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 FINRA. 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–FINRA–2011–069 and should be submitted on or before December 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31524 Filed 12–7–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65876; File No. SR–BX–2011–078]

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

December 2, 2011.

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 November 22, 2011, 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, 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

BX is filing with the Commission a proposed rule change to modify pricing for BX members using the NASDAQ OMX BX Equities System. The new pricing will take effect immediately. The text of the proposed rule change is available at BX's principal office, at *http:/nasdaqomxbx.cchwallstreet.com/,* at the Commission's Public Reference Room, and at *http://www.sec.gov.*

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 purpose of the proposed rule change is to adopt fees applicable to the new routing services on the NASDAQ OMX BX Equities Market.[3] BX has a pricing model under which members are charged for the execution of quotes/orders posted on the BX book (*i.e.,* quotes/orders that provide liquidity), while members receive a rebate for orders that access liquidity; this is not changing. The proposed fees, because they apply to routed orders, will apply only to orders executed at venues other than the NASDAQ OMX BX Equities Market.

BX proposes to amend BX Rule 7018(a) to adopt fees for the execution of routed orders in securities priced at $1 or more per share and BX Rule 7018(b) to adopt fees for routing of securities priced at less than $1 per share. In BX Rule 7018(a), the charges depend on both where the order was executed and the order's routing strategy, which is similar to NASDAQ Rule 7018(a).[4] The different routing strategies, BSTG,[5] BSCN,[6] BMOP,[7] BTFY[8] and BCRT,[9] are defined in BX Rule 4758 and correlate to some of the routing strategies of NASDAQ, as explained below. The proposed BX routing fees are the same as or less than NASDAQ's, which is also explained further below.[10]

Respecting BSTG and BSCN orders, the charge is $0.0023 per share executed at NYSE and $0.0030 per share executed at venues other than NYSE. Respecting NASDAQ's comparable STGY and SCAN orders,[11] this charge is the same for shares executed on NYSE and also the same as what NASDAQ charges for routed executions at other venues in NASDAQ-listed securities, NYSE-listed securities and for securities listed on exchanges other than NASDAQ or NYSE ($0.0030 per share).[12] The Exchange believes that charging the same routing fees as NASDAQ should attract users to its new routing program.

Respecting BMOP orders, the charge is $0.0025 per share executed at NYSE and $0.0035 per share executed at venues other than NYSE. This is the same as what NASDAQ charges for its comparable MOPP orders,[13] which is, following the format of the NASDAQ fee schedule: (i) for NASDAQ-listed securities, $0.0035 per share; (ii) for NYSE-listed securities, $0.0035 per share executed at venues other than NYSE or $0.0025 per share executed at NYSE; and (iii) for securities listed on exchanges other than NASDAQ or NYSE, $0.0035 per share. The Exchange has determined that this is the appropriate charge to attract BMOP orders to BX.

Respecting BTFY orders, the charge is $0.0022 per share executed at NYSE and $0.0005 per share executed at venues other than NYSE, NASDAQ or PSX. For orders that execute at PSX, BX will pass through all fees assessed and rebates offered by PSX and for orders that execute at NASDAQ, BX will pass through all fees assessed and rebates offered by NASDAQ. BX, PSX and NASDAQ are affiliates. This is the same as what NASDAQ charges for its comparable TFTY orders,[14] which is $0.0022 per share executed at NYSE and $0.0005 per share executed at venues other than NYSE, BX or PSX, regardless of where the security is listed. For orders that execute at BX, NASDAQ gives a credit of $0.0014 for orders that

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 65470 (October 3, 2011), 76 FR 62489 (October 7, 2011) (SR–BX–2011–048).

[4] Similar to the fees proposed here, NASDAQ bases the charge on the type of routing strategy employed and where the order was executed, because routing fees are generally intended to the recoup the cost of routing the order to another venue for execution. However, unlike BX, NASDAQ also bases its routing fees on where the security is listed. This is not a significant difference because the proposed fees include a separate charge for execution on the NYSE.

[5] *See* BX Rule 4758(a)(1)(A)(iii).

[6] *See* BX Rule 4758(a)(1)(A)(iv).

[7] *See* BX Rule 4758(a)(1)(A)(vi).

[8] *See* BX Rule 4758(a)(1)(A)(v).

[9] *See* BX Rule 4758(a)(1)(A)(vii).

