

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73305; File No. SR-BX-2014-047]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Amend Fees for Optional Wireless Connectivity for Co-Located Clients

October 6, 2014.

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 September 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

The Exchange is proposing a rule change to amend fees assessed to clients for wireless connectivity that enables clients to receive data from BX. Specifically, the Exchange proposes to amend fees assessed for remote multicast ITCH (“MITCH”) Wave Ports for clients co-located at other third-party data centers, through which BX TotalView ITCH market data will be distributed after delivery to those data centers via wireless network. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com>, at the Exchange’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

BX is proposing to amend fees assessed under BX Rule 7015 for remote MITCH Wave Ports for clients co-located at other third-party data centers, through which BX TotalView ITCH market data will be distributed after delivery to those data centers via wireless network.

BX offers optional wireless connectivity to clients who had requested such connectivity for other markets’ data. BX uses network vendors to supply wireless connectivity from the Carteret, NJ data center to the data centers of other exchanges.<sup>3</sup> The vendor installs, tests and maintains the necessary communication equipment for this wireless network between the data centers. The wireless connectivity is an optional alternative to fiber optic network connectivity, providing lower latency because the wireless signals travel a straight, unimpeded line and because light waves travel faster through air than through glass (fiber optics). Because wireless transmission of such data requires an unimpeded line of sight between Carteret and the data center of the market to which it is connecting, BX and its vendors incur costs associated with maintaining hardware and leasing towers on which its microwave dishes and the associated hardware are mounted, which generally increase as distance between data centers increase.<sup>4</sup>

BX originally planned to create wireless connections to a data center in Newark used by NYSE as a SFTI Network Point of Presence, which is approximately 15 miles from BX’s Carteret data center. In 2013, NYSE began to allow wireless vendors and telco vendors to connect directly to its data center in Mahwah, NJ,<sup>5</sup> which is approximately 40 miles from Carteret. Because the wireless data feeds are designed to offer high-speed and low latency,<sup>6</sup> BX determined to direct its wireless vendors to connect to the Mahwah data center instead of the

Newark SFTI Point of Presence. As a consequence, BX is proposing to increase the fees assessed under Rule 7015 for MITCH Wave Ports relating to connectivity to data received wirelessly to and from Mahwah, which will help offset greater costs incurred in leasing towers, and purchasing and maintaining wireless equipment to cover the increased distance as well as the higher costs to house equipment and connections within the Mahwah data center.<sup>7</sup>

BX currently assesses an installation charge for the remote port, at each of the data center locations, of \$2,500 for installation, and \$5,000 as a monthly recurring fee.<sup>8</sup> Each of the data centers that a client may subscribe to is approximately the same distance from the Carteret data center. As discussed above, BX will be providing a direct connection to NYSE’s data center in Mahwah, which is significantly farther from Carteret. The Exchange incurs higher costs for housing its equipment at Mahwah, including higher fees for power, cabinets and connections. Moreover and as noted above, the Exchange and its vendors incur higher costs in leasing towers and equipment to connect Carteret to Mahwah. As a consequence, BX is proposing to increase the one-time installation charge to \$5,000, and the monthly recurring fee to \$7,500.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>9</sup> in general, and with Sections 6(b)(4) and (b)(5) of the Act,<sup>10</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, and 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.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading activities of those

<sup>3</sup> NASDAQ OMX acts as re-distributor of these third-party market data feeds, capturing the data at the originating data centers and transporting the data to the Carteret data center.

<sup>4</sup> Because direct line of sight between Carteret and the data centers of other exchanges is not possible, BX’s vendors lease as many towers and associated equipment as needed to ensure an unbroken line of sight between individual towers, repeating the signal until it arrives at its destination.

<sup>5</sup> See <http://www1.nyse.com/press/1337855269042.html>.

<sup>6</sup> Wireless connectivity is an optional alternative to higher latency fiber optic network connectivity.

<sup>7</sup> The Exchange notes that The NASDAQ Stock Market LLC recently increased fees assessed for its MITCH Wave Ports that connect to Mahwah. See Securities Exchange Act Release No. 73132 (September 17, 2014), 79 FR 56836 (September 23, 2014) (SR-NASDAQ-2014-092).

<sup>8</sup> Clients opting to pay for the remote MITCH Wave Ports will continue to be fee liable for the applicable market data fees as described in BX Rules 7019, 7023, and 7026.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

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

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

members who believe that co-location enhances the efficiency of their trading. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of such members. If a particular exchange charges excessive fees for co-location services, affected members will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including co-locating with a different exchange, placing their servers in a physically proximate location outside the exchange's data center, or pursuing trading strategies not dependent upon co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also revenues associated with the execution of orders routed to it by affected members.

Moreover, the Exchange believes the proposed increased fees are reasonable because they are based on the Exchange's increased costs incurred in connecting to Mahwah. As discussed, the greater distance between Carteret and Mahwah results in greater costs incurred by the Exchange and its vendors, and the Exchange is assessed higher charges for housing its equipment at Mahwah as compared to other exchanges' locations. The proposed fees allow the Exchange to recoup these costs and make a profit, while providing clients the ability to reduce latency in the transmission of data by connecting directly to NYSE's data center wirelessly.

The Exchange believes the proposed increased fees are equitably allocated in that all clients that voluntarily select connectivity to, and to receive data from, BX through this service is [sic] charged the same amount for the same services. Although the proposed fee is higher than the fees charged for connectivity to other exchanges' data centers, they are reflective of the increased costs associated with connecting to the Mahwah data center. Accordingly, the increased fees are allocated equitably on those that receive the benefit of the connectivity.

