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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69607; File No. SR-BX-2013-029)

May 20, 2013

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving Proposed Rule Change Relating to Board of Director Qualifications

On March 27, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Article IV, Section 4.3 of the Exchange’s By-Laws (“BX By-Laws”) with respect to the composition of the Exchange’s Board of Directors (“BX Board”).³ The proposed rule change was published for comment in the Federal Register on April 8, 2013.⁴ 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 exchange⁵ and, in particular, the requirements of Sections 6(b)(3)⁶ and 6(b)(5) of the Act.⁷ The proposal will reduce from three to one the minimum number of Public Directors⁸ that

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 69280 (April 2, 2013), 78 FR 20971.

⁴ See id.

⁵ 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).

⁶ 15 U.S.C. 78f(b)(3).

⁷ 15 U.S.C. 78f(b)(5).

⁸ Pursuant to BX By-Law Article I(gg), a Public Director is a Director who has no material business relationship with a broker or dealer, the Corporation (i.e., the Exchange) or its affiliates, or FINRA.

will be required to be included in the calculation of Non-Industry Directors⁹ for the purpose of determining the number of Non-Industry Directors that may serve on the BX Board. The Exchange proposed this change in light of the cessation in 2012 by the Boston Options Exchange LLC (“BOX”) of its operations as an options trading facility of the Exchange¹⁰ and the termination of the Regulatory Services Agreement (“RSA”) between BX and BOX.¹¹ To accommodate BOX when BOX was a BX facility, three Public Directors were required to be included in the calculation of the number of Non-Industry Directors on the BX Board.¹² The Commission notes that, although only one Public Director must be included in the composition of Non-Industry Directors as a result of the proposed rule change, the requirement in BX By-Law Article IV, Section 4.3 that the number of Non-Industry Directors must equal or exceed the

⁹ Pursuant to BX By-Law Article I(bb), a Non-Industry Director is a Director (excluding Staff Directors) who is (i) a Public Director; (ii) an officer or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry Director.

¹⁰ BOX was a facility of the Exchange under Section 39(a)(2) of the Act. See Securities Exchange Act Release Nos. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (SR-BSE-2003-17); 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (SR-BSE-2003-04) (“BOXR Order”); and 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2002-15). See also Release No. 58324; 73 FR 46936 (August 7, 2008) (File Nos. SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01) (“Order Approving the Acquisition of the Boston Stock Exchange, Incorporated by The NASDAQ OMX Group, Inc.”).

¹¹ The RSA specified, among other matters, that BX would terminate its responsibility for fulfilling certain obligations and cease performing certain regulatory functions as of the effective date of June 1, 2012, or sooner if BOX satisfied all of the conditions required for BOX to operate as a national securities exchange.

¹² See Securities Exchange Act Release No. 34-58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (File Nos. SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01); see also Securities Exchange Act Release No. 67009 (May 17, 2012), 77 FR 30566 (May 23, 2012) (SR-BX-2012-036).

sum of Industry Directors¹³ and Member Representative Directors¹⁴ will continue to be met.

Moreover, the Commission notes that, as a result of the proposed rule change, the BX Board composition requirement regarding Public Directors now will be similar to the board

composition requirements of NASDAQ OMX PHLX LLC (“Phlx”) and The NASDAQ Stock Market LLC (“NASDAQ”), both of which require that the number of Non-Industry Directors

must include at least one Public Director.¹⁵ In addition, the Commission notes that the BX Board

¹³ Pursuant to BX By-Law Article I(t), an Industry Director is a Director (excluding any two officers of the Corporation, selected at the sole discretion of the Board, amongst those officers who may be serving as Directors (the "Staff Directors")), who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute twenty percent or more of the professional revenues received by the Director or twenty percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns fifty percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute twenty percent or more of the professional revenues received by the Director or twenty percent or more of the gross revenues received by the Director's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Corporation or any affiliate thereof or to FINRA or has had any such relationship or provided any such services at any time within the prior three years.

¹⁴ Pursuant to BX By-Law Article I(x), a Member Representative Director is a Director who has been elected by the stockholders after having been nominated by the Member Nominating Committee or voted upon by Exchange Members pursuant to the BX By-Laws (or elected by the stockholders without such nomination or voting in the case of the Member Representative Directors elected pursuant to Article IV, Section 4.3(b)). A Member Representative Director may, but is not required to be, an officer, director, employee, or agent of an Exchange Member.

¹⁵ See Phlx By-Law Article III, Section 3-2(a) and NASDAQ By-Law Article III, Section 2(a).

will continue to have three Public Directors, because the BX Board still will need to have three Public Directors available to serve on its Regulatory Oversight Committee, as required by BX By-Law Article IV, Section 4.13. 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,¹⁶ that the proposed rule change (SR-BX-2013-029) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Kevin M. O'Neill
Deputy Secretary

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¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).