

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="27"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2013"/> - * <input type="text" value="051"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by NASDAQ OMX BX, Inc.  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) <input type="checkbox"/>	Section 3C(b)(2) <input type="checkbox"/>
Section 806(e)(2) <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

A Proposed Rule Change to Amend Fees Assessed for Connectivity to the Exchange Under Rule 7015 and Amend the Fees Assessed and Credits Paid Under Exchange Rule 7018(a).

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * <input type="text" value="Jeffrey"/>	Last Name * <input type="text" value="Davis"/>
Title * <input type="text" value="VP and Deputy General Counsel"/>	
E-mail * <input type="text" value="jeffrey.davis@nasdaqomx.com"/>	
Telephone * <input type="text" value="(301) 978-8484"/>	Fax <input type="text" value="(301) 978-8472"/>

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date <input type="text" value="08/28/2013"/>	Executive Vice President and General Counsel
By <input type="text" value="Edward S. Knight"/>	<input type="text"/>
(Name *)	

Edward S Knight,

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> NASDAQ OMX BX, Inc. (“BX” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend fees assessed for connectivity to the Exchange under Rule 7015. The Exchange is also amending the fees assessed and credits paid under Exchange Rule 7018(a) for executing certain trades that either add liquidity to or remove liquidity from the Exchange’s order book in securities priced at \$1 per share or greater.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on July 17, 2013. Exchange staff will advise the Board of Directors of the Exchange of any action taken pursuant to delegated authority. No other action by the Exchange is necessary for the filing of the rule change. The Exchange will assess the proposed fee beginning with the September 2013 billing cycle.

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

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

Questions regarding this rule filing may be directed to T. Sean Bennett, Associate General Counsel, The NASDAQ OMX Group, Inc., at (301) 978-8499, or Jeffrey Davis Deputy General Counsel, The NASDAQ OMX Group, Inc., at (301) 978-8484.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The Exchange is proposing to modify two sets of fees: (1) connectivity fees assessed under Exchange Rule 7015, and (2) execution fees and credits assessed or granted under Exchange Rule 7018(a) with respect to securities priced at \$1 per share or greater.

**Connectivity Fees.** The Exchange is proposing to increase the fee assessed for use of TCP ITCH data feed pairs to connect to the BX System. TCP ITCH data feed pairs are a type of port pair<sup>3</sup> that firms may subscribe to receive market data through a private (i.e., not shared) connection to BX. By contrast, a firm may subscribe to a Multicast ITCH data feed pair,<sup>4</sup> which provides access to a shared distribution of market data that is distributed to all subscribers simultaneously. BX assesses a fee of \$400 per month for each port pair used to connect to BX using protocols other than Multicast ITCH. Currently, subscription to a TCP ITCH data feed pair is covered by this fee. Unlike Multicast ITCH data, TCP ITCH data requires substantially greater hardware infrastructure to support subscribers because BX must support each individual TCP ITCH connection, including the transmission of the large volume of market data through each

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<sup>3</sup> BX uses the term "data feed pair" herein and in the rule as a more precise description of the intended use and functionality of the port pair.

<sup>4</sup> For a fee of \$1,000 per month for software-based TotalView-ITCH or \$2,500 per month for combined software- and hardware-based TotalView-ITCH.

port. By contrast, BX transmits market data for Multicast ITCH through a single point, which is accessed by all subscribers. In light of increased costs resulting from a need to support the hardware and support demands of the service, the Exchange is proposing to increase the fees for subscription to a TCP ITCH data port from \$400 per month, per port pair to \$750 per month, per port pair.

BX is also proposing to increase the \$400 monthly fee assessed under Rule 7015 for port pairs used to enter orders in Exchange trading systems to \$500 per month. The change does not affect ports used to receive market data, to enter quotes, or to enter trade reports into the FINRA/NASDAQ Trade Reporting Facility. The change applies both to members that obtain ports for direct access, and non-member service bureaus that act as a conduit for orders entered by BX members that are their customers.

BX notes that it has not increased the \$400 fee since its adoption in January 2009.<sup>5</sup> When the Exchange initially adopted its fees, it set its fee levels appropriate to the start-up nature of the Exchange's new equities trading platform and in manner designed to attract order flow to the Exchange. Since that time, the BX has matured as a market, resulting in higher volumes. As a consequence, the Exchange has experienced greater hardware demands and costs associated with offering connectivity options. Accordingly, BX believes that an increase in access services fees is now warranted to help ensure that its market data technology continues to perform at a high level of responsiveness and efficiency.

