

provided that appropriate communication standards are defined in 2010. What standard data communications interfaces(s) should be supported by appliances and the smart meter or data gateway so that appliance manufacturers can cost-effectively produce smart appliances that can communicate with the Smart Grid anywhere in the nation? How can communication between smart appliances and the Smart Grid be made “plug and play” for consumers who do not have the skills or means to configure data networks? If gateways or adapters are needed, who should pay for them: The utility or the consumer?

Please note that several important Smart Grid topics—including Federal and State policy hurdles, cyber security, and business case challenges—are beyond the scope of this request, except insofar as they bear on the primary topics identified above. One or more future requests for comment may be organized to obtain input on these additional issues. Discussions of all of the above topics are also ongoing in several forums, including the Smart Grid Interoperability Panel established by NIST and the GridWise Architecture Council established by DOE. Relevant input received through this request will be shared with NIST, DOE, and other interested Federal agencies.

**Ted Wackler,**

*Deputy Chief of Staff.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61495; File No. SR-BX-2010-006]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 2848, 3330, and 9810 To Reflect Changes to Corresponding FINRA Rules

February 4, 2010.

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 January 14, 2010, NASDAQ OMX BX, Inc. (the “Exchange” or “BX”) 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

substantially prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> 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 the Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to amend BX Rules 2848 (Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants); 3330 (Payment Designed to Influence Market Prices, Other than Paid Advertising); and 9810 (Initiation of Proceeding) to reflect recent changes to corresponding rules of the Financial Industry Regulatory Authority (“FINRA”). The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com>, the Exchange’s principal office, 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 based much of its rules on those of The NASDAQ Stock Market LLC (“NASDAQ”). Similarly, many of NASDAQ’s rules are based on rules of FINRA (formerly the National Association of Securities Dealers (“NASD”). As a consequence, many of BX’s rules closely mirror those of FINRA. During 2008, FINRA embarked on an extended process of moving rules formerly designated as “NASD Rules” into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has

substantively amended them. Accordingly, BX also proposes to initiate a process of modifying its rulebook to ensure that BX rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it will not be possible for the rule numbers of BX rules to mirror corresponding FINRA rules, because existing or planned BX rules make use of those numbers. However, wherever possible, BX plans to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses BX Rules 2848 (Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants); 3330 (Payment Designed to Influence Market Prices, Other than Paid Advertising); and 9810 (Initiation of Proceeding) to update cross-references to corresponding rules of FINRA.

In SR-FINRA-2009-078,<sup>4</sup> FINRA made changes that reflected, among other things, incorporation into the consolidated FINRA rulebook of NASD Rule 3330 as FINRA Rule 5230 (Payments Involving Publications that Influence the Market Price of a Security);<sup>5</sup> NASD Rule 2330 as FINRA Rule 2150 (Improper Use of Customers’ Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts);<sup>6</sup> and NASD Rule 2220 as FINRA Rule 2220 (Options Communications).<sup>7</sup>

FINRA Rule 2220, like former NASD Rule 2220, sets forth a member’s obligations with respect to its options communications with the public and: (a) uses, to the extent appropriate, the same terminology and definitions as in FINRA’s general rules on communications with the public; (b) makes the requirements for principal review of correspondence concerning options the same as for correspondence generally; and (c) updates the standards on the content of communications that precede the delivery of the options disclosure document (ODD).

BX is, by this filing, updating references in its Rule 2848 from NASD Rule 2220 to FINRA Rule 2220.

<sup>4</sup> See Securities Exchange Act Release No. 61087 (December 1, 2009), 74 FR 65190 (December 9, 2009) (SR-FINRA-2009-078) (notice of filing and immediate effectiveness).

<sup>5</sup> See Securities Exchange Act Release No. 60648 (September 10, 2009), 74 FR 47837 (September 17, 2009) (SR-FINRA-2009-048) (order approving adoption of FINRA Rule 5230).

<sup>6</sup> See Securities Exchange Act Release No. 60701 (September 21, 2009), 74 FR 49425 (September 28, 2009) (SR-FINRA-2009-014) (order approving adoption of FINRA Rule 2150).