[10] Pursuant to a November 28, 2011 conference call with Commission staff, Edith Hallahan, Principal Associate General Counsel, the NASDAQ OMX Group, Inc., confirmed that the proposed BX routing fees are the same as (not less than) NASDAQ's existing routing fees.

[11] *See* NASDAQ Rule 4758(a)(1)(A)(iii) and (iv).

[12] For NASDAQ-listed securities, there is no separate, lower fee for orders executed at NYSE, because NASDAQ-listed securities do not trade on NYSE and thus would not route there.

[13] *See* NASDAQ Rule 4758(a)(1)(A)(vi).

[14] *See* NASDAQ Rule 4758(a)(1)(A)(v).

remove liquidity at BX, which is the equivalent of a pass through of BX fees, because BX currently provides a credit of $0.0014 for executions on BX.[15] Accordingly, BTFY fees are the same as TFTY fees. Pass through fees are intended to recover costs without specifying what those costs are, because the applicable fees may be lengthy and dependent on various factors, and thereby difficult to replicate, even in an affiliated exchange's fee schedule. In addition, pass through fees are useful because they can keep pace with changes in the fees being passed through without extensive changes to the fee schedule.

Respecting BCRT orders, for orders that execute at PSX, BX will pass through all fees assessed and rebates offered by PSX and for orders that executed at NASDAQ, BX will pass through all fees assessed and rebates offered by NASDAQ; PSX and NASDAQ are affiliates of BX.[16] NASDAQ similarly passes through all fees assessed and rebates offered respecting orders routed to PSX (its affiliates) for its comparable CART [17] orders executed on PSX. With respect to BX, NASDAQ gives a credit of $0.0014 for orders that remove liquidity at BX; this is the equivalent of a pass through of BX fees, because the BX fee schedule currently provides a credit of $0.0014 for executions on BX.[18]

Respecting securities prices at less than $1 executed at a venue other than BX, BX proposes to amend BX Rule 7018(b) to adopt a charge of 0.3% of the total transaction cost. This is the same as what NASDAQ charges for orders that route and execute at an away market,[19] which the Exchange believes is reasonable.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[20] in general, and with Section 6(b)(4) of the Act,[21] 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 BX operates or controls. The new routing fees are reasonable because they seek to recoup the cost of the execution on the other venue, which is generally borne by the order router and, ultimately, the routing exchange. In particular, pass through fees, as proposed herein for BTFY and BCRT orders executed on NASDAQ and BX, are structured to recoup routing costs. The Exchange does not believe that the proposed pass through of such fees for orders routed to and executed at NASDAQ or BX should create any inappropriate incentives or raise any novel regulatory issues. The pass through proposed herein applies to exchanges affiliated with the Exchange, NASDAQ and PHLX, which BX believes is reasonable and currently exists in NASDAQ Rule 7018(a).

The proposed fees mimic the routing fee structure in effect on NASDAQ for some time.[22] The fees for BSCN, BSTG and BMOP are the same on BX as for SCAN, STGY and MOPP on NASDAQ. With respect to BTFY and BCRT, these are the same as TFTY and CART on NASDAQ with respect to a pass through of charges and credits from executions at PSX. TFTY and CART executions at BX receive a credit of $0.0014, which is equivalent to the charge on BX for removing liquidity and is thereby the same as a pass through of BX charges. Accordingly, the proposed pass through of fees for BTFY and BCRT with respect to executions at NASDAQ, although it would not result in a credit of $0.0014, is still the same, because the pass through charge will be NASDAQ's charge for removing liquidity.

BX also believes that the proposed routing fees are equitable. All similarly situated members are subject to the same fee structure, and access to BX is offered on fair and non-discriminatory terms. Specifically, the same routing fee, credit or pass through fee applies to any participant and does not differ based on user type (*e.g.,* customer or broker-dealer).

Furthermore, the new routing fees are reasonable and equitable in that the decision to use send routable orders and to use BX as a router is entirely voluntary; members can avail themselves of numerous other means of directing orders to other venues, including becoming members of those markets or using any of a number of competitive routing services offered by other exchanges and brokers.

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

BX 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. Because the market for order execution and routing is extremely competitive, members may readily opt to disfavor BX's execution and routing services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, BX does not believe that the proposed fees 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.[23] 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–2011–078 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–2011–078. This file number should be included on the

[15] *See* BX Rule 7018(a) (Credit for entering order that accesses liquidity).

[16] BCRT orders can only execute on BX, PSX or NASDAQ. *See* BX Rule 4758(a)(1)(A)(vii).