***Execution Fees and Credits.*** The Exchange proposes to amend four fees and credits governed by Rule 7018(a), which applies to securities priced at \$1 per share or

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<sup>5</sup> Securities Exchange Act Release No. 61595 (Feb. 2, 2009), 74 FR 6441 (Feb. 9, 2009)(SR-BX-2009-004).

greater. The first three adjustments apply to credits the Exchange offers members for entering order that accesses liquidity in the NASDAQ OMX BX Equities System. The first applies to order entered by a member through a BX Equities System Market Participant Identifier ("MPID") through which the member (i) accesses an average daily volume of 3.5 million or more shares of liquidity, or (ii) provides an average daily volume of 1 million or more shares of liquidity during the month (excluding an order that executes against a midpoint pegged order). Currently, the credit pays \$0.0014 per share executed. BX is lowering that credit to \$0.0013 per share executed.

The second adjustment applies to order entered by a member through a BX Equities System MPID through which the member provides an average daily volume of at least 25,000, but less than 1 million, shares of liquidity during the month (excluding an order that executes against a midpoint pegged order). Currently, the credit offered is \$0.0010 per share executed, and BX proposes to increase that credit to \$0.0011 per share executed.

The third adjustment is an increase from \$0.0004 to \$0.0007 in credit per share executed for all orders entered in securities priced at \$1 per share or greater that accesses liquidity in the NASDAQ OMX BX Equities System. This increase is a "catch-all" that applies to all other orders that access liquidity in securities priced \$1 per share or greater that are not specified elsewhere in Rule 7018(a) (i.e., not in the liquidity program described in the preceding two paragraphs, not midpoint peg orders, and not any of the multiple order types otherwise specified).

The fourth adjustment to the fee schedule for the BX Equities Market is an decrease from \$0.0015 to \$0.0014 per share executed in the charge for providing liquidity

through the NASDAQ OMX BX Equities System for Displayed order entered by a Qualified Liquidity Provider through a Qualified MPID. The Exchange charges a reduced fee for members providing liquidity if they meet the criteria of a “Qualified Liquidity Provider.” These criteria (which BX is not modifying) include requirements that the member access and provide volumes of liquidity in excess of certain levels, expressed as a percentage of Consolidated Volume.<sup>6</sup> BX is now proposing to further reduce the fee changed under that program from \$0.0015 to \$0.0014 per share executed.

b. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and Section 6(b)(4) of the Act,<sup>8</sup> in particular, because 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 that the Exchange operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The proposed connectivity fee increases are reasonable because they reflect the increased costs associated with offering connectivity options on BX. The proposed fees are equitable and not unfairly discriminatory because the Exchange is assessing the fees equally among subscribers to the service. Moreover, the proposed fees are not unfairly discriminatory as it enables the Exchange to allocate the increased costs of connectivity

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<sup>6</sup> “Consolidated Volume” is the consolidated volume of shares reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month.

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

to the Exchange to those who subscribe to the service. The Exchange believes that the increased fees will enable it to cover its costs and earn an appropriate return on its investment in market technology and services.

With respect to execution fees under Exchange Rule 7018(a), the Exchange believes that the minor fee modifications provide 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 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, with respect to the credits offered for orders executed that access liquidity on BX in securities priced at \$1 or greater, the Exchange notes that decreasing the credit paid to members qualifying for the highest volume tier and increasing the credit for members qualifying for the lower tier or for no tier (as is the case with the “catch-all” rate), will encourage more members to access liquidity from BX. BX expects that small and medium-sized member firms will benefit most from the proposed changes. Additionally, by increasing the overall quantities of executed orders that access liquidity, as BX believes will occur, BX expects to also increase total liquidity available on its market, increase total order interaction on its order book, and improve overall execution quality for all members.

With respect to the decrease from \$0.0015 to \$0.0014 per share executed in the charge for providing liquidity through the NASDAQ OMX BX Equities System for Displayed order entered by a Qualified Liquidity Provider through a Qualified MPID, the Exchange believes that the proposed modification 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 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the Exchange first notes the proposed changes do not modify the requirements with respect to the current \$0.0015 per share executed rate for Displayed orders that provide liquidity. The current Liquidity Provider program has itself been accepted as consistent with the Exchange Act.

