

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60444; File No. SR-BX-2009-044)

August 5, 2009

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fee Schedule of the Boston Options Exchange Facility to Implement The Non-Penny Pilot Class Pricing Structure

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 July 30, 2009, NASDAQ OMX BX, Inc. (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III 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,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule 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 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 Web site at

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

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

The Exchange proposes to add the Non-Penny Pilot Class Pricing Structure as Section 8 of the BOX Fee Schedule. The Non-Penny Pilot Class Pricing Structure will apply to all classes listed for trading on BOX that are not included in the Penny Pilot Program, as referenced in Chapter V, Section 33 of the BOX Rules (“Non-Penny Pilot Classes”).⁵ The Exchange requests that the effective date of the proposed rule change be August 3, 2009.

In proposed Section 8, for Non-Penny Pilot Classes, the Exchange will charge a fee of \$0.30 for transactions that add liquidity to the BOX Book and provide a credit of \$0.30 for transactions that remove liquidity from the BOX Book. These fees and credits will apply equally to all account types, whether Public Customer, Firm or Market Maker

⁵ A recent proposal submitted by the Exchange for immediately effectiveness removed the following three (3) exchange-traded fund share classes from the Liquidity Make or Take pricing structure: (1) Standard & Poor’s Depository Receipts® (SPY); (2) Powershares® QQQ Trust Series 1 (QQQQ); and (3) iShares Russell 2000® Index Fund (IWM). See Securities Exchange Act Release No. 60221 (July 1, 2009), 74 FR 32996 (July 9, 2009) (SR-BX-2009-033). These three classes will remain subject only to ‘standard’ fees.

and will be in addition to any applicable 'standard' trading fees and/or volume discounts, as described in Sections 1 through 4 of the BOX Fee Schedule.⁶

For example, a Public Customer order is entered into the BOX Trading Host and executes against a Broker Dealer's order resting on the BOX Book. The Public Customer is the remover of liquidity and the Broker Dealer is the adder of liquidity. The Public Customer will receive a \$0.30 credit and the Broker Dealer will be charged a \$0.30 fee according to the Non-Penny Pilot Class pricing structure. The Public Customer will receive a \$0.30 credit and the broker dealer will be charged \$0.50 (the \$0.30 Non-Penny Pilot Class Pricing Structure removal fee in addition to the standard \$0.20 transaction fee).

The Exchange believes that the proposed fees are competitive, fair and reasonable, and non-discriminatory in that they apply equally to all BOX Participants and customers. This proposal is in response to various 'Payment for Order Flow' programs currently in operation on other options exchanges. The Exchange will monitor the trading of options on these Non-Penny Pilot Classes to ensure that the proposal is operating in a fashion that promotes the interests of investors.

The Exchange also proposes to make a non-substantive change to Section 3 of the Fee Schedule to reflect that the differentiation between Market Maker volume in assigned and unassigned classes is no longer pertinent for billing purposes.⁷

⁶ Corresponding changes to Sections 1, 2, 3, and 4 of the Fee Schedule are being proposed to reflect the addition of the Non-Penny Pilot Class Pricing Structure. The Volume Discount will continue to be applicable for classes not included in The Liquidity Make or Take Pricing Structure of Section 7 of the Fee Schedule.

⁷ See Securities Exchange Act Release No. 59865 (May 5, 2009), 74 FR 22198 (May 12, 2009) (SR-BX-2009-022).

2. Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁸ in general, and Section 6(b)(4) of the Act,⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. In particular, the proposed change will allow the fees charged on BOX to remain competitive with other exchanges.

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 Exchange Act¹⁰ and Rule 19b-4(f)(2) thereunder,¹¹ 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 may summarily abrogate the rule change if it appears to the Commission that

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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. Please include File Number SR-BX-2009-044 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-2009-044. 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, 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 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-2009-044 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

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

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).