

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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2012-064, and should be submitted on or before June 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67074; File No. SR-BX-2012-037]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Waiver of Fees for BX Options Participants

May 30, 2012.

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 May 18, 2012, 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 to waive certain application, membership and data fees for BX members seeking to participate solely in the new BX Options Market.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=BXRulefilings>, at the principal office of the Exchange, 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to waive the following BX fees to promote participation in the new BX Options Market: (1) Membership Fee; (2) Trading Rights Fee; (3) Application Fee; (4) testing fee; and (5) Annual Administrative Fee.

The Exchange recently filed for approval to operate a new options market.<sup>3</sup> The new market, called NASDAQ OMX BX Options, or BX Options, will be all-electronic with no physical trading floor. BX proposed to adopt a series of rules based on the existing rules of NOM.<sup>4</sup>

Persons desiring to join the new BX Options Market need to apply to become members of BX pursuant to BX Rules. BX Members are subject to various charges for membership, services and equipment as noted in the 7000 Rules. The Exchange desires to waive certain of those fees to attract market

<sup>3</sup> See SR-BX-2012-30.

<sup>4</sup> See SR-BX-2012-30. BX will operate an electronic trading system developed to trade options that will provide for the electronic display and execution of orders in price/time priority without regard to the status of the entities that are entering orders.

participants to the new BX Options Market. BX seeks to implement the fee waivers immediately so that Applicants seeking to participate in the new BX Options market may begin submitting applications to the Exchange prior to the market's commencement of operations.

Currently, BX members are assessed a \$3,000 Membership Fee<sup>5</sup> per year and a \$500 per month trading rights fee.<sup>6</sup> The Exchange also assesses an Application Fee of \$2,000.<sup>7</sup> Among other fees, the Exchange also currently assesses subscribers to the Exchange a fee for conducting tests of their Exchange access protocols connection or market data feeds through the Exchange's Testing Facility a fee of \$300 per port, per month.<sup>8</sup> The Exchange assesses an Annual Administrative Fee to market data distributors that receive any proprietary Exchange data feed product. The amount of this fee is the higher of the delayed distributor fee of \$500 or the real-time distributor fee of \$1,000 (which may include the delayed fee). This fee is assessed annually.

The Exchange proposes to waive the Membership Fee, Trading Rights Fee, Application Fee, and Annual Administrative Fee for Applicants desiring to apply to become BX Options Market Participants, who will not transact business on the BX Equities Market.<sup>9</sup> The proposed fee waivers for the Membership Fee, Trading Rights Fee and Annual Administrative Fee would apply also to an existing BX member if that member applies to transact business on the BX Options Market only and will no longer be conducting an equities business on BX. In this example, the Application Fee would not be waived because it was already assessed at the time the member became a BX member.

<sup>5</sup> The Membership Fee is imposed on all persons that are Exchange members as of a date determined by the Exchange in December of each year. This fee is not refundable in the event that a person ceases to be an Exchange member following the date on which the fee is assessed. See Rule 7001. This Membership Fee is collected by the Financial Industry Regulatory Authority (FINRA) on behalf of the Exchange and would be refunded by the Exchange annually, if the fee is assessed to a BX Options Participant who qualified for the waiver.

<sup>6</sup> The Trading Rights Fee is assessed on all persons that are Exchange members as of a date determined by the Exchange in each month. This fee is not refundable in the event that a person ceases to be an Exchange member following the date on which the fee is assessed. See Rule 7001.

<sup>7</sup> The Application Fee for membership in the Exchange is non-refundable.

<sup>8</sup> These fees do not apply to testing occasioned by new or enhanced services or software, modifications to services or software initiated by the Exchange in response to a contingency or testing by a new subscriber under certain circumstances. See Rule 7030.

<sup>9</sup> New BX Options Market members would be assigned an account by the Membership Department.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

The waiver would also apply to a BX member who determines at a later date to transact business on the BX Options Market only; the Application Fee would not be waived in this case because it was already paid at the time the member became a BX member. The aforementioned waivers would not apply to Applicants seeking approval to participate solely in the BX Equities Market, or to an applicant seeking to participate in both the BX Equities and the BX Options Markets. In the event that an Applicant applies to be a BX Options Participant and obtains the waiver but later determines to commence an equities business, the BX Options Participant would be assessed the Membership Fee, Trading Rights Fee; testing fees; and Annual Administrative Fee going forward.<sup>10</sup>

The Exchange also proposes to waive BX Options testing fees as such fees are described in Rule 7030(d). The Exchange also proposes to make minor technical amendments to Rule 7001 to remove outdated text that dates back to the commencement of the BX Equities Market.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its fees is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>12</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange makes all services and products subject to its fees available on a non-discriminatory basis to similarly situated recipients. The proposed waivers of the Membership Fee, Trading Rights Fee, Application Fee, testing fee and Annual Administrative Fee are reasonable because the Exchange is seeking to attract market participants to the new BX Options Market.

The Exchange believes that the proposed waivers of the Membership Fee, Trading Rights Fee, Application Fee and Annual Administrative Fee are equitable and not unfairly discriminatory because the waivers will uniformly apply to BX Options Participants that transact business solely on the BX Options Market. The testing fee will also be uniformly waived for all testing related to the BX Options market.

The proposed technical amendments are reasonable, equitable and not

<sup>10</sup> These members would not be assessed an Application Fee, which was previously waived at the time they became Exchange members.

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

<sup>12</sup> 15 U.S.C. 78f(b)(4).

unfairly discriminatory because the amendments remove outdated text.

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

The Exchange 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>13</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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2012-037 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-2012-037. This file number should be included on the subject line if email is used. To help the Commission process and review your

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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 10:00 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-2012-037 and should be submitted on or before June 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67075; File No. SR-NYSE Arca-2012-28]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To List and Trade Shares of the JPM XF Physical Copper Trust Pursuant to NYSE Arca Equities Rule 8.201

May 30, 2012.

On April 2, 2012, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to list and trade shares of JPM

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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