

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>4</sup> and Rule 19b-4(f)(6) thereunder.<sup>5</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-ISE-2010-116 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-ISE-2010-116. 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-ISE-2010-116 and should be submitted on or before January 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

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

[FR Doc. 2010-31050 Filed 12-9-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63439; File No. SR-NASDAQ-2010-158]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify Market Maker Quote Management Procedures

December 6, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on December 3, 2010, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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 is filing with the Commission a proposed rule change to clarify market maker quote management procedures.

<sup>6</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.

The text of the proposed rule change is below. Proposed new language is italicized and proposed deletions are in brackets.<sup>3</sup>

\* \* \* \* \*

#### 4613. Market Maker Obligations

A member registered as a Market Maker shall engage in a course of dealings for its own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets in accordance with this Rule.

##### (a) Quotation Requirements and Obligations

(1) No Change.

(2) Pricing Obligations. For NMS stocks (as defined in Rule 600 under Regulation NMS) a Market Maker shall adhere to the pricing obligations established by this Rule during Regular Market Hours.

(A)-(E) No Change.

(F) Quotation Creation and Adjustment. For each Issue in which a Market Maker is registered, the System shall, *in the absence of a quotation that complies with this Rule entered by that Market Maker*, automatically create a quotation for display to comply with this Rule. System-created compliant displayed quotations will thereafter be allowed to rest and not be further adjusted by the System unless the relationship between the quotation and its related National Best Bid or National Best Offer, as appropriate, shrinks to the greater of: (a) 4 percentage points, or, (b) one-quarter the applicable percentage necessary to trigger an individual stock trading pause as described in NASDAQ Rule 4120(a)(11), or expands to within that same percentage less 0.5%, whereupon the System will immediately re-adjust and display the Market Maker's quote to the appropriate Designated Percentage set forth in section (D) above. [As the System allows for multiple attributable quotations by a Market Maker in an issue,] [q]Quotations originally entered by Market Makers *which have not been modified by the System upon entry or after resting on the book* shall be allowed to move freely towards [or away from] the National Best Bid or National Best Offer, as appropriate, for potential execution.

(G)-(K) No Change.

(b)-(e) No Change.

\* \* \* \* \*

#### 4752. Opening Process

(a) No Change.

<sup>3</sup> Changes are marked to the rule text that appears in the electronic manual of NASDAQ found at <http://nasdaqomx.cchwallstreet.com>.

(b) Trading Prior To Normal Market Hours. The system shall process all eligible Quotes/Orders at 7 a.m.:

(1) No Change.

(2) [At] *No earlier than between 9:25 a.m. and 9:30 a.m.*, the system shall open all remaining unopened Quotes in accordance with each firm's instructions.

(3)–(4) No Change.

(c)–(d) No Change.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

## 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

Recently, the Exchange adopted rules enhancing market maker quotation obligations. In connection with the implementation with these new standards, the Exchange proposes to clarify its quote management procedures when market makers fail to enter quotations in compliance with these new rules. In short, should a market maker fail to enter, or appropriately update, their quotations so as to remain in compliance with the new standards, the Exchange will create or adjust such quotations to prices that will ensure compliance.

In addition, the Exchange proposes to adjust the current fixed time of 9:25 a.m. for opening previously unopened quotations so as to allow the opening of such quotations at time periods closer to the 9:30 a.m. commencement of normal market trading.

The Exchange believes that these proposals both enhance compliance with the new market maker quotation standards and recognize the increased liquidity being provided by marker makers in the minutes before market open.

#### 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Sections 6(b)(5) of the Act,<sup>5</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 Exchange believes that the proposed rule meets these requirements in that it enhances compliance with the new market maker quotation standards and recognizes the increased liquidity being provided by marker makers in the minutes before market open.

#### 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.

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

Written comments on the proposed rule change 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: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

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

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

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

<sup>7</sup> 17 CFR 240.19b-4(f)(6). When filing a proposed rule change pursuant to Rule 19b-4(f)(6) under the Act, an exchange is required to give 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

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>8</sup> However, Rule 19b-4(f)(6)<sup>9</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day operative delay.

The Commission has considered Nasdaq's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will enable the Exchange to implement the proposed change consistent with the implementation date for the new market maker pricing obligations.<sup>10</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-NASDAQ-2010-158 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-2010-158. This file number should be included on the

proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

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

<sup>9</sup> *Id.*

<sup>10</sup> For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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-NASDAQ-2010-158 and should be submitted on or before January 3, 2011.

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

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

[FR Doc. 2010-31051 Filed 12-9-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63448; File No. SR-BX-2010-059]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Instituting Proceedings To Determine Whether To Disapprove Proposed Rule Change, as Modified by Amendment No. 1, To Create a Listing Market on the Exchange

December 7, 2010.

