

change from how the existing participation entitlement works today.⁶

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, 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 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The new priority overlay is the same as the current market-maker participation entitlement overlay, except that the participation entitlement will only be applied if there are no public customer orders resting at the best price or if a public customer was the first to rest interest at the best price. Otherwise, neither the current public customer priority overlay nor the market-maker participation entitlement priority overlay will be in effect. Thus, public customer orders will have priority over the orders of other market participants if they are the first orders entered at the best price; if they are not the first orders at the best price, then the order will be allocated among market participants using the underlying matching algorithm—price-time or pro-rata—both of which the Commission already has found as consistent with the Act.⁹ The Commission therefore believes that the modified participation entitlement priority overlay is consistent with the Act.

⁶ For example, assume the matching algorithm for an options class is established so that public customer orders have first priority, the modified participation entitlement has second priority, and any remaining balance is allocated using the pro-rata matching algorithm. If, at the time of execution, there is one or more public customer orders at the execution price but none is first in time sequence (for instance, because a market-maker quote was the first trading interest posted at the execution price), then the market-maker participation entitlement and public customer priority overlays would not be applied and the incoming order would be allocated solely on a pro-rata basis.

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See Securities Exchange Act Release No. 51822 (June 10, 2005), 70 FR 35321 (June 17, 2005) (Adopting CBOE Rule 6.45B).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-2009-052), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60668; File No. SR-BX-2009-043]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving Proposed Rule Change To Extend a Holiday for Certain Registration and Processing Fees for Associated Persons

September 14, 2009.

I. Introduction

On July 23, 2009, NASDAQ OMX BX, Inc. ("Exchange"), filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to extend a fee holiday for initial registration and processing and/or transfer and relicensing fees collected by the Exchange via Web CRD for the registration of associated persons of Exchange members. The proposed rule change was published for comment in the **Federal Register** on August 10, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange (as the Boston Stock Exchange), before its purchase by The NASDAQ OMX Group, Inc. in 2008,⁴ had ceased the trading of equity securities in 2007.⁵ In January 2009, when the Exchange's market center was launched, the Exchange adopted a new

set of Equity Rules, which include rules governing fees charged to members for registration of associated persons with the Exchange. Equity Rule 7003(b) sets forth the fees collected by the Exchange via the Web CRD system for initial registration and transfer or re-licensing: \$60 for each initial Form U4 filed for the registration of a representative or principal,⁶ and \$40 for each transfer or re-licensing of a representative or principal.⁷

The Exchange recognized that, in connection with the resumption of equities trading, additional firms might wish to become members of the Exchange, and if so, would need to register associated persons. Similarly, additional representatives or principals of pre-existing members might wish to trade equities on the Exchange and would thus need to register with the Exchange. Therefore, the Exchange waived these initial registration and transfer or re-licensing fees from January 1, 2009 to July 1, 2009.⁸ The Exchange proposed to extend this fee waiver period to cover the period from July 1, 2009 until October 1, 2009, to provide more time for associated persons that are new to equity trading through the Exchange to register, transfer, or re-license without incurring these costs. Registration events occurring after October 1, 2009 will be subject to the initial registration and/or transfer or re-licensing fees.⁹

III. Discussion and Commission Findings

The Commission has reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act¹¹ in that it provides for an equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities. The fee waiver applies to initial registration, transfer,

⁶ Rule 7003(b)(1).

⁷ Rule 7003(b)(2).

⁸ See Securities Exchange Act Release No. 59337 (February 2, 2009), 74 FR 6441 (February 9, 2009).

⁹ Rule 7003(b)(3) sets forth an annual fee of \$50 for each registered representative and principal for system processing. This annual fee was suspended on January 1, 2009 and will continue to be suspended until the Exchange submits a proposed rule change to reinstate it. See *id.* See also Notice.

¹⁰ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 60427 (August 4, 2009), 74 FR 39986 (August 10, 2009) ("Notice").

⁴ See Securities Exchange Act Release No. 58183 (July 17, 2008), 73 FR 42850 (July 23, 2008).

⁵ See Securities Exchange Act Release No. 57757 (May 1, 2008), 73 FR 26159 (May 8, 2008).

and re-licensing fees of both representatives and principals, and therefore applies equally to all categories of associated persons who would incur fees pursuant to Rule 7003(b)(1) and (2). In addition, the Commission notes that the Exchange has been waiving these fees since January 1, 2009, and believes waiving the fees for an additional three months, retroactive from July 1, 2009 until October 1, 2009, is a reasonable extension of the fee holiday. Based on the above, the Commission believes the proposed rule change constitutes an equitable allocation of reasonable dues, fees, and other charges under Section 6(b)(4) of the Act,¹² and is otherwise consistent with the requirements of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-BX-2009-043), be, and hereby is, approved.

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

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60662; File No. SR-BX-2009-053]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Amend IM-2110-4 To Reflect Changes to a Corresponding FINRA Rule

September 11, 2009.

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 September 1, 2009, 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 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,³ 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 Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to amend BX Equity Rule IM-2110-4 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority ("FINRA"). BX will implement the proposed rule change thirty days after the date of the filing. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com>, at 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

Many of the Equity Rules adopted by BX in conjunction with its resumption of the trading of cash equities are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). 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 IM-2110-04, which bars trading ahead of research reports and which formerly corresponded to NASD IM-2110-04. In SR-FINRA-2008-054,⁴ FINRA redesignated that rule as FINRA Rule 5280 and made substantive amendments to strengthen and simplify the rule. Notably, the amended FINRA rule requires FINRA members to establish, maintain and enforce policies and procedures reasonably designed to restrict or limit the flow of information between research department personnel or other persons with knowledge of the content or timing of a research report, and trading department personnel. Such policies and procedures had formerly been recommended but not required. BX is adopting the new FINRA rule in full (with minor modifications to reflect limits on its jurisdiction to regulate non-Exchange conduct), but is continuing to designate its rule as IM-2110-04 in order to maintain the 5000 Series of the BX Equity Rules for possible future use.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Sections 6(b)(5) of the Act,⁶ 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 Equity Rule IM-2110-04 to recent changes made to a corresponding FINRA rule, 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.

¹² *Id.*

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ Securities Exchange Act Release No. 59254 (January 15, 2009), 74 FR 4271 (January 23, 2009) (SR-FINRA-2008-054).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).