

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60591; File No. SR-BX-2009-048)

August 31, 2009

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change to amend the Grandfathered Rules of the Exchange

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 August 17, 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 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 the Grandfathered Rules of the Exchange. This proposal seeks to incorporate certain provisions of the former Constitution of the Boston Stock Exchange into the Grandfathered Rules. 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 the proposed rule change. The text of these statements may be examined at the places specified

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASDAQ OMX Group, Inc. acquired the Boston Stock Exchange in August 2008. In the order approving the acquisition, the Constitution of the Boston Stock Exchange was replaced with the By-Laws of the Exchange as amended.³ Thereafter, the Exchange adopted new, different rules for equities trading, the “Equity Rules” and the Rules, under the new Exchange, were renamed NASDAQ OMX BX [sic].⁴ In addition, the rules of the Exchange under its former name remained in effect. These rules, as amended subsequent to that acquisition, are entitled the “Grandfathered Rules.” 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.

This proposal seeks to incorporate certain provisions of the former Constitution of the Boston Stock Exchange into the Grandfathered Rules. The provisions regard the following: a) Participation (formerly Membership) rules, to supplement the By-Laws and the Grandfathered Rules to direct the Participants and prospective participants to Section 6(c) of the Securities and Exchange Act of 1934, as cited in the proposed rule text regarding the investigation and acceptance of an applicant; b) Non-liability of the Exchange provision, to reinforce to Participants the “non-liability” of the Exchange for damages sustained from use of the facilities

³ 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).

⁴ Securities Exchange Act Release No. 34-59154 (December 28, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48).

of the Exchange; c) 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 d) Exchange Inquiries to remind Participants that they may be subject to expulsion or suspension for failure to respond to an Exchange Inquiry.

The Exchange is seeking retroactive application of this proposal to the date which the new By-Laws were approved by the Commission.⁵ These rules supplement the existing Grandfathered Rules and do not substantially alter the rules in their current format.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁶ in general, and Section 6(b)(5) of the Act,⁷ 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. Specifically, the proposal will provide for the BOX Options Participants to follow the Rules as they existed at the time of the close.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁵ See supra note 3.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be

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 Exchange 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-2009-048 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-2009-048. 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 am and 3:00 pm. 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-2009-048 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.⁸

Florence E. Harmon
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).