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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-71956; File No. SR-BX-2014-018]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change to Amend the Fee Schedule under Exchange Rule 7018(a) with Respect to Transactions in Securities Priced at \$1 per Share or More

April 16, 2014.

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 April 8, 2014, NASDAQ OMX BX, Inc. (“BX” or “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 amend the fee schedule under Exchange Rule 7018(a) with respect to transactions in securities priced at \$1 per share or more.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange is proposing several changes to its fees and rebates applicable to transactions in securities priced at \$1 or more under BX Rule 7018(a).

First, the Exchange proposes to introduce a new credit for an order entered by a member that accesses liquidity equal to or exceeding 0.1% of total consolidated volume per month. BX will provide such firms \$0.0015 per share executed for liquidity accessing orders.

Next, the Exchange proposes to amend the criteria by which it provides a credit of \$0.0013 per share executed for liquidity accessing orders (excluding orders executing against the midpoint). Previously, this rate was available to a member (i) With an average daily volume of liquidity accessed in all securities during the month of 6 million or more shares through one or more BX Equities System MPIDs, provide [sic], however, that (ii) the member adds and/or removes liquidity of 30,000 or more contracts per day during the month through BX Options with an average daily volume of liquidity provided in all securities during the month of 1 million or more shares.

The Exchange proposes to amend the criteria by which it provides a credit of \$0.0011 per share executed for liquidity accessing orders (excluding orders executing against the midpoint). Previously, this rate was available to a BX Equities System MPID through which the member

provides an average daily volume of at least 25,000, but less than 1 million, shares of liquidity during the month. BX proposes to make this credit available to members that provide an average daily volume of at least 25,000, but less than 1 million, shares of liquidity during the month.

In BX Rule 7018(a) the term “Qualified Liquidity Provider” will be replaced with “Qualified Market Maker” (“QMM”) and both of these sub-sections will clarify that for members that qualify under these sub-sections, the member must have at least one Qualified MPID, respectively. There will now be two tiers available for the QMM, Tier 1 and Tier 2. Tier 1 will be achieved by the methods currently outlined in BX Rule 7018(a)(1) and (2). The Exchange proposes that a firm may become a Qualified Market Maker (Tier 2) by having at least one Qualified MPID, that is, an MPID through which, for at least 300 securities, the Qualified Market Maker quotes at the NBBO an average of at least 75% of the time during the regular market hours (9:30 a.m. through 4:00 p.m. during the month.

The Exchange proposes that the charge of \$0.0014 per share executed for a displayed order entered by a Qualified Liquidity Provider through a Qualified MPID remains the same, but that it now applies to a Qualified Market Maker (Tier 1) and no longer must go through a Qualified MPID.

Additionally, the Exchange proposes that a new charge of \$0.0017 per share executed will be added for a displayed order entered by a QMM (Tier 2).

The Exchange also proposes that the charge of \$0.0016 per share executed for a displayed order entered by a member (i) with a daily average volume of liquidity provided in all securities during the month of 2 million or more shares through one or more BX Equities System MPIDs, and (ii) that adds BX Options Market Maker volume under Chapter XV of BX Options rules of 20,000 or more contracts per day during the month, be replaced with a charge for a

displayed order entered by a member that adds liquidity equal to or exceeding \$0.25% of total consolidated volume during a month of \$0.00165 per share executed.

As for a displayed order entered through a NASDAQ OMX BX Equities System MPID through which a member provides an average daily volume of 4 million or more shares of liquidity during the month, the Exchange proposes that the current charge of \$0.0018 per share executed now applies to a displayed order by a member that provides an average daily volume of 2.5 million or more shares of liquidity during the month.

Next, the Exchange proposes that the charge for a midpoint pegged order entered by a member that provides an average daily volume of 2 million or more shares of liquidity using midpoint pegged orders during the month be reduced from \$0.0010 to \$0.0005 per share executed, and that it will now apply to a midpoint pegged order entered by a member that provides an average daily volume of 2 million or more shares of non-displayed liquidity during the month.

The Exchange also proposes that the charge for midpoint pegged order entered by a member that provides an average daily volume of 1 million or more, but less than 2 million, shares of liquidity using midpoint pegged orders during the month be reduced from \$0.00125 to \$0.0009 per share executed, and that it will now apply to a midpoint pegged order entered by a member that provides an average daily volume of 1 million or more, but less than 2 million shares of non-displayed liquidity.

The Exchange additionally proposes that a new charge for other non-displayed orders (other than those pegged to the midpoint) entered by a member that provides an average daily volume of 5 million or more shares of non-displayed liquidity, that a charge [sic] will be added of \$0.0019 per share executed.

Finally, the Exchange also proposes to make several grammatical and conforming changes to BX Rule 7018(a) for the purposes of consistency and clarity.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,³ in general, and Sections 6(b)(4) and (b)(5) of the Act,⁴ in particular, because 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 that the Exchange operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

At a high level, the changes simplify various aspects of the BX fee schedule to encourage firms to make use of the favorable economics it offers. By [sic] assigning rates to members based on their aggregate activity instead of on an MPID by MPID basis enhances a member's ability to earn certain proposed rates. By assigning displayed liquidity fees based on the total amount of liquidity provided, firms are more likely to be able to attain trading thresholds to receive superior execution rates. By lowering fees across multiple levels of firm level activity, BX ensures that growth in participation occurs across a broad contingent of Exchange members. In effect, this change lowers prices for BX members.