Additionally, the decrease in the applicable rate for such Displayed orders is reasonable because it will further encourage members to qualify for the program, and increase the total volume of orders displayed on the Exchange. Increased display of liquidity on the Exchange will benefit all members, as described above. Moreover, the Exchange continues to offer an even more favorable charge to members using midpoint pegged orders, which may be used by all members, regardless of volume.

The proposed fee reduction is consistent with an equitable allocation of fees because it is consistent with the established practice at a number of national securities exchanges of providing more favorable fee economics to members that contribute to market quality and the Exchange's market share by achieving certain volume requirements. A member that provides and displays a comparatively large volume of liquidity is demonstrating its commitment to the viability of BX's market model by posting orders at prices that attract members seeking liquidity. Accordingly, BX believes that it is equitable for the fees charged to such a member to be more favorable than the fees charged to members providing lower volumes of liquidity. The Exchange further believes that the change is not unfairly discriminatory because the associated volume

requirements are not very high and because the Exchange provides an alternative means of paying a lower fee for orders that provide liquidity.

The Exchange notes that it operates in a highly competitive market, in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, if the Exchange's proposed fee is deemed excessive, a market participant currently subscribed to the data service may elect to cancel its subscription and either subscribe to another connectivity option or route its order flow to another competitor exchange with lower fees.

#### 4. 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. BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, BX believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the increased subscription fee is reflective of the increased costs associated with offering the associated connectivity options. As such, the fees are targeted to apply to only those that subscribe to, and derive benefit from, subscription to

the connectivity options. In terms of TCP ITCH data feed fee, the Exchange will continue to offer other data connectivity options and firms may seek out third party providers of such data as well, should the firms determine that the cost of subscribing to the TCP ITCH data feed is excessive.

With respect to the execution fees and credits, the minor modifications described herein are a direct response to competition, which should be viewed as a positive signal that a competitive market exists. If the changes are unattractive to market participants, it is likely that BX will lose market share as a result. Accordingly, BX does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>9</sup> BX has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

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

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-BX-2013-051)

August \_\_, 2013

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change to Amend Fees Assessed for Connectivity to the Exchange Under Rule 7015 and Amend the Fees Assessed and Credits Paid Under Exchange Rule 7018(a)

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 28, 2013, 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.

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

The Exchange proposes a rule change to amend fees assessed for connectivity to the Exchange under Rule 7015. The Exchange is also amending the fees assessed and credits paid under Exchange Rule 7018(a) for executing certain trades that either add liquidity to or remove liquidity from the Exchange’s order book in securities priced at \$1 per share or greater. The text of the proposed rule change is also available on the Exchange’s Website at <http://nasdaqomxbx.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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 Exchange is proposing to modify two sets of fees: (1) connectivity fees assessed under Exchange Rule 7015, and (2) execution fees and credits assessed or granted under Exchange Rule 7018(a) with respect to securities priced at \$1 per share or greater.

**Connectivity Fees.** The Exchange is proposing to increase the fee assessed for use of TCP ITCH data feed pairs to connect to the BX System. TCP ITCH data feed pairs are a type of port pair<sup>3</sup> that firms may subscribe to receive market data through a private (*i.e.*, not shared) connection to BX. By contrast, a firm may subscribe to a Multicast ITCH data feed pair,<sup>4</sup> which provides access to a shared distribution of market data that is distributed to all subscribers simultaneously. BX assesses a fee of \$400 per

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<sup>3</sup> BX uses the term “data feed pair” herein and in the rule as a more precise description of the intended use and functionality of the port pair.

<sup>4</sup> For a fee of \$1,000 per month for software-based TotalView-ITCH or \$2,500 per month for combined software- and hardware-based TotalView-ITCH.

month for each port pair used to connect to BX using protocols other than Multicast ITCH. Currently, subscription to a TCP ITCH data feed pair is covered by this fee. Unlike Multicast ITCH data, TCP ITCH data requires substantially greater hardware infrastructure to support subscribers because BX must support each individual TCP ITCH connection, including the transmission of the large volume of market data through each port. By contrast, BX transmits market data for Multicast ITCH through a single point, which is accessed by all subscribers. In light of increased costs resulting from a need to support the hardware and support demands of the service, the Exchange is proposing to increase the fees for subscription to a TCP ITCH data port from \$400 per month, per port pair to \$750 per month, per port pair.