<sup>7</sup> See Securities Exchange Act Release No. 60534 (August 19, 2009), 74 FR 44410 (August 28, 2009) (SR-FINRA-2009-036) (order approving adoption of FINRA Rules 2124, 2220, 4370, and 5250).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

NASD Rule 3330 prohibits a member from giving, or offering to give, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service, or similar publication, of any matter that has, or is intended to have, an effect upon the market price of any security; and provides an exception for any matter that is clearly distinguishable as paid advertising. As part of transferring NASD Rule 3330 into the consolidated FINRA rulebook as FINRA Rule 5230, FINRA proposed two changes to the rule to modernize its terms and clarify its scope by: (a) Updating the list of media to which the rule refers to include electronic and other types of media, including magazines, Web sites, and television programs; and (b) expanding the exceptions in the rule beyond paid advertising to also include compensation paid in connection with research reports and communications published in reliance on Section 17(b) of the Securities Act of 1933 (the "1933 Act").

BX is, by this filing, re-numbering its Rule 3330 to Rule 5230 and amending the text to conform to the changes reflected in FINRA Rule 5230.

NASD Rule 2330 prohibits members and associated persons from: (a) Making improper use of a customer's securities or funds; (b) guaranteeing a customer against loss in connection with any securities transaction or in any securities account of the customer; and (c) sharing in the profits or losses in the customer's account except under certain limited conditions specified in the Rule. As part of transferring NASD Rule 2330 into the consolidated FINRA rulebook as FINRA Rule 2150, FINRA proposed minor changes to Rule 2150(c) and added Supplementary Information to the rule that codified existing staff guidance concerning the inapplicability of the rule to certain guarantees, permissible reimbursement by a member of certain losses, correction of *bona fide* errors, and preservation of written authorizations.<sup>8</sup>

<sup>8</sup> Supplementary Material to FINRA Rule 2150 generally provides that (i) a "guarantee" extended to all holders of a security by an issuer as part of that security generally would not be subject to the prohibition against guarantees; (ii) the rule does not preclude a member from determining on an after-the-fact basis to reimburse a customer for transaction losses, provided however that the member shall comply with all reporting requirements that may be applicable to such payment; (iii) the rule does not preclude a member from correcting a *bona fide* error; and (iv) a member must preserve the required written authorization(s) for a period of at least six years after the date the account is closed.

BX has proposed, in a recent immediately effective filing,<sup>9</sup> to re-number its Rule 2330 and IM-2330 to Rule 2150 and IM-2150, respectively; clarify cross-references in its rule and IM; and reflect the changes to FINRA Rule 2150. BX is, by this filing, clarifying the cross-reference in its Rule 9810 to BX Equity Rule 2150.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>10</sup> in general, and with Sections 6(b)(5) of the Act,<sup>11</sup> 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 changes will conform BX Rules 2848, 3330 and 9810 to recent changes made to several corresponding FINRA rules, to promote application of consistent regulatory standards.

### 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.

### 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

*Because the foregoing proposed rule change does not:* (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

<sup>9</sup> See Securities Exchange Act Release No. 61129 (December 8, 2009), 74 FR 66188 (December 14, 2009) (SR-BX-2009-080) (notice of filing and immediate effectiveness).

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2010-006 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-2010-006. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

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-2010-006, and should be submitted on or before March 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61510; File No. SR-FINRA-2010-003]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Trade Reporting of OTC Equity Securities and Restricted Equity Securities

February 5, 2010.

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 January 15, 2010, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) 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. On February 5, 2010, FINRA filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

FINRA is proposing to amend the FINRA OTC Reporting Facility (“ORF”) Rules and the PORTAL Rules (FINRA Rule 6630 Series) regarding the reporting requirements for restricted equity securities; update the definition of “OTC Equity Security;” and clarify member reporting obligations with

respect to certain trades reported on or through an exchange.

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

The proposed rule change includes several amendments to the reporting provisions regarding the ORF. In general, the proposed rule change amends the definition of “OTC Equity Security” in the FINRA trade reporting rules to address the cessation of the PORTAL Market and clarifies the scope of the ORF rules. The proposed rule change also makes conforming changes to other FINRA rules, including the Order Audit Trail System (“OATS”) rules.

