

SECURITIES AND EXCHANGE COMMISSION
(Release No. 60163; File No. SR-BX-2009-025)

June 23, 2009

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving Proposed Rule Change to Retroactively Amend the Fee Schedule to Clarify and Correct References to the Volume Discount Given to Market Makers

On May 8, 2009, NASDAQ OMX BX, Inc. filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the Fee Schedule of the Boston Options Exchange Group, LLC (“BOX”) on a retroactive basis to clarify and correct references relating to the volume discount (“Volume Discount”) given to Market Makers. The proposed rule change was published for comment in the Federal Register on May 21, 2009.³ The Commission received no comment letters on the proposal. This order approves the proposed rule change.

The Exchange proposes to amend Section 3 of the BOX Fee Schedule, dealing with Market Maker Trading Fees, on a retroactive basis. BOX currently applies, and historically has applied, a Volume Discount to the fees charged to BOX Market Makers who engage in particularly active trading volume on BOX. The proposed changes will clarify and correct the Fee Schedule to reflect that trading volume in options classes included within the Liquidity Make or Take Pricing Structure (“Make or Take”), as set forth in Section 7 of the BOX Fee

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59919 (May 14, 2009), 74 FR 23915 (May 21, 2009).

Schedule, is excluded when determining a Market Maker's Volume Discount.⁴ The text explicitly stating this used to be included in the BOX Fee Schedule, but was inadvertently removed in a prior filing, SR-BSE-2007-52.⁵ The Exchange requests that the proposed rule change be made effective retroactive to November 30, 2007, which is the date of filing and effectiveness of SR-BSE-2007-52.

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.⁶ In particular, the Commission believes that the proposal to retroactively modify the Exchange's fee schedule such that trading volume in options classes included within the Make or Take is excluded when determining a Market Maker's Volume Discount it is consistent with and Section 6(b)(4) of the Act,⁷ in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Commission notes that the Exchange has represented that the inadvertent elimination of the language in question from the BOX Fee Schedule on November 30, 2007 did not alter BOX Market Makers' understanding that Make or Take volume was excluded from the calculation of the Volume Discount. The Commission also notes that the proposed change is intended to eliminate any gap in the actual treatment of Make or Take volume when calculating the Volume Discount. Accordingly, the Commission believes that the proposed changes to

⁴ Make or Take volume is excluded when determining a Market Maker's monthly trading volume for purposes of the Volume Discount and is not eligible to have a Volume Discount applied to it.

⁵ See Securities Exchange Act Release No. 56948 (December 12, 2007), 72 FR 72426 (December 20, 2007)(SR-BSE-2007-52).

⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(4).

Section 3 of the BOX Fee Schedule do not raise any new or novel issues and merely are designed to accurately reflect the fee structure the Exchange and its participants understood to be in effect.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-BX-2009-025), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon
Deputy Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).