

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64636; File No. SR-BX-2011-030]

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

June 8, 2011.

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 May 25, 2011, NASDAQ OMX BX, Inc. (the “Exchange”) 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 change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify pricing for member using the NASDAQ OMX BX Equities System. The Exchange will implement the proposed change on June 1, 2011. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com/>, at the Exchange’s principal office, on the Commission’s Web site at <http://www.sec.gov>, 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 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

BX is proposing to modify its fees for trades that execute at prices at or above \$1.<sup>3</sup> BX has a pricing model under which members are charged for the execution of quotes/orders posted on the BX book (*i.e.*, quotes/orders that provide liquidity), while members receive a rebate for orders that access liquidity. Since BX introduced this pricing model in 2009, several other exchanges have emulated it, including the EDGA Exchange, the BATS-Y Exchange, and the CBOE Stock Exchange (“CBSX”). Currently, BX charges a fee to add liquidity of \$0.0018 per share executed, while providing a rebate for accessing liquidity of \$0.0014 per share executed.

Effective June 1, 2011, BX will introduce a tiered pricing structure for both the fee and rebate portion of the pricing schedule. First, although they are not paid a credit for liquidity provision, certain BX members nevertheless find it advantageous to post liquidity because the rebate paid to liquidity takers encourages more rapid execution of posted orders. To provide further incentives to members to post liquidity through BX, the Exchange is introducing a “Qualified Liquidity Provider” program. A Qualified Liquidity Provider is a BX member with (i) Shares of liquidity provided and (ii) total shares of liquidity accessed and provided in all securities through one or more of its NASDAQ OMX BX Equities System Market Participant Identifiers (“MPIDs”) that represent more than 0.40% and 0.50%, respectively, of the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during the month. With respect to displayed orders entered through any MPID of a Qualified Liquidity Provider that is a Qualified MPID, the member will be charged \$0.0015 per share executed, rather than the current rate of \$0.0018 per share executed. A “Qualified MPID” is an MPID through which the member quotes at the national best bid or offer (“NBBO”) an average of at least 25% of the time during regular market hours (9:30 a.m. through 4 p.m.) during the month, in at least 150 securities. For each trading day, the percentage of time

that a member quotes at the NBBO for each security will be calculated by determining the percentage of time quoting at the best bid and the percentage of time quoting at the best offer, and determining the average of the two percentages. Thus, for a given security, if a member quotes at the best bid 10% of the day, and at the best offer 55% of the day, its average at the NBBO will be 32.5%  $((10 + 55)/2)$ . The percentage for each day will then be added and divided by the number of trading days in the month to determine the overall percentage in each stock.<sup>4</sup>

With respect to the rebate paid to members accessing liquidity, BX is modifying the fee schedule to provide that the current credit of \$0.0014 will be paid only with respect to orders entered by a member through an MPID through which the member accesses an average daily volume of 3.5 million or more shares of liquidity during the month, or provides an average daily volume of 25,000 or more shares of liquidity during the month. Because these requirements are not especially high, BX expects that most members seeking the higher rebate will be able to achieve at least one of the criteria. However, for members that do not achieve these requirements, the credit will be \$0.0005 per share executed.<sup>5</sup> The change is designed to ensure that the most favorable rebate is provided to members that consistently support the BX market through liquidity provision or order routing at the levels required by the new tier. To the extent that the change results in a fee increase for some members, it will also help to offset the cost of implementing the Qualified Liquidity Provider program.

##### 2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(4) of the Act,<sup>7</sup> in

<sup>4</sup> The program is similar to the Supplemental Liquidity Provider program of the New York Stock Exchange, under which members may earn progressively higher liquidity provider credits if they satisfy a requirement of quoting at the NBBO 10% or more of the time and add specified levels of liquidity to the book, with the credit rising as the amount of liquidity provided increases. See [http://www.nyse.com/pdfs/nyse\\_equities\\_pricelist.pdf](http://www.nyse.com/pdfs/nyse_equities_pricelist.pdf).

<sup>5</sup> By comparison, under the fee schedule of the EDGA Exchange, a member accessing liquidity can earn a rebate of \$0.00015 per share executed if it adds or routes an average daily volume of 50,000 shares on the EDGA Exchange, but is charged \$0.0030 per share executed if it does not. See <http://www.directedge.com/Membership/FeeSchedule/EDGAFeeSchedule.aspx>. Thus, both aspects of BX’s proposed credit tiers are more favorable to its members than the corresponding credit/fee of the EDGA Exchange.

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Although BX is not modifying its fees for securities priced below \$1, it is moving the language describing such fees into Rule 7018(b) and redesignating existing Rule 7018(b) as Rule 7018(c).

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. All similarly situated members are subject to the same fee structure, and access to BX is offered on fair and non-discriminatory terms.

The new program for Qualified Liquidity Providers is reasonable and equitable because it will reduce fees for members that contribute to BX's market quality by directing a relatively large quantity of orders to BX and quoting at the NBBO with regularity in a large number of stocks. Volume-based discounts such as the proposed Qualified Liquidity Provider program have been widely adopted in the cash equities markets, and are equitable because they are open to all members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with the requirements for the favorable pricing tier. By adding not only volume requirements but also requirements for Qualified Liquidity Providers to quote at the NBBO with some degree of consistency, BX believes that it can use pricing incentives to increase quoted depth at the NBBO, thereby also benefiting market participants that direct orders to the quotes/orders of Qualified Liquidity Providers.

Similarly, the proposed pricing tier with respect to BX's credit for members accessing liquidity is designed to provide incentives for members to contribute to BX's market quality by accessing and/or providing liquidity. Orders that provide liquidity increase the likelihood that members seeking to access liquidity will have their orders filled, while orders that access liquidity encourage liquidity providers to post in the expectation of having their own orders filled. Accordingly, BX believes that it is reasonable and equitable to use pricing incentives, such as a higher rebate for accessing liquidity, to encourage members to increase their participation in the market either through liquidity provision or routing of liquidity accessing orders. BX also notes that the credits it offers, both to members achieving the tier and those that do not, are more favorable than the credit/fee charged by the EDGA Exchange in comparable circumstances.

Finally, 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. 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. BX believes that the proposed rule change reflects this competitive environment because it will use pricing incentives to encourage greater use of BX's order execution facilities.

#### *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. Because the market for order execution is extremely competitive, members may readily opt to disfavor BX's execution services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, 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*

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 Act.<sup>8</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 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-2011-030 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-2011-030. 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 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 a.m. and 3 p.m. Copies of the 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 available publicly. All submissions should refer to File Number SR-BX-2011-030 and should be submitted on or before July 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 200.30-3(a)(12).