

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64933; File No. SR-BX-2011-047]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Renumber Rule 5230

July 20, 2011.

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 July 18, 2011, NASDAQ OMX BX, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as effecting a change described under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. 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 renumber Rule 5230 as Rule 5230A. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in *brackets*.⁴

5000A. Supplementary Conduct Rules

[5230.] *5230A. Payments Involving Publications that Influence the Market Price of a Security*

(a)–(b) No change.

* * * * *

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

In January 2010, the Exchange adopted Rule 5230, which incorporated changes to the corresponding FINRA rules on payments involving publications that influence the market price of a security.⁵ At that time, the remainder of the Exchange’s Rule 5000 Series was unused. Subsequently, the Exchange has adopted listing rules for the BX Venture Market and placed those rules in the Rule 5000 Series.⁶ Because Rule 5230 deals with member conduct, and not listing on the BX Venture Market, the Exchange proposes to renumber existing Rule 5230 as Rule 5230A to separate it from the listing rules and thereby avoid confusion. There is no change to the substance of the rule. The Exchange also proposes to adopt Rule 5000A as a title for this new series of rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general, and with Sections 6(b)(5) of the Act,⁸ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. The proposed change will help avoid confusion that could otherwise arise from having a member conduct rule intertwined in the Exchange’s listing rules.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not

necessary or appropriate in furtherance of the purposes of the Act.

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 proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder,¹⁰ in that the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The proposed rule change will renumber an existing rule, without changing the substance of that rule. Therefore, the Exchange believes it does not significantly affect the protection of investors or the public interest or raise any novel or significant regulatory issues.

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.

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

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ Changes are marked to the rules of the Exchange found at <http://nasdaqomxbx.cchwallstreet.com>.

⁵ Securities Exchange Act Release No. 61495 (February 4, 2010), 75 FR 7528 (February 19, 2010) (SR-BX-2010-006).

⁶ Securities Exchange Act Release No. 64437 (May 6, 2011), 76 FR 27710 (May 12, 2011) (SR-BX-2010-059).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-BX-2011-047 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-2011-047. 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-2011-047 and should be submitted on or before August 16, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64934; File No. SR-FINRA-2011-031]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend FINRA Rule 9251 to Explicitly Protect From Discovery Those Documents That Federal Law Prohibits FINRA From Disclosing

July 20, 2011.

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 July 8, 2011, Financial Industry Regulatory Authority, Inc. ("FINRA") 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 FINRA. 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

FINRA is proposing to amend FINRA Rule 9251 to explicitly protect from discovery those documents that federal law prohibits FINRA from disclosing.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA Rule 9251 delineates the types of documents that FINRA's Department

of Enforcement ("Enforcement") and Department of Market Regulation ("Market Regulation") must produce to respondents during the discovery phase of a disciplinary proceeding. The rule also explicitly shields certain types of documents from production. For example, Enforcement and Market Regulation may withhold documents that are protected by attorney-client privilege or constitute attorney work product.³ The rule allows additional types of documents to be withheld where a hearing officer determines that they are irrelevant to the proceeding or for other good cause.⁴ The rule, moreover, contains procedural safeguards. For example, a hearing officer may privately review and determine the appropriate status of a withheld document.⁵ The rule does not, however, explicitly shield from discovery documents that federal law prohibits FINRA from disclosing. To help ensure both an efficient discovery process and compliance with federal law, the proposed rule change clarifies that Enforcement and Market Regulation shall withhold such documents from respondents during a disciplinary proceeding. Further, the proposed rule change precludes a hearing officer from requiring Enforcement or Market Regulation to either produce or reveal information about the existence of a document if federal law prohibits such disclosure.

The proposed rule change would amend FINRA Rule 9251 to explicitly protect from discovery those documents that federal law prohibits FINRA from disclosing. Currently, when Enforcement and Market Regulation possess a document that federal law prohibits them from disclosing, they must affirmatively seek a hearing officer determination that they can withhold it on the grounds of a lack of relevancy or for other good cause. The proposed rule change would increase efficiency by avoiding the need for the parties to brief, and hearing officers to resolve, unnecessary "good cause" motions regarding documents that FINRA cannot legally produce during disciplinary proceedings. The procedural safeguard discussed above would apply to this category of withheld documents.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be 30 days following

³ FINRA Rule 9251(b)(1)(A).

⁴ FINRA Rule 9251(b)(1)(D).

⁵ FINRA Rule 9251(c).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹¹ 17 CFR 200.30-3(a)(12).