

efficient operation overall for the co-located customer.

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

The Exchange does not believe that the proposed Fee Schedule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

#### *C. 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.

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

The foregoing Fee Schedule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>6</sup> At any time within 60 days of the filing of the proposed Fee Schedule 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, as amended, 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-Phlx-2011-164 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-Phlx-2011-164. This file number should be included on the 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2011-164, and should be submitted on or before January 17, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011-33121 Filed 12-23-11; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66015; File No. SR-BX-2011-081]

### **Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Fees for Co-Location Services**

December 20, 2011.

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 December 9, 2011, 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**

The Exchange proposes to modify pricing for co-location services. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at the Exchange's principal office, on the Commission's Web site at <http://www.sec.gov>, 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 modifying its co-location fee schedule, Exchange Rule 7034(a), to include a fee for an optional cabinet choice. Currently co-location customers have the option of obtaining several cabinet sizes and power densities. The co-located customer may obtain a half cabinet, a low density cabinet, a medium density cabinet, a medium-high density cabinet and a high density cabinet.<sup>3</sup> Each cabinet may vary in size and maximum power capacity. The fees related to the cabinet and power usage are incremental, with additional charges being imposed based on higher levels of cabinet and/or power usage, the use of non-standard cabinet sizes or special cabinet cooling equipment. The co-location customer may obtain more power by choosing a combination of lower power density cabinets. However, the Exchange is providing a choice of a larger cabinet (30"W x 48" D x 96" H) with higher power instead of combining several units for more power ( $\geq 10\text{kW} \leq 17.3\text{kW}$ ) with an installation fee of

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Exchange Rule 7034(a).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

\$7,000; and an ongoing monthly fee of \$15,000. The co-location customer also has the option of a smaller cabinet (24" W x 42" D x 84" H) with the same power structure which would reduce the installation fee to \$3,500 with the same ongoing monthly fee of \$15,000 per month.

Additionally, the Exchange is proposing to include a fee for a super high density cabinet kit in Exchange Rule 7034(d). The optional super high density cabinet requires additional customized equipment to adequately cool the cabinet. The Exchange is proposing an installation fee of \$7,000 for the required customized equipment kit. All fees are charged to recoup costs associated with the optional cabinets while providing increased efficiency; and to the extent the costs are covered, provide a profit to the Exchange.

The Exchange is making the super high density cabinets available as a convenience to customers, and notes that use of Exchange cabinets is completely voluntary.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Section 6(b)(4) of the Act,<sup>5</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls.

The Exchange will incur costs for the super high-density cabinets due to the additional costs incurred for the change in design of the cabinets to meet the need of the client, and the costs incurred for infrastructure to accommodate the proposed units as the cabinet design is not of the same dimension as the current cabinets to accommodate new server sizes. The Exchange will also incur additional costs for personnel needed to monitor and support the new cabinets. The Exchange looks to recoup the additional costs from all market participants that opt to utilize the proposed cabinets. Thus, the price charged for the proposed cabinets is equitable and just in that the proposed fees that will be charged only to those that opt for the proposed super high-density cabinets and will be based on the costs to develop and maintain the system, as well as allowing the Exchange to earn a return on its investment. Furthermore, because the proposed super high-density cabinet

option is entirely voluntary and available to all members, the Exchange's fees for the proposed cabinet are not only equitably allocated, but also non-discriminatory.

Additionally, the Exchange is providing the additional cabinet option to its co-located customers to provide greater efficiency for their trading operations. In order to receive similar service under the current structure, the co-located customer would need to combine several currently provided cabinets. While the price may appear initially similar, the co-located customer would incur additional monthly interconnectivity costs for cabling to connect all the cabinets. Additionally, having one super high-density cabinet to meet the space and power requirements to operate the newly designed servers reduces the additional latency that would be experienced by combining several cabinets to achieve a similar result. The new design of the super high-density cabinet allows the fit of more equipment in one unit before reaching power capacity. For all the above reasons, the proposed super high-density cabinets results in a more efficient operation overall for the co-located customer.

## 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.

## C. 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.

## 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>6</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, as amended, 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-2011-081 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-2011-081. This file number should be included on the 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2011-081, and should be submitted on or before January 17, 2012.

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2011-33120 Filed 12-23-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66012; File No. SR-BX-2011-073]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving a Proposed Rule Change To Modify Rule 7034 Regarding Low Latency Network Connections

December 20, 2011.

