Proposed Rule Change To Consolidate Certain Committee Functions Into the BX Review Council

May 12, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (‘‘Act’’),1 and Rule 19b–4 thereunder,2 notice is hereby given that on April 30, 2014, NASDAQ OMX BX, Inc. (‘‘BX’’ or ‘‘Exchange’’), filed with the Securities and Exchange Commission (‘‘Commission’’) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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

BX proposes a rule change to consolidate responsibilities of certain committees of the Board of Directors and to make related changes to the Exchange By-Laws and Rules.

The text of the proposed rule change is available from BX’s Web site at http://nasdaqomxbx.cchwallstreet.com, at BX’s principal office, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange is proposing to expand the regulatory responsibilities of the

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Review Council must have at least three Public members, as defined in the By-Laws, and the number of Non-Industry members shall equal or exceed the sum of the number of Industry members and Member Representative members.

shall nominate candidates for appointment by the Board for each vacant or new position on the Exchange Listing and Hearing Review Council, the Exchange Review Council, or other committee that is to be filled with a Member Representative member under the terms of the By-Laws. See Exchange By-Law, Article IV, Section 4.14(b)(iii). Further provided by the By-Laws, the Member Nominating Committee shall consist of no fewer than three and no more than six members, and all members, or the choice of a broker or dealer, the Corporation or its affiliates, or FINRA. See Exchange By-Law, Article II(b).

“Non-Industry member” means an Exchange Listing and Hearing Review Council member, Exchange Review Council member, or member of any other committee appointed by the Board who has no material business relationship with a broker or dealer, the Corporation or its affiliates, or FINRA. See Exchange By-Law, Article II(c).

Industry member” means an Exchange Listing and Hearing Review Council member, Exchange Review Council member, or member of any other committee appointed by the Board who (i) is a Public member; (ii) an officer or employee of an issuer of securities listed on the Exchange; or (iii) any other individual who would not be an Industry member. See Exchange By-Law, Article II(c).

The By-Laws provide that a quorum for the transaction of business consists of a majority of the Review Council, including not less than 50 percent of the Non-Industry members of the Review Council and at least one Member Representative member.

Market Operations Review Committee

The MORC is responsible for considering Exchange member appeals of determinations made pursuant to Exchange Rules 4612, 4619, 4620, 11890, and Exchange Options Rules Chapter V Section 6. Decisions of the MORC in these matters are not appealable, however, determinations of the MORC with respect to Rule 11890 may be arbitrated. The By-Laws require that the MORC be comprised of a number of Member Representative members that is equal to at least 20 percent of the total number of members of the MORC. Moreover, the By-Laws require that no more than 50 percent of the members of the MORC be engaged in market making activity or employed by a broker member whose revenues from market making exceed 10 percent of its total revenues. The By-Laws do not provide a description of what is a quorum for purposes of holding a meeting of the MORC, however, the committee has adopted a three member quorum requirement.

Market Regulation Committee

The Market Regulation Committee (the “Regulation Committee”) is a committee of the Board, which is responsible for providing advice and guidance to the Board on regulatory proposals and industry initiatives relating to quotations, execution, trade reporting, and trading practices; advising the Board in its administration of programs and systems for the surveillance and enforcement of rules governing Exchange Member’s conduct and trading activities in the Exchange; providing a pool of attorney panelists for hearing panels under the Exchange Committee pursuant to these By-Laws. See Exchange By-Law, Article II(c).

Unlike disciplinary proceedings under the Rule 9000 Series, speedy resolution of matters under the MORC’s jurisdiction is important to ensuring fair and equitable treatment of market makers, and, with regard to clearly erroneous determinations, benefits market participants and helps ensure the accuracy of transactional information disseminated to investors. Rule 11890(c)(2) expressly requires a panel to consist of three or more members of the MORC providing that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member firm whose market making activity exceeded 10 percent of its total revenues. The rule also states that in no case shall a MORC Panel include a member affiliated with a party to the trade.