More specifically, the proposed increase of \$0.0013 to \$0.0015 per share executed of the credit for an order that accesses liquidity (excluding liquidity pegged to the midpoint) entered by a member that accesses liquidity equal to or exceeding 0.1% of total consolidated volume during a month is consistent with an equitable allocation of fees and is not unfairly discriminatory because it remains [sic] consistent with the Exchange's approach of providing a credit for orders accessing liquidity, which benefits all market participants, and is applicable to all such

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(4), (5).

orders. Additionally, it is reasonable because it reflects the availability of what is in effect a price reduction for all members that access liquidity in this manner.

The applicability of the credit of \$0.0013 per share executed for an order that accesses liquidity (excluding liquidity pegged to the midpoint) entered by a member with a daily average volume of liquidity provided in all securities during the month of 1 million or more shares is consistent with an equitable allocation of fees and is not unfairly discriminatory because it does not change the credit, but simply reduces the requirement of 6 million or more shares through one or more BX Equities System MPIDs, and that adds/or removes liquidity of 30,000 or more contracts per days [sic] during the month through BX Options (excluding and order that executes against a midpoint pegged order) to simply 1 million or more shares. The amount of the credit is not being changed, and is reasonable because it has the potential to reduce aggregate fees while simplifying the process for obtaining that particular rate.

The applicability of the credit of \$0.0011 per share executed for an order that accesses liquidity (excluding liquidity pegged to the midpoint) entered by a member that provides an average daily volume of at least 25,000, but less than 1 million, shares of liquidity during the month is consistent with an equitable allocation of fees and is not unfairly discriminatory because it does not change the credit, but simply removes the requirement that the order is entered by a member through a BX Equities System MPID. The amount of the credit is in essence not being changed. As discussed above, the change makes the credit more inclusionary since some firms may have multiple MPIDs.

The applicability of the charge of \$0.0014 per share executed for a displayed order entered by a Qualified Market Maker (Tier 1) is consistent with an equitable allocation of fees and is not unfairly discriminatory because it does not change the charge, but merely substitutes

“Qualified Market Maker (Tier 1)” for “Qualified Liquidity Provider through a Qualified MPID”. Moreover, this change, much like the others above, make [sic] a more favorable rate available to a member as a whole, and not for just one of its constituent MPIDs. Indeed, this change makes the provision of such a rate less discriminatory.

The new charge of \$0.0017 per share executed for a displayed order entered by a Qualified Market Maker (Tier 2) and the introduction of a method for obtaining this status is consistent with an equitable allocation of fees and is not unfairly discriminatory because it expands the eligibility of favorable rates to add liquidity under the QMM program. It is reasonable because the program has proven valuable in improving the quotations of BX, which, in turn, benefits market participants who seek to access liquidity at favorable rates.

The increase to the charge of \$0.0016 per share executed for a displayed order entered by a member (i) with a daily average volume of liquidity provided in all securities during the month of 2 million or more shares through one or more BX Equities System MPIDs, and (ii) that adds BX Options Market Maker volume under Chapter XV of BX Options rules of 20,000 or more contracts per day during the month, to a charge of \$0.00165 per share executed for a displayed order entered and replaces the above requirement with a requirement that it be by a member that adds liquidity equal to or exceeding 0.25% of total consolidated volume during the month is consistent with an equitable allocation of fees and is not unfairly discriminatory because it only modestly increases the charge by \$0.00005 per share executed and the updated requirement applicable to the member entering the displayed order is reasonable because it affects similarly situated members in the same way.

The applicability of the charge of \$0.0018 per share executed for a displayed order entered by a member that provides an average daily volume of 2.5 million or more shares of

liquidity during the month is consistent with an equitable allocation of fees and is not unfairly discriminatory because it does not change the credit, but simply reduces the number of shares required to reach this level from 4 million to 2.5 million or more shares of liquidity during the month. It is reasonable in that it affects similarly situated members in the same way.

The reduction of the charge from \$0.0010 to \$0.0005 per share executed for a midpoint pegged order entered by a member that provides an average daily volume of 1 million shares, but less than 2 million shares of non-displayed liquidity (previously, liquidity using midpoint pegged orders) is consistent with an equitable allocation of fees and is not unfairly discriminatory because the Exchange believes that it is appropriate to charge a lower fee to midpoint pegged orders, which provide price improvement. It is also reasonable because it affects similarly situated members in the same way.

The new charge for non-displayed orders (other than those pegged to the midpoint) entered by a member that provides an average daily volume of 5 million or more shares of non-displayed liquidity of \$0.0019 per share executed is consistent with an equitable allocation of fees and is not unfairly discriminatory because use of non-displayed orders is wholly voluntary. It is also reasonable because it encourages additional activity from large non-display participants.

The proposed pricing changes are, in part, reflective of BX's ongoing efforts to use responsive pricing to attract orders that BX believes will improve market quality.

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 is designed to ensure that the charges and credits for participation on BX reflect changes in the cost of such participation to BX, and its desire to attract order flow that improves the market for all participants.

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

The Exchange 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.⁵ BX notes that it operates in a highly competitive market in which market participants can readily favor over 40 different competing exchanges and alternative trading systems 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 increases with respect to certain orders coupled with the easier to qualify for pricing tier for members active in the Exchange's cash equities market enhances the Exchange's competitiveness by reducing fees for some and raising fees modestly for others. Moreover, because there are numerous competitive alternatives to the use of the Exchange, it is likely that BX will lose market share as a result of the changes if they are unattractive to market participants. Accordingly, BX does not believe that the proposed changes will impair the ability

⁵ 15 U.S.C. 78f(b)(8).

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 change has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and paragraph (f) of Rule 19b-4⁷ thereunder. 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2014-018 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-BX-2014-018. 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 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-2014-018 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.⁸

Kevin M. O'Neill,
Deputy Secretary.

⁸ 17 CFR 200.30-3(a)(12).

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