proposed change to exclude the date of the Russell Reconstitution from calculations of Consolidated Volume is reasonable because it will diminish the likelihood of a de facto price increase occurring because a member is not able to reach a volume percentage on that date that it reaches on other trading days during the month. BX further believes that the change is consistent with an equitable allocation of fees and is not unfairly discriminatory. Specifically, because trading activity on the date of the Russell Reconstitution will be excluded from determinations of a member's percentage of Consolidated Volume, BX believes it will be easier for members to determine the volume required to meet a certain percentage of participation than would otherwise be the case. To the extent that a member has been active in BX at a significant

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4) and (5).

level throughout the month, excluding the date of the Russell Reconstitution, on which its percentage of Consolidated Volume is likely to be lower than on other days, will increase its overall percentage for the month. Conversely, even if a member was more active on the date of Russell Reconstitution than on other dates, it is unlikely that its activity on one day would be able to increase its overall monthly percentage to a meaningful extent. Thus, BX believes that the change will benefit members that are in a position to achieve volume levels required by the BX pricing schedule but without harming the ability of any members to reach such levels. Finally, BX believes that the change does not unfairly burden competition because it will help to preserve or improve the pricing status that would apply to members' trading activity in the absence of the Russell Reconstitution, and therefore will not impact the ability of such members to compete.

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. BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, BX believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, the change will make it easier for members to

achieve a certain percentage of Consolidated Volume during the month of the Russell Reconstitution, and therefore it is designed to protect members from the possibility of a de facto price increase. Accordingly, BX does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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.⁶ 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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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-2013-038 on the subject line.

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2013-038. 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 offices of BX. 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-2013-038, 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.⁷

Kevin M. O'Neill
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).