

has on deposit cash or securities of another member to furnish, upon the written request of the other member, a statement of its financial condition as disclosed in its most recently prepared balance sheet. In SR-FINRA-2009-081, FINRA amended NASD Rule 2910 and consolidated it within FINRA Rule 2261 to require that members provide to other members the balance sheet that was prepared in accordance with the member's usual practice or as required by state or federal securities laws or any corresponding rule or regulation. Also, FINRA amended the provision to require that members be permitted to provide their balance sheet to other members in paper or electronic form; however, this does not require obtaining consent of the other members for delivery.

NASDAQ believes that NASDAQ Rule 2270 and 2910 should be consolidated and amended to reflect the provisions in the new FINRA 2261. For clarification, this results in deleting NASDAQ Rules 2270 and 2910. This will allow customers and other members to continue to have access to a copy of the member's most recent balance sheet at any time upon request while simplifying the provisions. NASDAQ is adopting the new FINRA rule in full by incorporating by reference FINRA Rule 2261 into the proposed NASDAQ Rule 2261.

## 2. Statutory Basis

The Exchange 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)(5) of the Act,<sup>6</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 NASDAQ Rules 2270 and 2910 to recent changes made to corresponding FINRA Rule 2261 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 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **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-NASDAQ-2010-156 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-NASDAQ-2010-156. 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. 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-NASDAQ-2010-156 and should be submitted on or before December 30, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

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

[FR Doc. 2010-30942 Filed 12-8-10; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-63428; File No. SR-EDGX-2010-18]**

### **Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.9 To Offer Anti-Internalization Qualifier ("AIQ") Functionality to Exchange Users**

December 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 30, 2010, EDGX Exchange, Inc. (the "Exchange" or the "EDGX") filed with the Securities and Exchange

<sup>9</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>5</sup> 15 U.S.C. 78f.

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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

Commission (the "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 constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act.<sup>3</sup> 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 offer Anti-Internalization Qualifier ("AIQ") functionality to Exchange Users pursuant to proposed Rule 11.9(f). The text of the proposed rule change is available on the Exchange's Web site at <http://www.directedge.com>, at the Exchange's principal office, at the Public Reference Room of the Commission, and the Commission's Web site.<sup>4</sup>

### **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 self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The Exchange proposes to offer Anti-Internalization Qualifier ("AIQ") functionality to Exchange Users pursuant to proposed Rule 11.9(f).

##### **Background**

The proposed AIQ modifiers are designed to prevent two orders with the same Unique Identifier (as defined below) from executing against each other. The Exchange proposes to offer five AIQ modifiers that will be implemented and can be set at the market participant identifier ("MPID"), the Exchange Member identifier or the Anti-Internalization Group identifier

level<sup>5</sup> (any such identifier, a "Unique Identifier").<sup>6</sup> With one exception, described below, the AIQ modifier on the incoming order controls the interaction between two orders marked with AIQ modifiers from the same Unique Identifier. The five AIQ modifiers are discussed more thoroughly below.

##### **AIQ Cancel Newest ("CN")**

An incoming order marked with the CN modifier will not execute against opposite side resting interest marked with any AIQ modifier originating from the same Unique Identifier. The incoming order marked with the CN modifier will be cancelled back to the originating User. The resting order marked with an AIQ modifier, which otherwise would have interacted with the incoming order from the same Unique Identifier, will remain on the EDGX book ("Book").

##### **AIQ Cancel Oldest ("CO")**

An incoming order marked with the CO modifier will not execute against opposite side resting interest marked with any AIQ modifier originating from the same Unique Identifier. The resting order marked with the AIQ modifier, which otherwise would have interacted with the incoming order by the same Unique Identifier, will be cancelled back to the originating User. The incoming order marked with the CO modifier will remain on the Book.

##### **AIQ Decrement and Cancel ("DC")**

An incoming order marked with the DC modifier will not execute against opposite side resting interest marked with any AIQ modifier originating from the same Unique Identifier. If both orders are equivalent in size, both orders will be cancelled back to the originating User. If the orders are not equivalent in size, the smaller order will be cancelled back to the originating User and the larger order will be decremented by the size of the smaller order, with the balance remaining on the Book.

##### **AIQ Cancel Both ("CB")**

An incoming order marked with the CB modifier will not execute against opposite side resting interest marked with any AIQ modifier originating from the same Unique Identifier. The entire size of both orders will be cancelled back to the originating User.

<sup>5</sup> The Anti-Internalization Group identifier is a unique two character ID that an Exchange Member selects.

<sup>6</sup> Any Exchange Member that has an MPID issued by FINRA is identified in the Exchange's internal systems by that MPID.

##### **AIQ Cancel Smallest ("CS")**

An incoming order marked with the CS modifier will not execute against opposite side resting interest marked with any AIQ modifier originating from the same Unique Identifier. If both orders are equivalent in size, both orders will be cancelled back to the originating User. If the orders are not equivalent in size, the smaller of the two orders will be cancelled back to the originating User and the larger order will remain on the Book.

##### **Additional Discussion**

AIQ modifiers are intended to prevent interaction between the same Unique Identifier. AIQ modifiers must be present on both the buy and the sell order in order to prevent a trade from occurring and to effect a cancel instruction. AIQ modifiers are available for orders entered in either an agency or principal capacity. An incoming AIQ order cannot cancel through resting orders that have price and/or time priority. When an order with an AIQ modifier is entered it will first interact with all available interest in accordance with the execution process described in Exchange Rules 11.8 and 11.9. If there is a remaining balance on the order after trading with all orders with higher priority, it may then interact with an opposite side AIQ order in accordance with the rules established above. Incoming AIQ orders that are priced through the price of a resting AIQ order may cancel the resting order as long as no other non-AIQ orders have priority.