The Exchange is proposing to expand the responsibilities of the Review Council by merging the adjudicatory role of the MORC and the advisory role of the Regulation Committee, both as described above, into the Review Council. The Exchange is proposing to amend the By-Laws and Exchange Rules by eliminating references to the Regulation Committee and MORC, and adding the description of these roles to the Review Council’s responsibilities under the By-Laws and Exchange Rules. The Exchange is also proposing to define a new type of Panelist under the rules, which will replace the Regulation Committee Panelist. The new “Special Panelist” will take on the role provided currently by Regulation Committee Panelists, which is discussed in more detail below. All of these changes taken together will ensure each function of the MORC and Regulation Committee will continue, unaltered.

The current composition requirements of the Review Council are as prescriptive, if not more so, than the composition requirements of the MORC and Regulation Committee. As noted above, the Review Council must have between eight and twelve members, whereas the MORC and Regulation Committee have no such minimum and maximum composition requirements. In practice, both the MORC and Regulation Committee have fewer members than eight members each. In addition, the Review Council must have at least twenty percent of its members nominated by the Member Nominating
The MORC has a unique composition requirement that limits its membership to no more than 50 percent of members that are non-industry members overrepresented by BX. The MORC has no such requirement.

Under the Exchange’s By-Laws, the MORC has a unique composition requirement that limits its membership to no more than 50 percent of members that are non-industry members. The Board of Directors of the Exchange has the authority to determine the composition of the MORC. In this regard, the Exchange believes that the composition of the MORC is never overrepresented by market making members. The Exchange is proposing to adopt this requirement for the new Review Council under the By-Laws.

The Exchange notes that FINRA’s rule concerning the selection criteria for its Panelists is substantially similar to that of the MORC. The Exchange is proposing minor changes to Rule 9231(b) to delete the definition of Market Regulation Committee and from other sources the Board deems appropriate given the responsibilities of Hearing Panelists. Accordingly, the Exchange proposes to delete the definition of Market Regulation Committee under Rule 9120(u) and hold the rule in reserve.

Changes to Rule 9231(b)

The Exchange is proposing minor technical changes to Rule 9231(b), which concerns the composition of Hearing Panelists. BX is eliminating an erroneous reference to a paragraph (2) under Rule 9231(b)(1), which was included when the Exchange adopted the rule. BX is also replacing references to the Regulation Committee in Rule 9231(b)(1)(D) with references to FINRA Panelists, including members of FINRA’s Member Regulation Committee. BX may currently draw a person who: Previously served on the Exchange Review Council; previously served on a disciplinary subcommittee of the Exchange Review Council, including a Subcommittee, Hearing Proceeding Committee, or which its predecessor subcommittees; previously served as a Director, or as a Governor of the Exchange prior to its acquisition by The NASDAQ OMX Group, Inc., but does not serve currently in that position; or currently serves on the Regulation Committee or who previously served on the Regulation Committee not earlier than four years before the date the complaint was served upon the Respondent who was the first served Respondent in the disciplinary proceeding for which the Hearing Panel or the Extended Hearing Panel is being appointed. BX is also making clear that it may draw upon a FINRA Panelist approved by the Exchange Board, including a member of FINRA’s Market Regulation Committee if the Panelist is approved by the Board at least annually. BX is also memorializing that a Panelist may be drawn from other sources the Board deems appropriate given the responsibilities of Panelists.

The Exchange notes that FINRA’s rule concerning the selection criteria for its Panelists is substantially similar to that of the Exchange. Specifically, FINRA Rule 9231(b)(1) provides that a Panelist be a person who: Currently serves or previously served on a District Committee; previously served on the National Adjudicatory Council; previously served on a disciplinary
subcommittee of the National Adjudicatory Council or the National Business Conduct Committee, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees; or, previously served as a Director or a Governor, but does not serve currently in any of these positions. BX believes that drawing from FINRA’s pool of Panelists will provide the Exchange with individuals that have adequate experience and expertise to be BX Panelists, and will provide a larger pool from which to draw Panelists. BX notes that, by requiring the Board to approve a FINRA Panelist as a precondition to participating in a BX matter, BX is ensuring that the Panelists that review BX matters are adequately qualified to adjudicate such matters.

