

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70539; File No. SR-BX-2013-052)

September 27, 2013

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Pricing for Certain Options Symbols

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 23, 2013, NASDAQ OMX BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 Substance of the Proposed Rule Change

The Exchange proposes to amend BX Options Rules, Chapter XV, Section 2 entitled “BX Options Market – Fees and Rebates” to amend fees and rebates for various options.

While the changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on October 1, 2013.

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaqomxbx.cchwallstreet.com>, at the principal office of the Exchange, on the Commission’s website 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

BX proposes to amend certain rebates and fees in Chapter XV, Section 2(1) pertaining to Penny Pilot³ Options overlying the following stocks: Bank of America Corporation (“BAC”), iShares Russell 2000 Index (“IWM”), PowerShares QQQ (“QQQ”), SPDR S&P 500 (“SPY”), and iPath S&P 500 VIX St Futures ETN (“VXX”) (collectively the “Specified Penny Pilot Options”). Specifically, the Exchange proposes to amend the BX Options Market Maker⁴ Rebate to Add Liquidity and the Fee to Add Liquidity in the Specified Penny Pilot Options.

The Exchange proposes to decrease the BX Options Market Maker Rebate to Add Liquidity in the Specified Penny Pilot Options from \$0.20 to \$0.00 per contract.⁵ The Exchange also proposes to decrease the BX Options Market Maker Fee to Add Liquidity in the Specified

³ The Penny Pilot on BX Options was established in June 2012, and was expanded and extended through December 31, 2013. See Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030) (order approving BX Options rules and establishing Penny Pilot); 67342 (July 3, 2012), 77 FR 40666 (July 10, 2012) (SR-BX-2012-046) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 68518 (December 21, 2012), 77 FR 77152 (December 31, 2012) (SR-BX-2012-076) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 69784 (June 18, 2013), 78 FR 37873 (June 24, 2013) (SR-BX-2013-039).

⁴ A BX Options Market Maker must be registered as such pursuant to Chapter VII, Section 2 of the BX Options Rules, and must also remain in good standing pursuant to Chapter VII, Section 4.

⁵ The Rebate to Add Liquidity is paid to a BX Options Market Maker only when the BX Options Market Maker is contra to a Non-Customer or BX Options Market Maker. A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.

Penny Pilot Options from \$0.10 to \$0.00 per contract.⁶ The fee schedule after the proposed rule change will reflect the fees and rebates as follows:

Fees and Rebates (per executed contract)			
	Customer	BX Options Market Maker	Non-Customer¹
BAC, IWM, QQQ and SPY:			
Rebate to Add Liquidity	\$0.00	\$0.00	N/A
Fee to Add Liquidity	\$0.10	\$0.00	\$0.45
Rebate to Remove Liquidity	\$0.00	N/A	N/A
Fee to Remove Liquidity	N/A	\$0.45	\$0.45

The Exchange believes that the proposed amended BX Options Market Maker fee and rebate for the Specified Penny Pilot Options is competitive and will encourage BX members to transact business on the Exchange. While the Exchange is reducing the Rebate to Add Liquidity it is also not assessing a Fee to Add Liquidity to BX Options Market Makers which will enable the Exchange to remain competitive with other options exchanges and encourage BX Options Market Makers to make markets at the Exchange.

2. Statutory Basis

BX believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,⁷ in general, and with Section 6(b)(4) and 6(b)(5) of the Act,⁸ in particular, in that it

⁶ The Fee to Add Liquidity is assessed to a BX Options the BX Options Market Maker is contra to a Customer.

⁷ 15 U.S.C. 78f.

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 BX operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that pricing by symbol is reasonable, equitable and not unfairly discriminatory because it is not novel as other options exchanges differentiate pricing by security today.⁹ Further, the Specified Penny Pilot Options are highly liquid as compared to other Penny Pilot Options and therefore it is reasonable to assess different pricing for these symbols. The Exchange believes that its proposal to assess different fees and rebates for the Specified Penny Pilot Options as compared to all other Penny Pilot Options is equitable and not unfairly discriminatory as described hereafter.

The Exchange believes that for Specified Penny Pilot Options the proposed decrease of the Rebate to Add Liquidity for BX Options Market Makers from \$0.20 (available only when they are contra to a Non-Customer or BX Options Market Maker) to \$0.00 per contract is reasonable because the Exchange is also proposing not to assess BX Options Market Makers a Fee to Add Liquidity in the Specified Penny Pilot Options. The Exchange believes that BX Options Market Makers will be encouraged to make markets at the Exchange which in turn will benefit other market participants through tighter markets and order interaction. The Exchange believes that for Specified Penny Pilot Options the proposed decrease of the Rebate to Add Liquidity for BX Options Market Makers from \$0.20 (available only when they are contra to a Non-Customer or BX Options Market Maker) to \$0.00 per contract is equitable and not unfairly

⁸ 15 U.S.C. 78f(b)(4) and (5).