#### I. Introduction

On August 20, 2010, NASDAQ OMX BX ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to create a new listing market. The proposed rule change was published for comment in the **Federal Register** on September 8, 2010.<sup>3</sup> The Commission received three comments on the proposal.<sup>4</sup> The Commission subsequently extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to December 7, 2010.<sup>5</sup> On December 6, 2010, BX submitted Amendment No. 1 to the proposed rule change.<sup>6</sup> This order institutes proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1. Institution of disapproval proceedings, however, does not indicate that the Commission has formulated any conclusions with respect to any of the issues involved.

#### II. Description of the Proposal<sup>7</sup>

The Exchange proposes to create a new listing market, to be called the "BX Venture Market."<sup>8</sup> The Exchange has stated that it expects that the securities listed on BX would not be classified as national market system ("NMS") securities.<sup>9</sup> As a result, BX-listed securities would not be subject to an NMS plan and would not be subject to Regulation NMS under the Act.<sup>10</sup> BX-listed securities would trade on the Exchange and also could trade over-the-counter ("OTC").<sup>11</sup> Further, BX-listed

securities would be considered penny stocks under Exchange Act Rule 3a51-1, unless they qualify for an exemption from the definition of a penny stock.<sup>12</sup> No "blue sky" exemption would be available under Section 18 of the Securities Act of 1933 or the rule adopted thereunder,<sup>13</sup> so companies would be required to satisfy state law registration requirements and other state laws that regulate the sale and offering of securities. In addition, BX would not list any company that meets the quantitative (e.g., financial) requirements for listing on The NASDAQ Stock Market LLC ("Nasdaq").

To qualify for initial listing on BX, a company must be registered under Section 12(b) of the Act<sup>14</sup> and be current in its periodic filings with the Commission. The company would also be required to have a fully independent audit committee comprised of at least three members and comply with the requirements of Rule 10A-3 under the Exchange Act.<sup>15</sup> The company would be required to have its independent directors make compensation decisions for executive officers (either by having the independent directors meet in executive session or by having them sit on a compensation committee), and independent directors would be required to meet on a regular basis in executive sessions.<sup>16</sup> The company's

Authority ("FINRA") OTC Reporting Facility. See Notice, *supra* note 3.

<sup>12</sup> See 17 CFR 240.3a51-1.

<sup>13</sup> 15 U.S.C. 77r; Securities Act Rule 146. In addition, some state laws and regulations may provide an exemption from certain registration or "blue sky" requirements for companies listed on the Boston Stock Exchange, based on the higher listing standards previously applied by the former Boston Stock Exchange. The proposed listing rules would provide that the Exchange will take action to delist any company listed on BX that attempts to rely on such an exemption. Companies would also agree not to rely on any such exemption as a provision of the BX Listing Agreement.

<sup>14</sup> 15 U.S.C. 78j(b).

<sup>15</sup> 17 CFR 240.10A-3. Certain companies listing on BX will be permitted to phase in compliance with the audit committee and compensation committee requirements following their listing. With respect to the audit committee requirements, a company listing in connection with its initial public offering would be required to have one independent director on the committee at the time of listing; a majority of independent members within 90 days of the date of effectiveness of the company's registration statement; and all independent members within one year of the date of effectiveness of the company's registration statement.

<sup>16</sup> With respect to the compensation committee requirement, a company listing in connection with its initial public offering, upon emerging from bankruptcy, or that otherwise was not subject to a substantially similar requirement prior to listing (such as a company only traded in the OTC market) would be required to have one independent director on the committee at the time of listing; a majority of independent members within 90 days of listing; and all independent members within one year of listing.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 62818 (September 1, 2010), 75 FR 54665 ("Notice").

<sup>4</sup> See Letters to Elizabeth M. Murphy, Secretary, Commission, from Tom A. Alberg, Managing Director and Founder, Madrona Venture Group, dated December 1, 2010 ("Madrona Letter"); Michael R. Trocchio, Bingham McCutchen LLP, dated October 3, 2010 ("Pink OTC Markets Letter"); and William F. Galvin, Secretary of the Commonwealth, Commonwealth of Massachusetts, dated September 28, 2010 ("MSD Letter").

<sup>5</sup> See Securities Exchange Act Release No. 63105 (October 14, 2010), 75 FR 64772 (October 20, 2010).

<sup>6</sup> See *infra* Section II for a description of Amendment No. 1.

<sup>7</sup> This description does not review every rule proposed by BX that has been filed as part of its proposed rule change; rather, it focuses on the most prominent rules considered in review of the BX's proposal. See Notice, *supra* note 3, for a description of the proposed rule change. See also Exhibit 5 to the Form 19b-4 for all the rules proposed by BX, available at <http://www.sec.gov/rules/sro/bx/2010/34-62818-ex5.pdf>.

<sup>8</sup> See Amendment No. 1. As originally proposed, the proposed rule change provided that a BX-listed company should refer to its listing as on the "BX."

<sup>9</sup> See Notice, *supra* note 3.

<sup>10</sup> See 17 CFR 242.600 *et seq.*

<sup>11</sup> OTC trades of BX-listed securities would be reported to the Financial Industry Regulatory

<sup>11</sup> 17 CFR 200.30-3(a)(12).