

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62632; File No. SR-BX-2010-049)

August 3, 2010

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

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 16, 2010, 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,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 website at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>.

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

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

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

<sup>4</sup> 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

a) Changes to Trading Fees:

The BOX Fee Schedule currently lists certain execution fees as ‘standard’ trading fees, meaning that these execution fees are not dependent upon whether the transaction added or removed liquidity on BOX.<sup>5</sup> These standard fees, specifically within Sections 1-3 of the BOX Fee Schedule, are applicable to certain Public Customer PIP Improvement Orders,<sup>6</sup> Broker Dealer proprietary accounts and Market Maker accounts, respectively. The standard fees are currently set at \$0.20 per contract executed for Broker Dealer proprietary accounts and Market Maker accounts. The Exchange proposes to make the following adjustments to trading fees effective Monday, July 19, 2010; with the exception of the Public Customer Trading Fees, which will be effective August 1, 2010:

Public Customer Trading Fees

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<sup>5</sup> See Section 7 of the BOX Fee Schedule which sets forth any applicable ‘liquidity fees and credits’.

<sup>6</sup> According to Section 1 of the BOX Fee Schedule a Public Customer is charged \$0.15 per executed contract of an Improvement Order on its behalf in the PIP where that order is not submitted as a Customer PIP Order (“CPO”) whereby it is labeled as a “non-CPO”.

The Exchange proposes to amend Section 1 of the BOX Fee Schedule relating to standard transaction fees applicable to Public Customers. Currently, except for non-CPO, there are no standard trading fees for any Public Customer Orders which may be executed on BOX, including CPOs and Public Customer Orders on the Book.<sup>7</sup> The Exchange proposes to add to the standard transaction fees for Public Customer accounts a \$0.25 per executed contract charge for a Primary Improvement Order for a Public Customer and, effective August 1, 2010, for all non-PIP transactions, a \$0.10 charge per executed contract.<sup>8</sup>

#### Fees and Charges to SPY, QQQQ, and IWM

Currently, the standard fee for transactions in the Exchange Traded Fund Shares (“ETFs”) Standard & Poor’s Depository Receipts® (“SPY”), Powershares® QQQ Trust Series 1 (“QQQQ”) and iShares Russell 2000® Index Fund (“IWM”) are set at \$0.10 per contract for Broker Dealers and at \$0.05 per contract for BOX Market Makers. In addition, the credits and fees of Section 7 of the BOX Fee Schedule currently apply equally for these three classes at \$0.05 for both the fees and credits. The Exchange proposes to remove the different fees for transactions in SPY, QQQQ, and IWM throughout the BOX Fee Schedule so that transactions in these three classes will no longer be treated separately from other classes.

#### Transactions in the PIP

Currently, the standard fee for transactions within the PIP, including transactions in SPY, QQQQ and IWM, is set at \$0.20 per contract, both for Broker Dealers and for BOX Market

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<sup>7</sup> Applicable charges and credits described in Section 7 of the BOX Fee Schedule also apply to Public Customer Orders.

<sup>8</sup> The above fees are in addition to any applicable charges and credits described in Section 7 of the BOX Fee Schedule.

Makers. The Exchange proposes to amend Sections 2 and 3 to raise the standard transaction fee for PIP executions from \$0.20 to \$0.25 both for Broker Dealers and for BOX Market Makers.

#### Fees and Credits in Section 7

Currently, the existing credits and fees within Section 7 for transactions in the PIP are \$0.15. These credits and fees apply equally to all account types, whether Public Customer, Broker Dealer or Market Maker and are in addition to any applicable trading fees, as described in Sections 1 through 3 of the BOX Fee Schedule. The Exchange proposes to increase the existing credits and fees within Section 7 for transactions in the PIP, from \$0.15 to \$0.25.

Currently, the volume discount for the fees charged to Initiating Participants only applies to executions in PIP auctions initiated by the particular Initiating Participant which occur at a price at least better than the NBBO and after a threshold average daily volume (“ADV”) of 50,000 contracts per month is reached. Any PIP executions of the Initiating Participant above this threshold receive a \$0.05 discount. The Exchange proposes to replace the volume discount with a per contract execution fee based upon a tiered fee schedule to apply to executions in PIP auctions initiated by the particular Initiating Participant.<sup>9</sup> Each Initiating Participant’s ADV for executions in PIP auctions will be calculated. All PIP executions by the Initiating Participant for that month will be charged the same per contract fee according to the respective PIP auction ADV pursuant to the following table:

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<sup>9</sup> This tiered fee schedule shall apply to the standard transaction fee for PIP trades charged to Public Customers pursuant to Section 1(b), Broker-Dealers pursuant to Section 2(a) or Market Makers pursuant to Section 3(a) of the Fee Schedule. For example, a Broker-Dealer Primary Improvement Order submitted by an Initiating Participant who has reached the highest ADV tier of over 150,001 contracts executed in PIP auctions for the month will be charged a \$0.10 standard transaction fee plus a provide liquidity fee of \$0.25, for a total fee of \$0.35 on his Primary Improvement Order.

<b>Average daily volume for Initiating Participant</b>	<b>Fee Per Contract</b>
ADV of 150,001 contracts and greater	\$0.10
ADV of 100,001 contracts to 150,000 contracts	\$0.12
ADV of 50,001 contracts to 100,000 contracts	\$0.15
ADV of 20,001 contracts to 50,000 contracts	\$0.17
ADV of 0 contracts to 20,000 contracts	\$0.25

This proposed tiered fee schedule is designed to incent BOX Participants to submit their Public Customer Orders into the PIP for the possibility of price improvement. As a BOX Participant's monthly PIP initiated trading volume increases, the per-contract fee that an Initiating Participant is charged for such executions is decreased.

## 2. Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>10</sup> in general, and Section 6(b)(5) of the Act,<sup>11</sup> in particular, as well as Section 6(b) of the Act,<sup>12</sup> in general, and Section 6(b)(4) of the Act,<sup>13</sup> 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 as well as apply such fees in a manner which is equitable based upon the particular account type, e.g. Public Customer, Market Maker or Broker Dealer, for which such transactions are executed. The obligations of Public

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

Customers, Market Makers on BOX and Brokers Dealers that execute transactions on BOX are different. For example, BOX Market Makers must maintain active two-sided markets in options classes to which they are assigned and also have certain restrictions regarding trading activity in classes outside of their assignment, both of which do not apply to Public Customers or Broker Dealers on BOX.

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 Act<sup>14</sup> and Rule 19b-4(f)(2) thereunder,<sup>15</sup> 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 summarily may abrogate the rule change if it appears to the Commission that 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

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

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-2010-049 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-2010-049. 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 Web site viewing and printing in the Commission's Public Reference Room, located at 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 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–2010-049 and should be submitted on or before [date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).