

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60818; File No. SR-BX-2009-048)

October 13, 2009

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving a Proposed Rule Change to Amend the Grandfathered Rules of the Exchange

On August 17, 2009, NASDAQ OMX BX, Inc. (“Exchange”) 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 Grandfathered Rules of the Exchange.³ The proposed rule change was published for comment in the Federal Register on September 8, 2009.⁴ The Commission received no comments on the proposal.

The proposed rule change would incorporate certain provisions of the former Constitution of the Boston Stock Exchange, Incorporated (“BSE”)⁵ into the Grandfathered Rules. The provisions to be added to the Grandfathered Rules relate to the following: (1) Participation (formerly Membership) rules, to supplement the By-Laws and the Grandfathered Rules to direct the BOX Options Participants (“Participants”) and prospective participants to Section 6(c) of the Act⁶, as cited in the proposed rule text regarding the investigation and acceptance of an applicant; (2) Non-liability of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Grandfathered Rules are operative to the extent that they apply to the Boston Options Exchange Group, LLC (“BOX”) and to Options Participants on the Exchange, and are to be read in conjunction with the Rules of the BOX.

⁴ See Securities Exchange Act Release No. 60591 (August 31, 2009), 74 FR 46288.

⁵ Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-02, -23, -25; SR-BSECC- 2008-01) (“Release No. 34-58324”).

⁶ 15 U.S.C. 78f(c).

Exchange provision, to reinforce to Participants the “non-liability” of the Exchange for damages sustained from use of the facilities of the Exchange; (3) Insolvent Participants, to provide guidance for Insolvent Participants to notify the Exchange, of such insolvency and to state that the Exchange will notify the Commission of such insolvency; and (4) Exchange Inquiries to remind Participants that they may be subject to expulsion or suspension for failure to respond to an Exchange Inquiry.

The Exchange proposes to apply these provisions retroactively to the date on which proposals set forth in Release No. 34-58324 were approved by the Commission.⁷

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 exchange⁸ and, in particular, the requirements of Section 6 of the Act⁹ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act¹⁰, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 because it clarifies the provisions of the former BSE Constitution that will continue to apply to Participants.

⁷ See supra note 5.

⁸ In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹¹, that the proposed rule change (SR-BX-2009-048) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).