[17] *See* NASDAQ Rule 4758(a)(1)(A)(xi).

[18] *See* BX Rule 7018(a) (Credit for entering order that accesses liquidity).

[19] *See* NASDAQ Rule 7018(b).

[20] 15 U.S.C. 78f.

[21] 15 U.S.C. 78f(b)(4).

[22] *See* NASDAQ Rule 7018.

[23] 15 U.S.C. 78s(b)(3)(A)(ii).

subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2011–078 and should be submitted on or before December 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–31485 Filed 12–7–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65875; File No. SR–CBOE–2011–112]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to FLEX Transaction Fees

December 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 23, 2011, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''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 CBOE. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder.[4] 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 is proposing to amend its Fees Schedule as it relates to Flexible Exchange Options (''FLEX Options'').[5] The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

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

In its filing with the Commission, CBOE 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. CBOE 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 purpose of this proposed rule change is to revise the CBOE Fees Schedule as it relates to FLEX Options. In particular, the Exchange is proposing to amend the fees schedule to provide that FLEX transactions for the account of non-Trading Permit Holder broker-dealers (which use the ''C'' order origin code) are subject to the same transaction fee rates that are applicable to public customers (which also use the ''C'' order origin code).[6] This change will be effective immediately.

Currently, the FLEX trading procedures and principles contained in Rule 24B.5 provide for certain allocation priorities to public customers and non-Trading Permit Holder broker-dealers.[7] To accomplish this, both public customer orders and non-Trading Permit Holder broker-dealer orders in FLEX Options are currently identified through using the order origin code ''C''. However, use of the same code may result in billing discrepancies because the public customer fee rates currently differ from broker-dealer fee rates.[8] For

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. *See* CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.17. The rules governing the trading of FLEX Options on the FLEX Request for Quote (''RFQ'') System platform (which consists of open outcry based trading) are generally contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform (which combines both open outcry and electronic based trading) are generally contained in Chapter XXIVB. Currently, all FLEX Options are traded on the FLEX Hybrid Trading System platform.

[6] The FLEX transaction fees for public customers are currently as follows: $0.00 per contract for equity options; $0.44 per contract for SPX options where the premium is greater than or equal to $1; $0.35 per contract for SPX options where the premium is less than $1; $0.40 per contract for OEX, XEO, S&P500 Dividend Index and Volatility Index options (except OEX and XEO Weeklys); $0.30 per contract for OEX and XEO Weeklys; $0.00 for QQQQ options; $0.18 per contract for all other index, exchange-traded fund (''ETF''), exchange-traded note (''ETN'') and HOLDRS options; and $0.85 per contract for credit default options and credit default basket options. In addition, a ''CFLEX Surcharge Fee'' of $0.10 per contract applies to all orders (all origin codes) executed electronically on the FLEX Hybrid Trading System. The CFLEX Surcharge Fee is charged up to the first 2,500 contracts per trade. *See* CBOE Fees Schedule Section 1 and Footnotes 1 and 17.

[7] Under the FLEX electronic request for quotes (''RFQ'') process, an incoming RFQ order is eligible to trade with FLEX RFQ responses (referred to as ''FLEX Quotes'') and FLEX Orders at a single clearing price that leaves bids and offers which cannot trade with each other (referred to as a ''BBO clearing price'') In determining priority, the FLEX system gives priority to FLEX Quotes and FLEX Orders whose price is better than the BBO clearing price, then to FLEX Quotes and FLEX Orders at the BBO clearing price. Generally, allocation among multiple FLEX Quotes and FLEX Orders at the BBO clearing price are first to FLEX Quotes subject to a FLEX Appointed Market-Maker participant entitlement, if applicable; second to FLEX Orders resting in the FLEX electronic book; third to FLEX Quotes for the account of public customers and non-Trading Permit Holder broker-dealers, with multiple interest ranked based on time priority, and finally all other FLEX Quotes, with multiple interest ranked based on time priority. *See* Rule 24B.5(a)(1)(C); *see also* Rule 24B.5(a)(1)(C) and (D) for various on the allocation algorithm when the RFQ market is locked or crossed or when the Trading Permit Holder that initiated the RFQ has indicated an intention to cross.

[8] The Exchange notes that, to the extent there may be any billing discrepancy with respect to FLEX Options transactions for the account of a non-Trading Permit Holder broker-dealers, such discrepancy would result in an under collection by the Exchange for such transactions. In that regard,

Continued