⁹ See NASDAQ OMX PHLX LLC's ("Phlx") Pricing Schedule, which has different pricing for SPY. See also the Chicago Board Options Exchange, Incorporated's Fees Schedule, which distinguishes index products.

discriminatory because no market participant on BX Options would be entitled to a Rebate to Add Liquidity in the Specified Penny Pilot Options.

The Exchange believes that for Specified Penny Pilot Options the proposed decrease of the Fee to Add Liquidity for BX Options Market Makers from \$0.10 (available only when they are contra to a Customer) to \$0.00 per contract is reasonable because the Exchange would no longer assess a fee to BX Options Market Makers which should encourage these participants to offer more aggressive markets at the Exchange. The Exchange believes that for Specified Penny Pilot Options the proposed decrease of the Fee to Add Liquidity for BX Options Market Makers from \$0.10 (available only when they are contra to a Customer) to \$0.00 per contract is equitable and not unfairly discriminatory because BX Options Market Makers, unlike other market participants, have obligations to the market and regulatory requirements,¹⁰ which normally do not apply to other market participants. A BX Options Market Maker has the obligation to make continuous markets, engage in course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with course of dealings. Non-Customers, including Professionals, Firms, Broker-Dealers and Non-BX Options Market Makers, are assessed a Fee to Add Liquidity of \$0.45 per contract in the Specified Penny Pilot Options. Customers are assessed a Fee to Add Liquidity in the Specified Penny Pilot Options of \$0.10 per contract only when they are contra to a Customer.

¹⁰ Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a Market Maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder. See Chapter VII, Section 5.

Assessing Customers Fees to Add Liquidity in the Specified Penny Pilot Options, which are lower than other Non-Customer market participants, and not assessing BX Options Market Makers the fee is reasonable, equitable and not unfairly discriminatory because the model seeks to reward liquidity providers by assessing takers. Other options exchanges similarly provide benefits to liquidity providers.¹¹ The Exchange believes that lowering costs will incentivize BX Options Market Makers to interact with a greater number of Specified Penny Pilot Options orders on the Exchange. The proposed differentiation between BX Options Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. Customers would continue to not be assessed a Fee to Remove Liquidity in the Specified Penny Pilot Options while BX Options Market Makers and Non-Customers are assessed a \$0.45 per contract Fee to Remove Liquidity in the Specified Penny Pilot Options. The Exchange would continue to uniformly assess the Fee to Add Liquidity in Specified Penny Pilot Options to all Non-Customers.¹²

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

BX 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. To the contrary, BX has designed its fees and rebates to compete effectively for the execution and routing of options contracts.

The Exchange believes that the proposed amended fees and rebates to add liquidity for the Specified Penny Pilot Options will attract BX Options Market Makers to engage in market

¹¹ Phlx pays a Simple Order Rebate for Adding Liquidity to Market Makers but not Customers and assesses a Simple Order Fee for Removing Liquidity to all market participants thereby creating a \$0.24 per contract fee differential as between Customers and Market Makers in Simple Orders. See Section I of Phlx's Pricing Schedule.

¹² No market participant is entitled to a Rebate to Remove Liquidity in the Specified Penny Pilot Options.

making activities at the Exchange which results in tighter markets and order interaction and benefits all market participants. As described herein, BX Options Market Makers have obligations to the market and regulatory requirements,¹³ which normally do not apply to other market participants. While BX Options Market Makers will not be paying a Fee to Add Liquidity in the Specified Penny Pilot Options, Customers will pay a fee which is lower than that assessed to Non-Customers. The Exchange believes that this does not present an undue burden on competition because the pricing seeks to reward liquidity providers, which in turn benefits all market participants. The proposed differentiation between BX Options Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants.

Additionally, since the fees and rebates are comparable to those present at other options venues,¹⁴ the Exchange believes the proposals discussed herein do not pose an undue burden on intermarket competition. The Exchange operates in a highly competitive market comprised of twelve U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed fee and rebate scheme discussed herein is competitive. The Exchange believes that this competitive marketplace

¹³ Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a Market Maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder. See Chapter VII, Section 5.

¹⁴ See PHLX's Pricing Schedule.

materially impacts the fees and rebates present on the Exchange today and substantially influences the proposal set forth above.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or 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.¹⁵ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2013-052 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2013-052. 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 Section, 100 F Street, NE, Washington, DC 20549-1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also 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-2013-052 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.¹⁶

Kevin M. O'Neill
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).