BX is also proposing to increase the \$400 monthly fee assessed under Rule 7015 for port pairs used to enter orders in Exchange trading systems to \$500 per month. The change does not affect ports used to receive market data, to enter quotes, or to enter trade reports into the FINRA/NASDAQ Trade Reporting Facility. The change applies both to members that obtain ports for direct access, and non-member service bureaus that act as a conduit for orders entered by BX members that are their customers.

BX notes that it has not increased the \$400 fee since its adoption in January 2009.<sup>5</sup> When the Exchange initially adopted its fees, it set its fee levels appropriate to the start-up nature of the Exchange's new equities trading platform and in manner designed to attract order flow to the Exchange. Since that time, the BX has matured as a market, resulting in higher volumes. As a consequence, the Exchange has experienced greater hardware demands and costs associated with offering connectivity options. Accordingly,

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<sup>5</sup> Securities Exchange Act Release No. 61595 (Feb. 2, 2009), 74 FR 6441 (Feb. 9, 2009)(SR-BX-2009-004).

BX believes that an increase in access services fees is now warranted to help ensure that its market data technology continues to perform at a high level of responsiveness and efficiency.

***Execution Fees and Credits.*** The Exchange proposes to amend four fees and credits governed by Rule 7018(a), which applies to securities priced at \$1 per share or greater. The first three adjustments apply to credits the Exchange offers members for entering order that accesses liquidity in the NASDAQ OMX BX Equities System. The first applies to order entered by a member through a BX Equities System Market Participant Identifier ("MPID") through which the member (i) accesses an average daily volume of 3.5 million or more shares of liquidity, or (ii) provides an average daily volume of 1 million or more shares of liquidity during the month (excluding an order that executes against a midpoint pegged order). Currently, the credit pays \$0.0014 per share executed. BX is lowering that credit to \$0.0013 per share executed.

The second adjustment applies to order entered by a member through a BX Equities System MPID through which the member provides an average daily volume of at least 25,000, but less than 1 million, shares of liquidity during the month (excluding an order that executes against a midpoint pegged order). Currently, the credit offered is \$0.0010 per share executed, and BX proposes to increase that credit to \$0.0011 per share executed.

The third adjustment is an increase from \$0.0004 to \$0.0007 in credit per share executed for all orders entered in securities priced at \$1 per share or greater that accesses liquidity in the NASDAQ OMX BX Equities System. This increase is a "catch-all" that applies to all other orders that access liquidity in securities priced \$1 per share or greater



that are not specified elsewhere in Rule 7018(a) (i.e., not in the liquidity program described in the preceding two paragraphs, not midpoint peg orders, and not any of the multiple order types otherwise specified).

The fourth adjustment to the fee schedule for the BX Equities Market is an decrease from \$0.0015 to \$0.0014 per share executed in the charge for providing liquidity through the NASDAQ OMX BX Equities System for Displayed order entered by a Qualified Liquidity Provider through a Qualified MPID. The Exchange charges a reduced fee for members providing liquidity if they meet the criteria of a “Qualified Liquidity Provider.” These criteria (which BX is not modifying) include requirements that the member access and provide volumes of liquidity in excess of certain levels, expressed as a percentage of Consolidated Volume.<sup>6</sup> BX is now proposing to further reduce the fee changed under that program from \$0.0015 to \$0.0014 per share executed.

## 2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and Section 6(b)(4) of the Act,<sup>8</sup> in particular, because 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 that the Exchange operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

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<sup>6</sup> “Consolidated Volume” is the consolidated volume of shares reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month.

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

The proposed connectivity fee increases are reasonable because they reflect the increased costs associated with offering connectivity options on BX. The proposed fees are equitable and not unfairly discriminatory because the Exchange is assessing the fees equally among subscribers to the service. Moreover, the proposed fees are not unfairly discriminatory as it enables the Exchange to allocate the increased costs of connectivity to the Exchange to those who subscribe to the service. The Exchange believes that the increased fees will enable it to cover its costs and earn an appropriate return on its investment in market technology and services.

