

the governance of the Exchange. By simplifying the governance structure in this way, the Proposed Rule Change promotes the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

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

The Exchange does not believe that the Proposed Rule Change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange will continue to conduct regulated activities (including operating and regulating its market and Members) of the type it currently conducts, but will be able to do so in a more efficient manner to the benefit of its Members. Furthermore, the proposed Conversion is not a competitive proposal, but rather is intended to add efficiency with respect to the governance process for the Exchange and its affiliates.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited or received written comments on the Proposed Rule Change.

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

Because the foregoing proposed rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The

Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to effect the Conversion upon filing with the Secretary of State of the State of Delaware and, according to the Exchange, simplify the administration associated with the Exchange's overall corporate structure immediately.<sup>20</sup> Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EDGA-2014-33 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-EDGA-2014-33. This file number should be included on the subject line if email 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 10:00 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-EDGA-2014-33, and should be submitted on or before January 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Brent J. Fields,**  
*Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-73894; File No. SR-BX-2014-060]

### **Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Ports**

December 19, 2014.

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 December 15, 2014, 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.

<sup>21</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>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 met this requirement.

<sup>20</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

The Exchange proposes to amend chapter XV, section 3 entitled "BX Options Market—Access Services." Specifically, the Exchange is proposing to adopt additional port fees.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on January 2, 2015.

The text of the proposed rule change is available on the Exchange's Web site 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

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 purpose of this filing is to adopt Port Fees for the following ports: Order Entry Ports,<sup>3</sup> CTI Ports,<sup>4</sup> BX Depth

<sup>3</sup> The Order Entry Port Fee is a connectivity fee in connection with routing orders to the Exchange via an external order entry port. BX Participants access the Exchange's network through order entry ports. A BX Participant may have more than one order entry port.

<sup>4</sup> CTI offers real-time clearing trade updates. A real-time clearing trade update is a message that is sent to a member after an execution has occurred and contains trade details. The message containing the trade details is also simultaneously sent to The Options Clearing Corporation. The trade messages are routed to a member's connection containing certain information. The administrative and market event messages include, but are not limited to: system event messages to communicate operational-related events; options directory messages to relay basic option symbol and contract information for options traded on the Exchange; complex strategy messages to relay information for those strategies traded on the Exchange; trading action messages to inform market participants when a specific option or strategy is halted or released for trading on the Exchange; and an indicator which distinguishes electronic and non-electronically delivered orders.

Ports,<sup>5</sup> BX TOP Ports,<sup>6</sup> and Order Entry DROP Ports,<sup>7</sup> (collectively "BX Ports"). The Exchange proposes to assess a \$200 Port Fee for each of the BX Ports on a per port, per month, per mnemonic basis. The Exchange would also note that BX Depth and BX Top Port Fees will be assessed to non-BX Participants and BX Participants. Additionally, the Exchange will note that it will continue to assess no fee for SQF Ports<sup>8</sup> by placing the SQF Port Fee in new chapter XV, section 3(b) along with the new BX Port Fees.

Each BX Options Participant is assigned a Market Participant Identifier or "mnemonic"<sup>9</sup> and in some cases, certain BX Participants request multiple mnemonics for purposes of accounting for trading activity. These mnemonics identify users at a particular BX Participant. The Exchange bills its Port Fees based on the number of mnemonics configured for each port. By way of example, if a BX Participant, ABC, requested 2 ports from the Exchange and further requested that each port be configured to be accessed by 4 mnemonics or in some cases account numbers,<sup>10</sup> the BX Participant would be billed for 8 ports at the rate of \$550 [sic] per port for that month. All

<sup>5</sup> BX Depth is a data feed that provides quotation information for individual orders on the BX book, last sale information for trades executed on BX, and Order Imbalance Information as set forth in BX Rules chapter VI, section 8. BX Depth is the options equivalent of the BX TotalView/ITCH data feed that BX offers under BX Rule 7023 with respect to equities traded on BX. As with TotalView, members use BX Depth to "build" their view of the BX book by adding individual orders that appear on the feed, and subtracting individual orders that are executed. See chapter VI, section 1 at subsection (a)(3)(A).

<sup>6</sup> BX TOP Port is a data feed that provides the BX Best Bid and Offer ("BBO") and last sale information for trades executed on BX. The BBO and last sale information are identical to the information that BX sends to the Options Price Regulatory Authority ("OPRA") and which OPRA disseminates via the consolidated data feed for options. BX TOP Port is the options equivalent of the BX Basic data feed offered for equities under BX Rule 7047. See chapter VI, section 1 at subsection (a)(3)(B).

<sup>7</sup> The DROP interface provides real time information regarding orders sent to BX and executions that occurred on BX. The DROP interface is not a trading interface and does not accept order messages.