The Exchange believes that adding this functionality will allow Exchange Users to better manage order flow and prevent undesirable executions with themselves or the potential for (or the appearance of) "wash sales" that may occur as a result of the velocity of trading in today's high speed marketplace. Many Exchange Users have multiple connections into the Exchange due to capacity and speed related demands. Orders routed by the same User via different connections may, in certain circumstances, trade against each other. The new AIQ modifiers provide Users the opportunity to prevent these potentially undesirable trades occurring under the same Unique Identifier on both the buy and sell side of the execution. The Exchange also believes that this functionality will allow firms to better internalize agency order flow which in turn may decrease the costs to its customers. The Exchange notes that the AIQ modifiers do not alleviate, or otherwise exempt, broker-dealers from their best execution obligations. As such, broker-dealers

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

<sup>4</sup> <http://www.sec.gov>.

using the AIQ modifiers will be obligated to internally cross agency orders at the same price, or a better price than they would have received had the orders been executed on the Exchange. Additionally, the AIQ modifiers will assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act ("ERISA") that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts. Finally, the Exchange notes that offering the AIQ modifiers will streamline certain regulatory functions by reducing false positive results that may occur on Exchange generated wash trading surveillance reports when orders are executed under the same Unique Identifier. For these reasons, the Exchange believes the AIQ modifiers offer users enhanced order processing functionality that may prevent potentially undesirable executions without negatively impacting broker-dealer best execution obligations.

## 2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Securities Exchange Act of 1934 (the "Act"), and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)<sup>7</sup> of the Act. Specifically, the proposed change is consistent with Section 6(b)(5)<sup>8</sup> of the Act, because it 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 facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. Specifically, the AIQ functionality allows firms to better manage order flow and prevent undesirable executions against themselves, and the proposed change described herein enhances the choices available to such firms in how they do so.

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

The proposed rule change does not impose any burden on competition that is 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*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not 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 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

The Exchange has requested that the Commission waive the 30-day pre-operative delay so that the Exchange may immediately offer Exchange users the ability to better manage order flow and prevent undesirable executions with themselves or the potential for or the appearance of wash sales that may occur as a result of the velocity of trading in today's high speed marketplace. The Commission notes that the proposal is based on similar rules of other exchanges<sup>11</sup> and believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.<sup>12</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-EDGX-2010-18 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-EDGX-2010-18. 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-EDGX-2010-18 and should be submitted on or before December 30, 2010.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to 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 Exchange has satisfied this requirement.

<sup>11</sup> See Securities Exchange Act Release No. 60182 (June 26, 2009), 74 FR 32014 (July 6, 2009) (SR-NASDAQ-2009-057); Securities Exchange Act Release No. 60191 (June 30, 2009) (SR-NYSEArca-2009-058); Securities Exchange Act Release No. 60266 (July 9, 2009), 74 FR 34380 (July 15, 2009) (SR-BATS-2009-022); Securities Exchange Act Release No. 62102 (May 13, 2010), 75 FR 28670 (May 21, 2010) (SR-BATS-2010-011).

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

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

[FR Doc. 2010-30944 Filed 12-8-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63432; File No. SR-BX-2010-082]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for the NASDAQ OMX BX Equities System

December 3, 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 November 24, 2010, NASDAQ OMX BX, Inc. ("BX") 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 BX. 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

BX proposes to modify pricing for BX members using the NASDAQ OMX BX Equities System by clarifying that partial trading days will not be counted in the calculation of average daily trading volume for purposes of determining a member's eligibility for recently adopted pricing tiers in BX's fee schedule. BX will implement the proposed change immediately [sic]. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com>, at BX'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, BX 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. BX 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

BX recently modified its fees for trades that execute at prices at or above \$1.<sup>3</sup> Effective November 1, 2010, BX introduced a tiered pricing structure for the fee that it charges to orders that add liquidity, under which members adding a daily average of more than 50 million shares of liquidity during a month are charged \$0.00025 per share executed, while members adding a daily average of 50 million or fewer shares during the month are charged \$0.0004 per share executed.

Through this proposed rule change, BX is adding language to BX Rule 7018 to clarify that any day that the market is not open for the entire trading day will be excluded from the calculation of a member's average daily volume. The change recognizes that many members may have extremely light trading volumes on days such as the day after Thanksgiving, when the markets are not open for an entire trading day. Accordingly, excluding this day from average daily volume calculations provides a more accurate assessment of the member's volume during the month. There have been no partial trading days during the month of November prior to the date of submission of this filing, so the filing is not retroactive in effect.

##### 2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Section 6(b)(4) of the Act,<sup>5</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 BX operates or controls. The change will clarify the application of a recent pricing change by excluding partial trading days from average daily volume calculations, making it easier for members to achieve more favorable pricing tiers by excluding trading days when their volume is likely to be lower.

<sup>3</sup> Securities Exchange Act Release No. 63285 (November 9, 2010), 75 FR 70310 (November 17, 2010) (SR-BX-2010-074).

<sup>4</sup> 15 U.S.C. 78f.

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

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

BX 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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>6</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder, because it establishes a due, fee, or other charge imposed by BX on its members.

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](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2010-082 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-2010-082. 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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</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.