

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72584; File No. SR-BX-2014-036)

July 10, 2014

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Fees and Rebates for Various Options

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 July 1, 2014, 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.

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, 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

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

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

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

BX proposes to amend certain rebates and fees in Chapter XV, Section 2(1), Fees for Execution of Contracts on the BX Options Market. Specifically, the Exchange proposes to: (i) increase the BX Options Fee to Remove Liquidity for BX Options Market Makers as well as Non-Customers in Penny Pilot<sup>3</sup> Options and Non-Penny Pilot Options; and (ii) increase the BX Options Customer Rebate to Remove Liquidity in certain Penny Pilot Options from \$0.32 to \$0.35 per contract, as explained further below.

First, the BX Options Fee to Remove Liquidity for BX Options Market Makers and Non-Customers will increase from \$0.45 per contract to \$0.46 per contract in all Penny Pilot Options. Penny Pilot Options include two categories of options that are part of the Penny Pilot: (i) certain options that are specified on the Exchange's pricing

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<sup>3</sup> The Penny Pilot on BX Options was established in June 2012, and was expanded and extended through December 31, 2014. 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); 71107 (December 12, 2013), 78 FR 77528 (December 23, 2013) (SR-BX-2013-061) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); and 72246 (May 23, 2014), 79 FR 31160 (May 30, 2014) SR-BX-2014-027) (notice of filing and immediate effectiveness expanding and extending Penny Pilot).

schedule<sup>4</sup> and (ii) all other Penny Pilot Options. Accordingly, this proposal raises the BX Options Fee to Remove Liquidity for BX Options Market Makers and Non-Customers for all Penny Pilot Options; the fee is currently the same (\$0.45 per contract) and will continue to be the same \$0.46 per contract) for all Penny Pilot Options. The Exchange is similarly proposing to increase the Fee for Removing Liquidity for BX Options Market Makers and Non-Customers in Non-Penny Pilot Options from \$0.88 to \$0.89 per contract. Non-Customers include a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker. These modest increases are intended to defray the cost of the proposed increased rebate, which is described below.

Second, the Exchange proposes to increase the BX Options Customer Rebate to Remove Liquidity in Penny Pilot Options from \$0.32 per contract to \$0.35 per contract. This change does not apply to Penny Pilot Options overlying the following stocks: BAC, IWM, QQQ and SPY, because there is no rebate in those particular options.

The Exchange believes that the proposed amended BX Options fees are competitive and should encourage BX members to transact business on the Exchange.

## 2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Section 6(b)(4) and 6(b)(5) of the Act,<sup>6</sup> in

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<sup>4</sup> These include options on 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”) (together, “Specified Penny Pilot Options”).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

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

The proposed increase in the Fee to Remove Liquidity for BX Options Market Makers and Non-Customers from \$0.45 per contract to \$0.46 per contract in all Penny Pilot Options is reasonable, because it is a very modest increase. In addition, it is similar to the fees charged by The NASDAQ Stock Market LLC's NASDAQ Options Market ("NOM") (which is \$0.48 per contract for xxx [sic]) and NASDAQ OMX PHLX (which charges \$0.48 per contract). Similarly, the increase in the Fee for Removing Liquidity for BX Options Market Makers and Non-Customers in Non-Penny Pilot Options from \$0.88 to \$0.89 per contract is also reasonable, because it is a very modest increase, and would result in the same fee as NOM currently charges. These proposed increases are equitable and not unfairly discriminatory, because they apply to all BX Options Market Makers and Non-Customers in Penny Pilot Options equally.<sup>7</sup>

The proposal to increase the Customer Rebate to Remove Liquidity in Penny Pilot Options from \$0.32 per contract to \$0.35 per contract is intended to attract additional customer business to BX Options. This, in turn, should bring more liquidity to the BX Options marketplace, which should benefit all market participants. The Exchange believes that the increase in the rebate is reasonable, because it is modest. The rebate has been \$0.32 since it was first established in 2012.<sup>8</sup> The Exchange pays the Rebate to Add

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<sup>7</sup> Customers do not pay a Fee for Removing Liquidity in any options.

<sup>8</sup> See Securities Exchange Act Release No. 67339 (July 3, 2012), 77 FR 40688

Liquidity to a Customer only when the Customer is contra to a Non-Customer or BX Options Market Maker.

The Exchange believes the proposed Customer Rebate to Remove Liquidity in Penny Pilot Options is equitable and not unfairly discriminatory, because it is available to all Customers. In addition, the Exchange believes the proposal is equitable and not unfairly discriminatory, because the Exchange desires to incentivize participants to transact Customer orders on the Exchange and obtain this rebate. The Exchange believes that this rebate will incentivize members to bring order flow and increase the liquidity on the Exchange to the benefit of all market participants. Further, the Exchange also believes that it continues to be reasonable, equitable and not unfairly discriminatory to only offer the Rebate to Remove Liquidity to Customers and not to other market participants as an incentive to attract Customer order flow to the Exchange. As the Exchange stated when adopting this rebate,<sup>9</sup> it is an important Exchange function to provide an opportunity to all market participants to trade against Customer orders.

Customer order flow benefits all market participants by improving liquidity, the quality of order interaction and executions at the Exchange.

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

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(July 10, 2012) (SR-BX-2012-043) (notice of filing and immediate effectiveness of proposed rule change to adopt transaction and routing fees).

<sup>9</sup> Id.

execution and routing of options contracts. 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 program discussed herein is competitive. The Exchange believes that this competitive marketplace 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.<sup>10</sup>

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

#### 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-2014-036 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-2014-036. 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, 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 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-2014-036, 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>

Kevin M. O'Neill  
Deputy Secretary

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