

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60174; File No. SR-BX-2009-030)

June 25, 2009

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Current Pilot Program for Linkage Fees on the Boston Options Exchange Facility

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on June 23, 2009, NASDAQ OMX BX, Inc. (the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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”), the options trading facility of the Exchange, to extend until July 31, 2010, the current pilot program applicable to the options intermarket linkage (“Linkage”) fees. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s Internet website at

<http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>.

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

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

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

the proposed rule change. The text of those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's fees for Principal ("P") and Principal Acting as Agent ("P/A") Orders<sup>3</sup> executed on BOX currently operate under a pilot program scheduled to expire on July 31, 2009.<sup>4</sup> The Exchange proposes to extend the current pilot program for such Linkage fees through July 31, 2010. Because all Linkage orders received by BOX are for the account of a market maker on another exchange, Linkage fees that are applicable to P and P/A orders are the same as fees applicable to market makers on other exchanges that submit orders to BOX outside of Linkage. The side of a BOX trade opposite an inbound P or P/A order would be billed normally as any

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<sup>3</sup> Under Section 1(j) of Chapter XII of the BOX Rules, a "Linkage Order" means an Immediate or Cancel order routed through Linkage. There are three types of Linkage Orders:

- (i) "P/A Order," which is an order for the principal account of a Market Maker (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the Market Maker is acting as agent;
- (ii) "P Order," which is an order for the principal account of a market maker (or equivalent entity on another Participant exchange) and is not a P/A Order; and
- (iii) "Satisfaction Order," which is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade Through.

<sup>4</sup> See Securities Exchange Act Release No. 58082 (July 2, 2008), 73 FR 39746 (July 10, 2008) (SR-BSE-2008-35). See also Securities Exchange Act Release No. 56167 (July 30, 2007), 72 FR 43302 (August 3, 2007) (SR-BSE-2007-33). See also Securities Exchange Act Release No. 54225 (July 27, 2006), 71 FR 44056 (August 3, 2006) (SR-BSE 2006-26). See also Securities Exchange Act Release No. 52147 (July 28, 2005) 70 FR 44706 (August 3, 2005) (SR-BSE-2005-28).

other BOX trade. Consistent with the Linkage Plan, no fees will be charged to a party sending a Satisfaction Order to BOX. Rather, a fee will be charged to the BOX Participant that was responsible for the trade-through that caused the Satisfaction Order to be sent.

The Exchange believes that extending the Linkage fee pilot program until July 31, 2010, will give the Exchange and the Commission additional time and opportunity to evaluate the appropriateness of Linkage fees.

The Exchange also proposes to make a non-substantive change by correcting a cross-reference to an earlier section within the Fee Schedule regarding the pass through of surcharge fees.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>5</sup> in general, and Section 6(b)(4) of the Act,<sup>6</sup> in particular, 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.

### 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.

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

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

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

### 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

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2009-030 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-2009-030. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room 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-2009-030 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>9</sup>

Elizabeth M. Murphy  
Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).