<sup>8</sup> SQF ports are ports that receive inbound quotes at any time within that month. The SQF Port allows a BX Participant to access information such as execution reports and other relevant data through a single feed. For example, this data would show which symbols are trading on BX and the current state of an options symbol (i.e., open for trading, trading, halted or closed). Auction notifications and execution reports are also available. BX Market Makers rely on data available through the SQF Port to provide them the necessary information to perform market making activities.

<sup>9</sup> A mnemonic is a unique identifier consisting of a four character alpha code.

<sup>10</sup> Account numbers are assigned by the Exchange and associated with particular BX Participants.

billing is captured at the Participant level. BX Participants may choose to have multiple mnemonics or in some case multiple account numbers for the convenience of conducting their business, however only one mnemonic and one account number is required to conduct business on BX.

Today, the NASDAQ Options Market LLC ("NOM") assesses port fees for similar ports, with the exception of SQF. The Exchange desires to commence assessing such fees on BX at this time, with the exception of SQF as it desires to continue to encourage BX Market Makers to participate in this market.

#### 2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of section 6 of the Act,<sup>11</sup> in general, and with section 6(b)(4) and 6(b)(5) of the Act,<sup>12</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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that adopting Port Fees for the BX Ports at \$200 per port, per month, per mnemonic is reasonable because it would allow the Exchange to recoup fees associated with offering the BX Ports. The BX Port Fees reflect a portion of the costs that the Exchange bears with respect to offering and maintaining the BX Ports. The Port Fees are reasonable because they enable the Exchange to offset, in part, its connectivity costs associated with making such ports available, including costs based on gateway software and hardware enhancements and resources dedicated to gateway development, quality assurance, and support. The Exchanges port fees are lower than the costs for ports at other options exchanges<sup>13</sup> as BX Options is a relatively new market and the Exchange seeks to remain competitive with more mature options markets.

The Exchange believes that Port Fees for the BX Ports at \$200 per port, per month, per mnemonic is equitable and not unfairly discriminatory because the

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>13</sup> Miami International Securities Exchange LLC ("MIAX") assesses port fees that range from \$1,000 to \$5,000 depending on connectivity levels. See MIAX's Fee Schedule. ISE Gemini, LLC ("ISE Gemini") assesses port fees that range from \$750–\$12,500 depending on connectivity levels. See ISE Gemini's Fee Schedule. Finally, C2 Options Exchange, Incorporated ("C2") assesses port fees that range from \$500–\$1,000 depending on connectivity levels. See C2's Fee Schedule.

Exchange will assess the same fees for all BX Ports to all BX Participants.

The Exchange believes that continuing to assess no fee for SQF Ports, while assessing fees for other BX Ports, is reasonable because the Exchange desires to incentivize more BX Market Makers to engage in market marking activities on the Exchange. The proposal would provide all BX Market Makers with the opportunity to maintain lower costs while also obtaining and utilizing the appropriate number of SQF to conduct their business.

The Exchange believes that continuing to assess no fee for SQF Ports, while assessing fees for other BX Ports, is equitable and not unfairly discriminatory because SQF Ports are utilized particularly by BX Market Makers in connection with their market making activities. Unlike other BX Participants, BX Market Makers add value to the market through continuous quoting<sup>14</sup> and a commitment of capital. The Exchange has traditionally assessed BX Market Makers lower transaction fees as compared to other BX Participants because BX Market Makers have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings.<sup>15</sup> Also, because of the volume of message traffic, BX Market Makers that utilize SQF Ports require more technology infrastructure and more ports than BX Participants that are not engaged in market making.

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

BX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed BX Port fees are fair and equitable, and therefore, will not unduly burden any particular group of market participants trading on the Exchange. The Exchange's proposal to adopt fees for the BX Ports would be applied in a uniform manner to all BX

Participants. The proposed fees are designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup a certain portion of connectivity costs, while continuing to offer competitive rates to BX Participants given the market is not a mature market.

With respect to the SQF Port Fee, the Exchange believes that continuing to assess no fee for SQF Ports, while assessing fees for other BX Ports, does not impose an undue burden on competition because SQF Ports are utilized particularly by BX Market Makers that add value to the market through continuous quoting<sup>16</sup> and a commitment of capital. The Exchange has traditionally assessed BX Market Makers lower transaction fees as compared to other BX Participants because BX Market Makers have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings.<sup>17</sup>

#### *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 rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act.<sup>18</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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2014-060 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-BX-2014-060. This file number should be included on the subject line if email 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 10:00 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-2014-060 and should be submitted on or before January 20, 2015.<sup>19</sup>

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

**Brent J. Fields,**  
*Secretary.*

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<sup>14</sup> Pursuant to chapter VII (Market Participants), section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. See chapter VII, section 5.

<sup>15</sup> See chapter VII, section 5.

<sup>16</sup> See note 14.

<sup>17</sup> See note 15.

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>19</sup> 17 CFR 200.30-3(a)(12).