With respect to execution fees under Exchange Rule 7018(a), the Exchange believes that the minor fee modifications provide 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 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, with respect to the credits offered for orders executed that access liquidity on BX in securities priced at \$1 or greater, the Exchange notes that decreasing the credit paid to members qualifying for the highest volume tier and increasing the credit for members qualifying for the lower tier or for no tier (as is the case with the “catch-all” rate), will encourage more members to access liquidity from BX. BX expects that small and medium-sized member firms will benefit most from the proposed changes. Additionally, by increasing the overall quantities of executed orders that access liquidity, as BX believes will occur, BX expects to also increase total liquidity available on its market, increase total order interaction on its order book, and improve overall execution quality for all members.

With respect to the decrease from \$0.0015 to \$0.0014 per share executed in the charge for providing liquidity through the NASDAQ OMX BX Equities System for Displayed order entered by a Qualified Liquidity Provider through a Qualified MPID, the Exchange believes that the proposed modification 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 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the Exchange first notes the proposed changes do not modify the requirements with respect to the current \$0.0015 per share executed rate for Displayed orders that provide liquidity. The current Liquidity Provider program has itself been accepted as consistent with the Exchange Act.

Additionally, the decrease in the applicable rate for such Displayed orders is reasonable because it will further encourage members to qualify for the program, and increase the total volume of orders displayed on the Exchange. Increased display of liquidity on the Exchange will benefit all members, as described above. Moreover, the Exchange continues to offer an even more favorable charge to members using midpoint pegged orders, which may be used by all members, regardless of volume.

The proposed fee reduction is consistent with an equitable allocation of fees because it is consistent with the established practice at a number of national securities exchanges of providing more favorable fee economics to members that contribute to market quality and the Exchange's market share by achieving certain volume requirements. A member that provides and displays a comparatively large volume of liquidity is demonstrating its commitment to the viability of BX's market model by

posting orders at prices that attract members seeking liquidity. Accordingly, BX believes that it is equitable for the fees charged to such a member to be more favorable than the fees charged to members providing lower volumes of liquidity. The Exchange further believes that the change is not unfairly discriminatory because the associated volume requirements are not very high and because the Exchange provides an alternative means of paying a lower fee for orders that provide liquidity.

The Exchange notes that it operates in a highly competitive market, in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, if the Exchange's proposed fee is deemed excessive, a market participant currently subscribed to the data service may elect to cancel its subscription and either subscribe to another connectivity option or route its order flow to another competitor exchange with lower fees.

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. BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, BX believes that the degree

to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the increased subscription fee is reflective of the increased costs associated with offering the associated connectivity options. As such, the fees are targeted to apply to only those that subscribe to, and derive benefit from, subscription to the connectivity options. In terms of TCP ITCH data feed fee, the Exchange will continue to offer other data connectivity options and firms may seek out third party providers of such data as well, should the firms determine that the cost of subscribing to the TCP ITCH data feed is excessive.

With respect to the execution fees and credits, the minor modifications described herein are a direct response to competition, which should be viewed as a positive signal that a competitive market exists. If the changes are unattractive to market participants, it is likely that BX will lose market share as a result. Accordingly, BX does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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>9</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

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

appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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-2013-051 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-2013-051. 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 website 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-2013-051 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Kevin M O'Neill  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

The text of the proposed rule change is below. Proposed new language is underlined; deletions are bracketed.

**7015. Access Services.**

The following charges are assessed by the Exchange for ports to establish connectivity to the NASDAQ OMX BX Equities Market, as well as ports to receive data from the NASDAQ OMX BX Equities Market:

- [~~\$400~~]\$500 per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is \$1000 per month, and TCP ITCH data feed pairs, for which the fee is \$750 per month for each port pair.[The \$400 port pair fee will be waived from January 2012 through March 2012 for a single port pair subscribed to by a member used for routing during this free period. To be eligible for the fee waiver, the member must increase the number of routable ports it has as of December 31, 2011 and must send routable order flow through the designated port pair at some point during the free period, otherwise the monthly fee will apply.]
- Internet Ports: An additional \$200 per month for each Internet port that requires additional bandwidth.
- TradeInfo BX is available to Members for a fee of \$95 per user per month.

\* \* \*

**7018. NASDAQ OMX BX Equities System Order Execution and Routing**

(a) The following charges and credits shall apply to the use of the order execution and routing services of the NASDAQ OMX BX Equities System by members for all securities priced at \$1 or more per share that it trades.

