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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75409; File No. SR-BX-2015-038]

July 9, 2015

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 7018

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 June 30, 2015, NASDAQ OMX BX, Inc. (“BX” or “Exchange”) 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 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 BX Rule 7018(a) and to eliminate the Excess Order Fee in BX Rule 7018(d).

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on July 1, 2015.

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.

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

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

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

The Exchange is proposing to amend BX Rule 7018(a) and to eliminate the Excess Order Fee in BX Rule 7018(d).

Specifically, BX Rule 7018(a) defines the criteria for a firm to become a Qualified Market Maker ("QMM") as by being a member that provides through one or more of its NASDAQ OMX BX Equities System ("System") market participant identifiers ("MPIDs") more than 0.15% of consolidated volume ("Consolidated Volume") during the month. For a member qualifying under this method, the member must have at least one qualified MPID ("Qualified MPID"), that is, an MPID through which, for at least 200 securities, the QMM quotes at the national best bid and offer ("NBBO") an average of at least 50% of the time during regular market hours (9:30 a.m. through 4:00 p.m. ET) during the month. Currently, the member must also provide an average daily volume of 1.5M shares or more using orders with midpoint pegging during the month.

The Exchange proposes to modify this last part of the criteria such that the member must also provide an average daily volume of 1.5M shares or more of non-displayed liquidity (rather

than using orders with midpoint liquidity) during the month. BX believes that by expanding the type of liquidity that allows firms to qualify as a QMM will improve the market by incentivizing firms to provide more liquidity and meet the other QMM criteria. Non-displayed orders, which include midpoint liquidity, can provide price improvement and improve the experience of members trading on the Exchange and thus provide a benefit to all other Exchange members.

The Exchange also proposes to delete BX Rule 7018(d), which is the Excess Order Fee. The Excess Order Fee was designed to provide a disincentive to member organizations to engage in order entry practices that are inefficient and thereby burdensome on the systems of BX by assessing a fee on member organizations if they reach a threshold of order activity based on an Order Entry Ratio calculation.<sup>3</sup> Although not a pervasive characteristic of the market, the fee was adopted to encourage member organizations with such practices to enhance the efficiency of their systems and modify their order entry practices, thus improving the market for all participants.<sup>4</sup> An unwanted consequence of the rule has been to capture beneficial, liquidity providing order flow and thereby dissuade member organizations from participating in BX in an effort to avoid triggering the fee. Moreover, the Exchange has observed that the fee is not assessed on a significant number of member organizations nor is it triggered every month, leading the Exchange to conclude that the small number of member organizations that may have been affected by the fee because of their inefficient order practices have taken the steps necessary to avoid such practices. The Exchange believes that, in light of the lack of consistent order activity that triggers the fee and the negative effect it has had on beneficial order flow, the Excess Order Fee should be eliminated. The Exchange notes that, should the inefficient order

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<sup>3</sup> See BX Rule 7018(d)(2) for a definition of “Order Entry Ratio.”

<sup>4</sup> See Securities Exchange Act Release No. 67272 (June 27, 2012), 77 FR 39530 (July 3, 2012) (SR-BX-2012-042) (adopting the Excess Order Fee).

entry practices that gave rise to the fee once again arise, it may adopt the fee once again or take other steps to provide a disincentive for such practices.

## 2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>6</sup> in 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 the Exchange operates or controls, and 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; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange proposes to amend the criteria for a firm to become a QMM. The criteria currently states that a member may become a QMM by providing through one or more of its System MPIDs more than 0.15% of Consolidated Volume during the month. For a member qualifying under this method, the member must have at least one Qualified MPID, that is, an MPID through which, for at least 200 securities, the QMM quotes at the NBBO an average of at least 50% of the time during regular market hours (9:30 a.m. through 4:00 p.m.) during the

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<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

month. Currently, the member must also provide an average daily volume of 1.5M shares or more using orders with midpoint pegging during the month.

[sic] Exchange believes it is reasonable to modify this last part of the criteria such that the member must provide an average daily volume of 1.5M shares or more of non-displayed liquidity (rather than using orders with midpoint liquidity) during the month because non-displayed orders can provide price improvement and improve the experience of members trading on the Exchange and thus provide a benefit to all other Exchange members. Also, BX believes the proposed change is reasonable because it expands the opportunity for firms to qualify as a QMM.

The Exchange also believes that the proposed change is equitably allocated and not unfairly discriminatory because modifying the criteria, as stated above, applies uniformly to all members that seek to become a QMM. Additionally, the Exchange believes that the proposed change further perfects the mechanism of a free and open market by refining and making more effective the means by which a member firm may become a QMM. Furthermore firms that currently qualify as a QMM will not need to change behavior under the new qualification method as midpoint liquidity is considered non-displayed liquidity.

The Exchange believes that elimination of the Excess Order Fee is reasonable because the fee is not triggered by a significant number of member organizations nor is it triggered every month; however, the Exchange believes that certain member organizations are disincentivized from providing order activity that is beneficial to market participants. Moreover, the Exchange may adopt the fee once again should the issues that gave rise to it reemerge. The Exchange believes that the proposed change is consistent with an equitable allocation of fees and is not unfairly discriminatory because it eliminates a fee, which applies to all member organizations

and which has served as a disincentive to certain market participants in providing beneficial order activity while also not being assessed significantly on member organizations. The Exchange believes that elimination of the Excess Order Fee will not unfairly burden competition because the fee is not relevant to competition. The Exchange notes that the fee was adopted to deter member organizations from using inefficient order practices that place excessive burdens on the systems of BX and, as a consequence, was not designed to impact competition among member organizations.

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

The Exchange does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.<sup>7</sup> BX notes that it operates in a highly competitive market in which market participants can readily favor dozens of 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. 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 modification to part of the criteria to become a QMM does not impose a burden on competition because it is optional and is the subject of competition from other exchanges. The Exchange does not believe that the proposed change will impair the ability of members or competing order execution venues to maintain their competitive standing in the

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<sup>7</sup> 15 U.S.C. 78f(b)(8).

financial markets. 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.

As noted above, the Exchange believes that elimination of the Excess Order Fee will not unfairly burden competition because the fee is not relevant to competition as it was adopted to deter member organizations from using inefficient order practices that place excessive burdens on the systems of BX. Moreover, other exchanges' fee schedules do not restrict order activity by using a fee like the Excess Order Fee. As noted, the practices that prompted the Exchange to adopt the rule have subsided and, consequently, the change does not impact the ability of any market participant or trading venue to compete.

Accordingly, BX does not believe that the proposed rule change 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

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 Act<sup>8</sup> and paragraph (f) of Rule 19b-4<sup>9</sup> 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.

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

<sup>9</sup> 17 CFR 240.19b-4(f).

#### 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-2015-038 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.

All submissions should refer to File Number SR-BX-2015-038. 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 such filing also will be available for inspection and copying at the principal offices 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-2015-038, 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.<sup>10</sup>

Brent J. Fields  
Secretary

[FR Doc. 2015-17297 Filed: 7/14/2015 08:45 am; Publication Date: 7/15/2015]

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<sup>10</sup> 17 CFR 200.30-3(a)(12).