

Act,<sup>10</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 Nasdaq operates or controls. The proposed rule change would allow the fee changes implemented by SR–NASDAQ–2010–014 to be applied retroactively throughout the entire period when the error was in the rule. Additionally, the proposed rule change would conform the text of the rule to the description of the proposed rule change that Nasdaq provided in SR–NASDAQ–2009–072, thereby eliminating any confusion as to the appropriate fees and Nasdaq’s intentions.

In approving the proposed rule change, the Commission notes that it received no comments on the proposal, and that Nasdaq stated it “has been billing members in accordance with the correct fees since the effective date of SR–NASDAQ–2009–072 on July 24, 2009, and accordingly believes that all of its members are cognizant of the correct fee.”

The Commission urges Nasdaq to carefully proofread future proposed rule changes before filing them with the Commission, to minimize errors and the additional proposed rule changes required to correct them.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR–NASDAQ–2010–015), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61782; File No. SR–BX–2010–021]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period To Receive Inbound Routes of Orders From Nasdaq Execution Services

March 25, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”) and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that, on March 23, 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 BX. BX 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

BX submits this proposed rule change to extend the pilot period of BX’s prior approval to receive inbound routes of equities orders from Nasdaq Execution Services, LLC (“NES”) through June 23, 2010.

#### 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Currently, NES is the approved outbound routing facility of the NASDAQ Stock Market LLC (“NASDAQ”) for cash equities, providing outbound routing from NASDAQ to other market centers.<sup>4</sup> BX also has been previously approved to receive inbound routes of equities orders by NES in its capacity as an order routing facility of NASDAQ.<sup>5</sup> The Exchange’s authority to receive inbound routes of equities orders by NES is subject to a pilot period ending March 23, 2010.<sup>6</sup> The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional 3 months, through June 23, 2010.

##### 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

<sup>4</sup> See Securities Exchange Act Release Nos. 50311 (September 3, 2004), 69 FR 54818 (September 10, 2004) (Order Granting Application for a Temporary Conditional Exemption Pursuant To Section 36(a) of the Exchange Act by the National Association of Securities Dealers, Inc. Relating to the Acquisition of an ECN by The Nasdaq Stock Market, Inc.) and 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) (SRNASD–2005–128) (Order Approving a Proposed Rule Change To Establish Rules Governing the Operation of the INET System). See also Securities Exchange Act Release Nos. 58752 (October 8, 2008), 73 FR 61181 (October 15, 2008) (SR–NASDAQ–2008–079); 58135 (July 10, 2008), 73 FR 40898 (July 16, 2008) (SR–NASDAQ–2008–061); 58069 (June 30, 2008), 73 FR 39360 (July 9, 2008) (SR–NASDAQ–2008–054); 56708 (October 26, 2007), 72 FR 61925 (November 1, 2007) (SR–NASDAQ–2007–078); 56867 (November 29, 2007), 72 FR 69263 (December 7, 2007) (SR–NASDAQ–2007–065); 55335 (February 23, 2007), 72 FR 9369 (March 1, 2007) (SR–NASDAQ–2007–005); 54613 (October 17, 2006), 71 FR 62325 (October 24, 2006) (SR–NASDAQ 2006–043); 54271 (August 3, 2006), 71 FR 45876 (August 10, 2006) (SR–NASDAQ–2006–027); and 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR–NASDAQ–2006–001).

<sup>5</sup> See Securities Exchange Act Release No. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008).

<sup>6</sup> See Securities Exchange Act Release No. 61271 (December 31, 2009), 75 FR 1102 (January 8, 2010).

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

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

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</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).

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. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from NES acting in its capacity as a facility of NASDAQ, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for 3 months is of sufficient length to permit both the Exchange and the Commission to assess the impact of the Exchange's authority to receive direct inbound routes of equities orders via NES (including the attendant obligations and conditions).

#### *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.

#### *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**

Because the foregoing 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 after the date of this filing, 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>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>11</sup> However, Rule 19b-4(f)(6)(iii)<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. BX has

requested that the Commission waive the 30-day operative delay.<sup>13</sup> BX notes that the proposal will allow the Exchange to continue receiving inbound routes of equities orders from NES, in a manner consistent with prior approvals and established protections, while also permitting the Exchange and the Commission to assess the impact of the pilot.<sup>14</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot period to be extended without interruption through June 23, 2010. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.<sup>15</sup>

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate 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-2010-021 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-2010-021. 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

<sup>13</sup> E-mail from Thomas Moran, Associate General Counsel, Office of General Counsel, NASDAQ OMX BX, to Theodore S. Venuti, Special Counsel, Division of Trading and Markets, Commission, dated March 24, 2010.

<sup>14</sup> See *supra* Section II.A.2.

<sup>15</sup> For the 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).

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 inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such 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-2010-021 and should be submitted on or before April 22, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61780; File No. SR-NYSE-2010-21]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Extend the Pilot Period for a Revised Unit-of-Count Methodology for NYSE OpenBook**

March 25, 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 March 11, 2010, the New York Stock Exchange LLC ("NYSE" or "Exchange") 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 substantially by the

<sup>16</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>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)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization 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>12</sup> *Id.*