#### I. Introduction

On October 31, 2011, NASDAQ OMX BX, Inc. ("BX" or the "Exchange") 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 modify Exchange Rule 7034 entitled "Co-Location Services" to establish a program for offering low latency network connections and to establish the initial fees for such connections. The Exchange also proposed administrative modifications to Exchange Rule 7034. The proposed rule change was published for comment in the **Federal Register** on November 10, 2011.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

The Exchange proposed to modify Exchange Rule 7034, which governs the Exchange's program for co-location services, to offer new options for low latency network telecommunication connections and to establish the fees for such connections. As its initial offering, the Exchange proposed to offer point-to-point telecommunication connectivity from the co-location facility to select major financial trading and co-location venues in the New York and New Jersey metropolitan areas, Toronto, and Chicago.<sup>4</sup>

According to the Exchange, the enhanced point-to-point connectivity would provide the Exchange's co-location customers with the opportunity to obtain low latency network connectivity with greater ease than is currently the case, and at a competitive price.<sup>5</sup> The Exchange represented that co-location customers currently obtain similar services by negotiating fees, obtaining service level agreements, and executing service agreements directly with approved telecommunication carriers, and that such co-location customers are currently charged a monthly negotiated fee by the telecommunications carrier in addition to a cross connection fee by the Exchange.<sup>6</sup> The Exchange represented that for its low latency network connection services, it would obtain wholesale rates from the carriers and then charge a markup to compensate the Exchange for its efforts to negotiate and establish the arrangement, for integrating the connectivity into the Exchange co-location connectivity offering, and for administrative costs associated with establishing and maintaining each new connection.<sup>7</sup>

According to the Exchange, co-location customers would have the opportunity to request these new low latency network telecommunication connections through the same process used to request a new co-located cabinet and other co-location services.<sup>8</sup> Co-location customers would retain the option of contracting directly with telecommunication providers, including either the providers that participate in the program, the current providers in the data center who have not yet agreed to participate, or any new carrier that is approved to install equipment in the Exchange's data center.<sup>9</sup>

The Exchange proposed one-time fees for the installation of telecommunication connectivity to select major financial trading and co-location venues in the New York and New Jersey metropolitan areas, Toronto, and Chicago, as well as per-month connectivity fees, at connectivity levels of 100MB, 1G, and 10G, respectively.<sup>10</sup> The Exchange represented that the fees

According to the Exchange, clients would have the option to use the enhanced point-to-point connectivity service to receive low latency network connectivity from the Exchange's data center to the client's chosen venue(s), in addition to the telco cross connect. These connections could be utilized to send market data to and receive orders from the chosen venues.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

were based on anticipated bandwidth necessary for the connections and distances to these select venues. The Exchange indicated its belief that the fees are reasonable, because they are similar and competitive with fees charged for similar services by other entities.<sup>11</sup>

The Exchange also proposed to eliminate references to certain fee waivers that expired July 31, 2011.<sup>12</sup>

#### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>13</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>14</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,<sup>15</sup> which requires, among other things, that the rules of a national securities exchange be 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In the Notice, the Exchange represented that the low latency network connections would be offered to market participants in a manner that is not unfairly discriminatory.<sup>16</sup> The Commission believes that this program to offer low latency network connectivity, in the manner described in the proposal, is consistent with Section 6(b)(5) the Exchange Act insofar as NASDAQ makes these connectivity options uniformly available to all members who voluntarily request them and pay the associated fees. Additionally, the Commission notes that members may choose not to obtain low

<sup>11</sup> *Id.* at 70186.

<sup>12</sup> *Id.*; see also Securities Exchange Act Release No. 64630 (June 8, 2011), 76 FR 34783 (June 14, 2011) (SR-NASDAQ-2011-074); and Securities Exchange Act Release No. 64858 (July 12, 2011), 76 FR 42152 (July 18, 2011) (SR-NASDAQ-2011-094).

<sup>13</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

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

<sup>16</sup> See Notice, 76 FR at 70186.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 65687 (November 4, 2011), 76 FR 70184 ("Notice").

<sup>4</sup> *Id.* at 70185. The Exchange represented that it currently provides a cross connect from a client's cabinet to its requested telecommunication carrier's cabinet (known as a "telco cross connect").