Other Technical Changes

Lastly, BX is making two minor technical corrections to its rules. BX is deleting an extraneous “and” from the definition of “Hearing Officer” under Rule 91209(c). BX is also adding the word “to” to Rule 11890(c)(1), which was erroneously omitted.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act 17 in general, and furthers the objectives of Section 6(b)(5) of the Act 18 in particular, in that it is designed to promote just and equitable principles of trade, 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, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Exchange also believes that the proposed rule is consistent with Section 6(b)(6) of the Act, 19 which requires the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, or the rules of the Exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

The Exchange believes that the proposed changes are consistent with these requirements because they bring efficiency to the committee process, by vesting a single Board committee with responsibilities currently spread across multiple committees, while ensuring that such responsibilities are performed to a high regulatory standard. In this regard, the new Review Council is, by every measure, a more diverse body than the committees that it replaces. The broad membership of the new Review Council will ensure that decisions made with respect to the MORC’s former responsibilities are made fairly. In this regard, the Exchange notes that the Review Council will adopt the MORC requirement that not more than 50 percent of the committee’s members be engaged in market making activity or employed by a BX member firm whose revenues from market making exceed 10 percent of its total revenues.

As discussed above, the By-Laws limit Review Council members to a maximum of two consecutive three-year terms, unlike the MORC and Regulation Committee. This requirement ensures that there is a consistent influx of new members to the Review Council. The By-Laws further require that membership of the Review Council is divided into three classes of members, whose terms expire in different years, thus ensuring that the Review Council is not completely reconstituted in any given year. The Exchange notes that the expansion of the Review Council’s responsibilities is an extension of the functions that it already performs. As discussed above, the Review Council is currently an adjudicatory body under BX’s rules, as well as an advisory committee to the Board. Accordingly, the Exchange believes that the proposed changes will serve to protect the public interest and promote appropriate discipline of members for violations of securities laws and rules of the Exchange.

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. Specifically, the Exchange believes that this change will bring efficiency and consistency in application of the investigative and adjudicatory processes by consolidating Board committee functions. Consequently, the changes will not impact competition among brokers or dealers, nor will they impact competition among the Exchange and its peers.

C. Self-Regulatory Organization’s Statement 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 written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act 20 and subparagraph (f)(6) of Rule 19b–4 thereunder.21

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 email to rule-comments@ sec.gov. Please include File Number SR–BX–2014–024 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number SR–BX–2014–024. This file number should be included on the subject line if email is used.

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ Rule 7018 Fees and Establish Fee Tiers for the Execution of Market-on-Close and Limit-on-Close Orders Executed in the NASDAQ Closing Cross and Eliminate the High Volume Market Participant Identifier Program

May 12, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),1 and Rule 19b–4 thereunder,2 notice is hereby given that on April 30, 2014, The NASDAQ Stock Market LLC (“NASDAQ” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a 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 the Substance of the Proposed Rule Change

NASDAQ is proposing to modify NASDAQ Rule 7018 fees assessed for execution and routing [sic] securities listed on the New York Stock Exchange (“NYSE”) and on exchanges other than NASDAQ and NYSE, as well as establishing fee tiers for the execution of Market-on-Close and Limit-on-Close orders executed in the NASDAQ Closing Cross and eliminating the high volume Market Participant Identifier program.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on May 1, 2014. The text of the proposed rule change is available at nasdaq.cchwallstreet.com at NASDAQ’s principal office, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, NASDAQ 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 those 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 parts of such statements.

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

1. Purpose

NASDAQ is proposing to amend NASDAQ Rule 7018 to modify NASDAQ Rule 7018 [sic] fees assessed for execution and routing [sic] securities listed on NYSE (“Tape A”) and on exchanges other than NASDAQ and the NYSE (“Tape B”), as well as establishing fee tiers for the execution of Market-on-Close and Limit-on-Close (“MOC/LOC”) orders executed in the NASDAQ Closing Cross.

Specifically, NASDAQ is proposing to offer reduced access fees for firms that execute against resting midpoint liquidity for both Tape A and Tape B securities. The standard access fees are currently $0.0030 per executed share, but the Exchange proposes to reduce this fee for Tape A and Tape B securities to $0.0027 per executed share. The Exchange believes that the proposed discounted executions for taking...