###### (a) Amendments to the ORF Rules

In 1990, the SEC adopted Rule 144A (“SEC Rule 144A”) under the Securities Act of 1933 <sup>4</sup> (“Securities Act”) to establish a safe harbor for the private resale of “restricted securities” to “qualified institutional buyers” (“QIBs”).<sup>5</sup> At the same time, FINRA (then NASD) created the PORTAL Market to serve as a system for quoting, trading, and reporting trades in certain designated restricted securities that were eligible for resale under SEC Rule 144A (“PORTAL securities”).<sup>6</sup> In September 2008, the NASDAQ Stock

Market (“NASDAQ”) ceased the operation of the PORTAL Market.<sup>7</sup> NASDAQ explained in the rule filing that it is taking a minority stake in a consortium that will control and operate a new electronic platform for handling transactions in SEC Rule 144A-eligible securities.<sup>8</sup> On October 26, 2009, NASDAQ filed a proposed rule change with the Commission for immediate effectiveness terminating NASDAQ’s PORTAL security designation process and removing rules related to the PORTAL Market from its rulebook.<sup>9</sup> As a result, NASDAQ no longer accepts new applications for debt or equity securities seeking PORTAL designation.<sup>10</sup>

FINRA’s transaction reporting rules for restricted equity securities are currently tied to whether the security is designated for inclusion in the PORTAL Market. Specifically, FINRA’s general transaction reporting rules for over-the-counter equity securities specifically exclude restricted securities and PORTAL securities from the reporting requirements.<sup>11</sup> FINRA’s PORTAL rules (FINRA Rule 6630 Series) require that transactions in PORTAL equity securities be reported to the ORF no later than 6:30 p.m. Eastern Time.<sup>12</sup>

<sup>7</sup> See Securities Exchange Act Release No. 58638 (September 24, 2008), 73 FR 57188 (October 1, 2008). As part of the separation of NASDAQ from FINRA, certain functionality relating to PORTAL, including the qualification and designation of PORTAL securities, became part of NASDAQ’s rules and were eliminated from the FINRA rules. See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

<sup>8</sup> In addition to NASDAQ ceasing operation of the PORTAL Market, the Commission has also approved the deletion of the Depository Trust Company (“DTC”) requirement that a SEC Rule 144A security, other than Investment Grade Securities, be included in an “SRO Rule 144A System” in order to be eligible for DTC’s deposit, book-entry delivery, and other depository services. See Securities Exchange Act Release No. 59384 (February 11, 2009), 74 FR 7941 (February 20, 2009). The PORTAL Market was the only “SRO Rule 144A System.” *Id.*

<sup>9</sup> Securities Exchange Act Release No. 60991 (November 12, 2009), 74 FR 60006 (November 19, 2009).

<sup>10</sup> See *id.* NASDAQ noted in the filing that nothing in the proposal was “intended to impact securities previously designated as PORTAL securities or alter any existing regulatory obligation applicable to such securities, including, but not limited to, any trade reporting obligation imposed by any self-regulatory organization.” *Id.*

<sup>11</sup> See FINRA Rule 6400 Series.

<sup>12</sup> FINRA Rule 6633(a). The proposed rule change is limited in scope to equity securities and would not affect the Trade Reporting and Compliance Engine Service (“TRACE”) or the reporting requirements with respect to transactions in debt securities. With respect to PORTAL securities that are debt securities, FINRA Rule 6633(b) currently requires members to report secondary market transactions to TRACE in accordance with the FINRA Rule 6700 Series. Thus, under current FINRA rules, reporting obligations for debt securities are set forth in the TRACE rules rather

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Amendment No. 1 clarifies the proposed revision to FINRA Rule 4560. See *infra* note 20.

<sup>4</sup> 17 CFR 230.144A.

<sup>5</sup> See Securities Act Release No. 6862 (April 23, 1990), 55 FR 17933 (April 30, 1990). For the purpose of SEC Rule 144A, a QIB is generally defined as any institution acting for its own account, or for the accounts of other QIBs, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the institution.

<sup>6</sup> See Securities Exchange Act Release No. 27956 (April 27, 1990), 55 FR 18781 (May 4, 1990).