

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64768; File No. SR-BX-2011-040)

June 29, 2011

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of  
Proposed Rule Change by NASDAQ OMX BX, Inc. to Amend the BOX Fee Schedule

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 June 28, 2011, NASDAQ OMX BX, Inc. (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 amend the Fee Schedule of the Boston Options Exchange Group, LLC (“BOX”).<sup>5</sup> While changes to the BOX Fee Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on July 1, 2011. The text of the proposed rule change is available from the principal office of the

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

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

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

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

<sup>5</sup> The BOX Fee Schedule can be found on the BOX website at [http://bostonoptions.com/pdf/BOX\\_Fee\\_Schedule.pdf](http://bostonoptions.com/pdf/BOX_Fee_Schedule.pdf).

Exchange, at the Commission's Public Reference Room, on the Exchange's Internet website at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings> and on the Commission's website at [www.sec.gov](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 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

Section 8 of the BOX Fee Schedule currently imposes a fee of \$0.50 per contract for all Eligible Orders sent to Away Exchanges in excess of 10,000 contracts per month for each BOX Options Participant.<sup>6</sup> Additionally, BOX currently exempts outbound Eligible Orders sent to Away Exchanges, up to a maximum of 10,000 contracts per month, from the fees and credits of Section 7 of the BOX Fee Schedule, as these transactions are deemed to neither 'add' nor 'take' liquidity from the BOX Book. The Exchange proposes an amendment to Section 8 of the BOX Fee Schedule to eliminate the \$0.50 per contract fee on Eligible Orders sent to Away Exchanges. Additionally, the

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<sup>6</sup> See Securities Exchange Act Release No. 64583 (June 2, 2011), 76 FR 33014 (June 7, 2011) (SR-BX-2011-031). The proposed change will have no effect on the billing of orders of non-BOX Options Participants.

Exchange proposes a corresponding change to Section 7 so that all Eligible Orders sent to Away Exchanges are exempt from Section 7 of the BOX Fee Schedule. Therefore, Eligible Orders sent to Away Exchanges will be subject only to the applicable transaction fees listed in Sections 1 through 3 of the BOX Fee Schedule

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>7</sup> in general, and Section 6(b)(4) of the Act,<sup>8</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities.

The Exchange believes that it is equitable to permit BOX Participants to have orders routed to away exchanges without being assessed a fee. The Exchange believes that BOX Options Participants may send additional order flow to BOX, to the benefit of all market participants, if there is no fee assessed when Participant orders may be sent to an Away Exchange. The Exchange believes that the proposed change is an equitable allocation of fees because the order routing fee structure applies to all BOX Participants.

Further, the Exchange believes the proposed change and the resulting order routing fee structure are fair and reasonable and must be competitive with similar fees in place on other exchanges. BOX operates within a highly competitive market in which market participants can readily direct order flow to any of eight other competing venues if they deem fee levels at a particular venue to be excessive. The change to allow BOX Participants to have more orders routed away at no cost is intended to attract order flow

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

to BOX and provide BOX Participants additional flexibility in their execution decisions. The Exchange believes all market participants can benefit from greater liquidity on BOX and that it is appropriate to provide a fee structure intended to attract additional order flow. In particular, the proposed change will allow BOX to remain competitive with other exchanges, and allow BOX to maintain a fee structure which is equitable among all BOX Participants. The Exchange believes that this competitive marketplace impacts the fees present on BOX today and influences this proposal.

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

The Exchange has neither solicited nor received comments on the proposed rule change.

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>9</sup> and Rule 19b-4(f)(2) thereunder,<sup>10</sup> because it establishes or changes a due, fee, or other charge applicable only to a member.

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

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

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.

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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2011-040 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-2011-040. This file number should be included on the subject line if e-mail 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NW, Washington, D.C. 20549, 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 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-2011-040 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).