

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70568; File No. SR-BX-2013-047)

September 30, 2013

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving a Proposed Rule Change to Assume Operational Responsibility for Certain Surveillance Activity Currently Performed by FINRA under the Exchange's Authority and Supervision

On July 31, 2013, NASDAQ OMX BX, Inc. ("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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to assume operational responsibility for certain surveillance activity currently performed by the Financial Industry Regulatory Authority ("FINRA") under the Exchange's authority and supervision. The proposed rule change was published for comment in the Federal Register on August 16, 2013.<sup>3</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 securities exchange<sup>4</sup> and, in particular, the requirements of Section 6(b)(5) of the Act.<sup>5</sup> Since its acquisition by The NASDAQ OMX Group, Inc., BX has contracted with FINRA through various regulatory services agreements to perform certain surveillance and other regulatory functions on its behalf. BX Rule 0150 requires that, unless the Exchange obtains prior Commission approval, the regulatory functions subject to the regulatory services agreement in effect at the time of its

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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. 70158 (August 12, 2013), 78 FR 50126 (August 16, 2013) ("Notice").

<sup>4</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>5</sup> 15 U.S.C. 78f(b)(5).

acquisition must continue to be performed by FINRA or an affiliate thereof or by another independent self-regulatory organization. BX now proposes to reallocate operational responsibility from FINRA to BX Regulation for a limited number of equities surveillance patterns and related review functions focused on: (1) manipulation patterns that monitor solely BX activity, including patterns that monitor the opening and closing crosses on The NASDAQ Stock Market LLC (“NASDAQ”) and compliance with minimum bid listing requirements; and (2) monitoring of compliance by NASDAQ member firms with elements of the Commission’s Regulation M<sup>6</sup> and NASDAQ Rule 4619 compliance, which will include data from BX.

In the Notice, the Exchange represents that it has the ability to conduct the surveillances and regulatory functions that it will assume. The Commission also notes that the Exchange represents that its expertise in its own market structure, along with its existing real-time monitoring of these activities, may enable the Exchange to better detect improper activities on its market. Moreover, these patterns, underlying rules, and analytical requirements are similar to patterns that BX regulatory personnel already monitor for affiliated options markets. The Exchange represents that NASDAQ’s MarketWatch group, which already handles other real-time surveillance of the BX market, should be able to adequately and effectively handle the surveillances related to the instant proposed rule change.

In the Notice, the Exchange further represents that it will continue to refer potentially violative conduct to FINRA for further review and that FINRA will continue to perform most of the surveillance activity for BX’s equity market. The Exchange also represents that FINRA will continue to perform examination and enforcement work, subject to BX’s supervision and ultimate responsibility.

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<sup>6</sup> 17 CFR 242.100 et seq.

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-BX-2013-047) be, and it hereby is, approved.

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

Kevin M. O'Neill  
Deputy Secretary

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<sup>7</sup> 15 U.S.C. 78s(b)(2).

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