

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60886; File No. SR-BX-2009-067)

October 27, 2009

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Effective Date of and Expand the Penny Pilot Program on the Boston Options Exchange Facility

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 October 19, 2009, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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) of the Act,³ and Rule 19b-4(f)(6) 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 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 Chapter V, Section 33 (Penny Pilot Program) of the Rules of the Boston Options Exchange Group, LLC ("BOX") to (i) extend the Penny Pilot Program in options classes ("Penny Pilot Program" or "Pilot") previously approved by the Securities and Exchange Commission ("Commission") through December 31, 2010; (ii) expand the number of classes included in the Pilot; and (iii) replace on a semi-annual basis any Pilot Program classes that have been delisted. The text of the proposed rule change is available from the principal office of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

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 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 hereby proposes to extend the time period of the Pilot Program⁵ which is currently scheduled to expire on October 31, 2009, through December 31, 2010.

Top 300

The Exchange also proposes to expand the number of classes included in the Pilot Program. Specifically, the Exchange proposes to add the top 300 most actively traded multiply listed options classes that are not yet included in the Pilot Program ("Top 300"). The Exchange proposes to determine the identity of the Top 300 based on national average daily volume in the prior six calendar months preceding their addition to the Pilot Program, except that the month immediately preceding their addition to the Pilot would not be utilized for purposes of the six month analysis.⁶ In determining the identity of the Top 300, the Exchange will exclude options

⁵ See Securities Exchange Act Release No. 60213 (July 1, 2009), 74 FR 32998 (July 9, 2009) (SR-BX-2009-032).

⁶ The Exchange will not include options classes in which the issuer of the underlying security is subject to an announced merger or is in the process of being acquired by

classes with high premiums. Pursuant to Chapter V, Section 33 of the BOX Rules, the Pilot Program classes will be announced to BOX Participants via Regulatory Circular and published by the Exchange on its website.⁷ This will bring the total number of options classes quoted pursuant to the Pilot Program to 363. The Exchange represents that BOX has the necessary system capacity to support any additional series listed as part of the Pilot Program.

The Exchange believes that it is appropriate to exclude high priced underlying securities, as the benefit to the public from including such classes is minimal because of the high price of at-the-money options.⁸ The Exchange believes an appropriate threshold for designation as “high priced” at the time of selection of new classes to be included in the Pilot is \$200 per share or a calculated index value of 200. At \$200 per share or a calculated index value of 200, strike prices are in \$10 increments, so the “at the money” strike is more likely to carry an intrinsic value of \$3 or more, and thus not trade in a penny increment. With a greater distance between strikes, there are fewer series that are actively traded. The determination of whether a security is trading above \$200 or above a calculated index value of 200 shall be based on the price at the close of trading on the Expiration Friday prior to being added to the Pilot. This approach is consistent with the approach the Exchange has taken for high-priced classes when selecting Pilot classes in the past.

another company, or if the issuer is in bankruptcy. For purposes of assessing national average daily volume, the Exchange will use data compiled and disseminated by the Options Clearing Corporation.

⁷ The Exchange shall also identify the classes to be added to the Pilot Program, per each phase, in a filing with the Commission.

⁸ For instance, as of August 12, 2009, the near term at the money call in GOOG (August 460 Calls) was trading at \$6.50 with the underlying at \$459.84. The lowest strike price September call trading below \$3 (with the underlying at the same price) was the September 500 Call.

Phased Implementation

The Exchange proposes to phase-in the additional classes to the Pilot Program over four successive quarters. Specifically, the Exchange proposes to add 75 classes in November 2009, February 2010, May 2010, and August 2010.⁹

Delistings

Additionally, the Exchange proposes that any Pilot Program classes that have been delisted may be replaced on a semi-annual basis by the next most actively traded multiply listed options classes that are not yet included in the Pilot, based on trading activity in the previous six months. The replacement classes would be added to the Pilot Program on the second trading day following January 1, 2010 and July 1, 2010.¹⁰ The Exchange will employ the same parameters to prospective replacement classes as approved and applicable under the Pilot Program, including excluding high-priced underlying securities.

Report

The Exchange agrees to submit semi-annual reports to the Commission that will include sample data and analysis of information collected from April 1 through September 30, and from October 1 through March 31, for each year, for the ten most active and twenty least active

⁹ The Exchange is proposing that the quarterly additions would be effective on November 2, 2009, February 1, 2010, May 3, 2010 and August 2, 2010, respectively. The Exchange has proposed these specific dates based upon a proposal of NYSE Arca recently submitted to the Commission. (See SR-NYSEArca-2009-91). For purposes of identifying the classes to be added per quarter, the Exchange shall use data from the prior six calendar months preceding the implementation month, except that the month immediately preceding their addition to the Pilot would not be utilized for purposes of the six month analysis. For example, the quarterly additions to be added on November 2, 2009 shall be determined using data from the six month period ending September 30, 2009.

¹⁰ The replacement classes will be announced to BOX Participants via Regulatory Circular and published by the Exchange on its website.

options classes added to the Pilot Program.¹¹ As the Pilot Program matures and expands, the Exchange believes that this proposed sampling approach provides an appropriate means by which to monitor and assess the Pilot Program's impact. The Exchange will also identify, for comparison purposes, a control group consisting of the ten least active options classes from the existing 63 Pilot Program classes. This report will include, but is not limited to: (1) data and analysis on the number of quotations generated for options included in the report; (2) an assessment of the quotation spreads for the options included in the report; (3) an assessment of the impact of the Pilot Program on the capacity of BOX's automated systems; (4) data reflecting the size and depth of markets, and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,¹² in general, and Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that

¹¹ The Exchange will continue to provide data concerning the existing 63 Pilot Program classes.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6)(iii) thereunder.¹⁷

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the 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 pre-filing requirement.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing.¹⁸ However, pursuant to Rule 19b-4(f)(6)(iii),¹⁹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that the proposed rule change is substantially similar to a proposal submitted by another options exchange that was recently approved by the Commission and also incorporates a change to the initial expansion date filed by the other exchange. The Exchange further states that waiving the 30-day operative delay will allow the Pilot Program to continue uninterrupted and allow the Exchange to adopt the same expansion schedule as another exchange.

The Commission believes waiving the 30-day operative delay²⁰ is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to implement the 75 additional classes on November 2, 2009 and permit the Pilot Program to continue uninterrupted, consistent with other exchanges.²¹ For those reasons, the Commission designates the proposal to be operative upon filing with the Commission.

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

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

²⁰ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78(c)(f).

²¹ See Securities Exchange Act Release Nos. 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009) (SR-NYSEArca-2009-44); and 60833 (October 16, 2009), 74 FR 54617 (October 22, 2009) (SR-NYSEArca-2009-91).

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2009-067 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-2009-067. 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 No. SR-BX-2009-067 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Florence E. Harmon
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).