Credit for entering order that accesses liquidity in the NASDAQ OMX BX Equities System:

Order that executes against a midpoint pegged order: \$0

Order entered by a member through a BX Equities System Market Participant Identifier ("MPID") through which the member (i) accesses an average daily volume of 3.5 million or more shares of liquidity, or (ii) provides an average daily executed \$0.0013[14] per share



volume of 1 million or more shares of liquidity during the month (excluding an order that executes against a midpoint pegged order):

Order entered by a member through a BX Equities System MPID through which the member provides an average daily volume of at least 25,000, but less than 1 million, shares of liquidity during the month (excluding an order that executes against a midpoint pegged order): \$0.0011[10] per share executed

BSTG, BSCN, BMOP, BTFY, BCRT, BDRK or BCST order that accesses liquidity in the NASDAQ OMX BX Equities System (excluding an order that executes against a midpoint pegged order): \$0.0014 per share executed

All other orders: \$0.0007[4] per share executed

Charge for providing liquidity through the NASDAQ OMX BX Equities System:

Displayed order entered by a Qualified Liquidity Provider through a Qualified MPID: \$0.0014[15] per share executed

Displayed order entered through a NASDAQ OMX BX Equities System MPID through which a member provides an average daily volume of 4 million or more shares of liquidity during the month: \$0.0018 per share executed

Midpoint pegged order: \$0.0015 per share executed

Other non-displayed orders: \$0.0025 per share executed

All other orders: \$0.0020 per share executed

For purposes of this rule, there are two methods of becoming a Qualified Liquidity Provider:

(1) A Qualified Liquidity Provider may be a member with (i) shares of liquidity provided and (ii) total shares of liquidity accessed and provided in all securities through one or more of its NASDAQ OMX BX Equities System MPIDs that represent more than 0.40% and 0.50%, respectively, of the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities ("Consolidated Volume") during the month. For purposes of calculating Consolidated Volume and the extent of a member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. For a member qualifying under this method, a Qualified MPID is an MPID through which, for at least 150 securities, the Qualified Liquidity Provider quotes at the national best bid or offer ("NBBO") an average of at least 25% of the time during regular market hours (9:30 a.m. through 4:00 p.m.) during the month.

(2) Alternatively, a Qualified Liquidity Provider may be a member with (i) shares of liquidity provided and (ii) total shares of liquidity accessed and provided in all securities through one or more of its NASDAQ OMX BX Equities System MPIDs that represent more than 0.35% and 0.45%, respectively, of Consolidated Volume during the month. For purposes of calculating Consolidated Volume and the extent of a member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. For a member qualifying under this method, a Qualified MPID is an MPID through which, for at least 400 securities, the Qualified Liquidity Provider quotes at the NBBO an average of at least 25% of the time during regular market hours (9:30 a.m. through 4:00 p.m.) during the month.

Charge for BSTG or BSCN order that executes in a venue other than the NASDAQ OMX BX Equities System:	\$0.0025 per share executed at NYSE
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	\$0.0030 per share executed at venues other than NYSE
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Charge for BMOP order that executes in a venue other than the NASDAQ OMX BX Equities System:	\$0.0027 per share executed at NYSE
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	\$0.0035 per share executed at venues other than NYSE
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Charge for BTFY order that executes in a venue other than the NASDAQ OMX BX Equities System:	\$0.0025 per share executed at NYSE
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\$0.0007 per share executed at venues other than NYSE, NASDAQ

For orders that execute at NASDAQ OMX PSX, NASDAQ OMX BX will pass through all fees assessed and rebates offered by NASDAQ OMX PSX

For orders that execute at NASDAQ, NASDAQ OMX BX will pass through all fees assessed and rebates offered by NASDAQ

Charge for BCRT order that executes in a venue other than the NASDAQ OMX BX Equities System:

For orders that execute at NASDAQ OMX PSX, NASDAQ OMX BX will pass through all fees assessed and rebates offered by NASDAQ OMX PSX

For orders that execute at NASDAQ, NASDAQ OMX BX will pass through all fees assessed and rebates offered by NASDAQ

Charge for BDRK and BCST order that executes in a venue other than the NASDAQ OMX BX Equities System:

\$0.0010 per share executed

(b) – (d) No change.