

ISE addressed such problems; (5) any complaints that ISE received during the operation of the pilot program and how ISE addressed them; and (6) any additional information that would assist the Commission in assessing the operation of the pilot program.

Finally, the Exchange represents that it has the necessary systems capacity to support new options series that will result from the introduction of additional expiration months listed pursuant to this proposed rule change.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>3</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)<sup>4</sup> in particular, in that 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 mechanisms of a free and open market and a national market system in a manner consistent with the protection of investors and the public interest. In particular, the Exchange believes listing additional near-term expiration months will offer investors more variety in trading options series that were previously not available. The Exchange believes this proposed rule change will also generate additional volume in these option classes without significantly taxing system resources.

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

The proposed rule change does not impose any burden on competition.

### 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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period

to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be 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-ISE-2010-91 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-2010-91. 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-2010-91 and should be submitted on or before September 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-21930 Filed 9-1-10; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62774; File No. SR-BX-2010-058]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 2260 To Reflect Changes to Corresponding FINRA Rule

August 26, 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 August 17, 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 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 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 Substance of the Proposed Rule Change

The Exchange proposes to amend BX Rule 2260 and IM-2260 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority ("FINRA"). The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com>, at the Exchange's principal office, at the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

<sup>5</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> 17 CFR 240.19b-4(f)(6).

<sup>3</sup> 15 U.S.C. 78f(b).

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

## 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 Exchange's rules 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 many cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, BX has initiated a process of modifying its rulebook to ensure that BX rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable.

This filing addresses BX Rule 2260 and IM-2260, which incorporates the guidance previously contained in the corresponding NASD Rules relating to the forwarding of proxy and other materials by members and the rates of reimbursement for such actions. In SR-FINRA-2009-066,<sup>4</sup> FINRA combined NASD Rule 2260 and IM-2260 into FINRA Rule 2251 without material amendment to the substance of the rule. FINRA also made minor clarifying changes and other changes primarily to reflect the new formatting and terminology conventions of the Consolidated FINRA Rulebook.<sup>5</sup> The Exchange proposes to similarly combine BX Rule 2260 and IM-2260 into new BX Rule 2251, which will continue to incorporate the requirements of the corresponding FINRA rule.<sup>6</sup>

<sup>4</sup> Securities Exchange Act Release No. 61052 (November 23, 2009), 74 FR 62857 (December 1, 2009) (SR-FINRA-2009-066).

<sup>5</sup> The Commission notes that, as part of those changes, FINRA deleted references to NASD Rule 2430. Since FINRA Rule 2251 no longer references NASD Rule 2430, and BX is conforming its rule to reflect the current FINRA rule, BX is also proposing to delete references to Nasdaq Rule 2430.

<sup>6</sup> BX intends to make a separate rule filing to incorporate changes required to this Rule by

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Section 6(b)(5) of the Act,<sup>8</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 the Exchange's rules to recent changes made to the 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder in that it effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>11</sup> The Exchange has

Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

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

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

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</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

requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange'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 noted above, BX rules cross-reference certain NASD rules that no longer exist, and have been updated in the consolidated FINRA rulebook. The proposed rule change will update certain of the references in the Exchange's rules that are outdated. The Commission also notes that these changes have previously been approved by the Commission for FINRA. The Commission believes that allowing this rule change to become immediately operative will facilitate the purpose of this rule change—namely, to eliminate any potential confusion arising from the existing rule's outdated cross-references. Based on the foregoing, the Commission finds that waiving the 30-day operative delay period is consistent with the protection of investors and the public interest, and the proposal is therefore deemed 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-BX-2010-058 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

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>12</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).

Securities and Exchange Commission,  
100 F Street, NE., Washington, DC  
20549-1090.

All submissions should refer to File Number SR-BX-2010-058. 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-BX-2010-058 and should be submitted on or before September 23, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-21931 Filed 9-1-10; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62782; File No. SR-NASDAQ-2010-107]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify the Eligibility Criteria for the Second Compliance Period for a Bid Price Deficiency on the Nasdaq Capital Market

August 27, 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 August 25, 2010, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. 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

Nasdaq proposes to modify the eligibility criteria for a company to receive a second compliance period for a bid price deficiency on the Nasdaq Capital Market. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.<sup>3</sup>

\* \* \* \* \*

5810. Notification of Deficiency by the Listing Qualifications Department  
When the Listing Qualifications Department determines that a Company does not meet a listing standard set forth in the Rule 5000 Series, it will immediately notify the Company of the deficiency. As explained in more detail below, deficiency notifications are of four types:

(1)-(4) No change.

Notifications of deficiencies that allow for submission of a compliance plan or an automatic cure or compliance period may result, after review of the compliance plan or expiration of the cure or compliance period, in issuance of a Staff Delisting Determination or a Public Reprimand Letter.

(a)-(b) No change.

IM-5810-1 No change.

(c) Types of Deficiencies and Notifications

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is entitled to an automatic cure or compliance period before a Staff Delisting Determination is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

(1)-(2) No change.

IM-5810-2 No change.

(3) Deficiencies for which the Rules Provide a Specified Cure or Compliance Period

With respect to deficiencies related to the standards listed in (A)-(E) below, Staff's notification will inform the Company of the applicable cure or compliance period provided by these Rules and discussed below. If the Company does not regain compliance within the specified cure or compliance period, the Listing Qualifications Department will immediately issue a Staff Delisting Determination letter.

(A) Bid Price

A failure to meet the continued listing requirement for minimum bid price shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved during any compliance period by meeting the applicable standard for a minimum of 10 consecutive business days during the applicable compliance period, unless Staff exercises its discretion to extend this 10 day period as discussed in Rule 5810(c)(3)(F).

(i) Global Select Market and Global Market

If a Company listed on The Nasdaq Global Market has not been deemed in compliance prior to the expiration of the 180 day compliance period, it may transfer to The Nasdaq Capital Market, provided that it meets *the applicable market value of publicly held shares requirement for continued listing and all other applicable requirements for initial listing on the Capital Market* [, other than the minimum] (*except for the bid price requirement*) based on the *Company's most recent public filings and market information and notifies Nasdaq of its intent to cure this deficiency*. [A Company listed on The Nasdaq Global Market transferring to The Nasdaq Capital Market must pay any applicable entry fees set forth in Rule 5920(a). The Company may also request a hearing to remain on The Nasdaq Global Market pursuant to the

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

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

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