The Exchange's proposal is also consistent with the requirement of Section 6(b)(5) of the Act that Exchange rules be designed to promote just and equitable principles of trade [sic] to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade [sic], to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 are not designed to permit unfair discrimination between clients, issuers, brokers, or dealers. The proposal is consistent with these requirements because it provides optional connectivity that promotes low-latency transfer of data to market participants. As is true of all co-location services, all co-located clients have the option to select this voluntary connectivity option, and there is no differentiation among clients with regard to the fees charged for the wireless connectivity to, and wirelessly-received data from Mahwah.

#### *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. To the contrary, this proposal will promote competition for distribution of market data by offering an optional direct connection to the NYSE data center, which will improve the latency of the connection to BX data that would be available through NYSE's STFI Point of Presence in Newark. As discussed above, the Exchange believes that fees for co-location services, including those proposed for microwave connectivity, are constrained by the robust competition for order flow among exchanges and non-exchange markets, because co-location exists to advance that competition. Further, excessive fees for co-location services, including for wireless technology, would serve to impair an exchange's ability to compete for order flow rather than burdening competition.

#### *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 change has become effective pursuant to Section 19(b)(3)(A) of the Act,<sup>11</sup> and paragraph (f)<sup>12</sup> of Rule 19b-4, thereunder. 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-2014-047 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-2014-047. 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 10:00 a.m. and 3:00 p.m. Copies of the 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-BX-

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f).

2014-047 and should be submitted on or before October 31, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73308; File No. SR-ISE-2014-45]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add a Reference to Exchange Act Rule 10C-1 in the Exchange's Rules Concerning Unlisted Trading Privileges

October 6, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 22, 2014 the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. 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 ISE proposes to add language to Rule 2101(a), entitled "Unlisted Trading Privileges," that will make clear that the Exchange will not list equity securities without first ensuring that its rules comply with Rule 10C-1 under the Act ("Rule 10C-1").<sup>3</sup> The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), 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 self-regulatory organization 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 self-regulatory organization 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 add language to Rule 2101(a), which will clarify the fact that the Exchange will not list equity securities without first ensuring that Exchange Rules comply with Rule 10C-1, as described below.<sup>4</sup>

On March 30, 2011, to implement Section 10C of the Act,<sup>5</sup> as added by Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"),<sup>6</sup> the Commission proposed Rule 10C-1 under the Act,<sup>7</sup> which directs each national securities exchange to prohibit the listing of any equity security of any issuer, with certain exceptions, that does not comply with the rule's requirements regarding compensation committees of listed issuers and related requirements regarding compensation advisers. On June 20, 2012, the Commission adopted Rule 10C-1.<sup>8</sup> Rule 10C-1 obligates the Exchange to establish listing standards that require each member of a listed issuer's compensation committee to be a member of the issuer's board and to be independent, as well as establish certain factors that an issuer must consider when evaluating the independence of a director.<sup>9</sup> Rule 10C-1 also requires the Exchange to establish standards for evaluating the independence of a compensation consultant, legal counsel, or other adviser ("Compensation Consultant") and requires a Company to provide funding to a compensation committee to retain such Compensation Consultant.<sup>10</sup>

<sup>4</sup> *Id.*

<sup>5</sup> 15 U.S.C. 78j-3.

<sup>6</sup> Public Law 111-203, 124 Stat. 1900 (2010).

<sup>7</sup> See Securities Act Release No. 9199, Securities Exchange Act Release No. 64149 (March 30, 2011), 76 FR 18966 (April 6, 2011) ("Rule 10C-1 Proposing Release").

<sup>8</sup> See Securities Act Release No. 9330, Securities Exchange Act Release No. 67220 (June 20, 2012), 77 FR 38422 (June 27, 2012) ("Rule 10C-1 Adopting Release").

<sup>9</sup> 17 CFR 240.10C-1.

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

The Exchange does not currently list any equity securities as a primary listing market. Consistent with this fact, Exchange Rule 2101(a) currently states that all equity securities traded on the ISE Stock Exchange<sup>11</sup> are traded pursuant to unlisted trading privileges and that the Exchange will not list any such securities before first filing and obtaining Commission approval of rules that incorporate qualitative listing criteria and comply with Rule 10A-3 under the Act.<sup>12</sup> To make clear the Exchange's intention to comply with the requirements of Rule 10C-1, the Exchange proposes to amend Rule 2101(a) to state that no equity securities will be listed on the ISE Stock Exchange until Exchange Rules have been amended to also comply with Rule 10C-1. Because the Exchange does not presently list any equity securities, the Exchange does not believe it is necessary to make any further amendments in response Section 952 of the Dodd-Frank Act at this time.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>13</sup> Specifically, the proposal is consistent with Section 6(b)(5) of the Act,<sup>14</sup> which requires exchange rules to promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes the proposed rule change fulfills these requirements because it will add language to Rule 2101(a) that clarifies the fact that the Exchange will not list equity securities without first ensuring that its rules comply with Rule 10C-1, which implements Section 10C of the Act.<sup>15</sup>

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

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act<sup>16</sup> in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule

<sup>11</sup> The ISE Stock Exchange is the Exchange's facility for trading equity securities.

<sup>12</sup> 17 CFR 240.10A-3.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> 15 U.S.C. 78j-3.

<sup>16</sup> 15 U.S.C. 78f(b)(8).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> 17 CFR 240.10C-1.