

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64981; File No. SR-BX-2011-046)

July 28, 2011

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of
Proposed Rule Change by NASDAQ OMX BX, Inc. to Amend the BOX Fee Schedule

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 15, 2011, 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 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”). While changes to the BOX Fee Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on August 1, 2011. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room, on the Exchange’s Internet website

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).

at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings> and on the Commission's website at www.sec.gov.

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

Fees and Credits in Section 7

Currently, Section 7d of the BOX Fee Schedule specifies a \$0.30 credit and fee for transactions in the BOX Price Improvement Period ("PIP"). These credits and fees apply equally to all account types, whether Public Customer, Broker Dealer or Market Maker, and across options classes, both those within the Penny Pilot program and those not in the Penny Pilot program ("Non-Penny classes"), 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 7d for PIP transactions in Non-Penny classes, and in Penny Pilot classes (other than QQQQ, SPY, and IWM) where the trade price is equal to or greater than \$3.00, from \$0.30 to \$0.75. Further, the Exchange proposes to add corresponding provisions and clarifying

language to Section 7d of the BOX Fee Schedule to specify that the fee and credit for all PIP transactions will remain \$0.30: (1) in QQQQ, SPY, and IWM; and (2) in all other Penny Pilot Classes where the trade price is less than \$3.00.⁵

The proposed increase in credits and fees for the specified PIP transactions is designed to provide all BOX market participants an additional incentive to submit their customer orders to the PIP and allow those orders the opportunity to benefit from its potential price improvement. BOX believes that the change to PIP transaction fees and credits are competitive, fair and reasonable, and non-discriminatory in that they apply to all categories of participants and across all account types. Additionally, BOX believes the proposed change to the PIP fees and credits is fair and reasonable as applied only to the specified classes and transactions because such options trade at minimum increments of \$.05 or \$.10, providing greater opportunity for market participants to offer additional price improvement. BOX believes that the opportunity for additional price improvement provided by these wider spreads merits offering more inducement for market participants to increase the price improvement for customer orders in these PIP transactions.

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)(4) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among

⁵ See BOX Trading Rules Chapter V, Section 6(b). For the QQQQs, SPR, and IWM, the minimum trading increment for all options contracts will be one cent, and that for all classes in the Penny Pilot trading at less than \$3.00 per option, the minimum trading increment shall be one cent.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

its members and other persons using its facilities. The Exchange believes the proposal is an equitable allocation of reasonable fees and other charges among BOX Options Participants. The Exchange also believes that there is an equitable allocation of reasonable credits among BOX Options Participants.

The Exchange believes that it is equitable to provide a credit to any Participant that removes liquidity through the PIP on behalf of its customer. The Exchange believes this credit will attract additional order flow to BOX and to the PIP in particular, to the benefit of all market participants. The Exchange believes that it is an equitable allocation of the fees and credits for PIP transactions because such fees and credits apply uniformly to all categories of participants and across all account types in the PIP. As stated above, the Exchange believes the proposed change to the PIP fees and credits is fair as applied only to the specified classes and transactions because such options trade at minimum increments of \$.05 or \$.10, providing greater opportunity for market participants to offer price improvement. The Exchange believes it is fair to offer an additional incentive to market participants to provide price improvement in these PIP transactions. These options classes trade at minimum increments of \$.05 or \$.10, providing greater opportunity for market participants to offer price improvement. BOX believes that the opportunity for additional price improvement provided by these wider spreads merits offering more inducement for market participants to increase the price improvement for customer orders in these PIP transactions. The Exchange believes that customer orders in these PIP transactions will benefit from this proposed change. All market participants that trade within the PIP, and all PIP transactions will continue to be subject to the fees and credits in Section 7 of the BOX Fee Schedule.

Further, the Exchange believes the proposed fees and credits related to the specified PIP transactions to be reasonable. BOX operates within a highly competitive market in which market participants can readily direct order flow to any of eight other competing venues if they deem fee levels at a particular venue to be excessive. The changes to BOX credits and fees proposed by this filing are intended to attract order flow to BOX by offering incentives to all market participants to submit their orders to the PIP for potential price improvement. BOX notes that this proposed rule change will increase both the fees and credit for these PIP transactions. The result is that BOX will collect a \$0.75 fee from Participants that add liquidity in Non-Penny classes and PIP transactions in Penny classes, other than QQQQ, SPY, and IWM, where the trade price is equal to or greater than \$3.00 and credit another Participant \$0.75 for removing liquidity in the same transactions. Stated otherwise, the fees collected will not necessarily result in additional revenue to BOX, but will simply allow BOX to provide the credit incentive to Participants to attract additional order flow to the PIP. BOX believes it is appropriate to provide incentives to market participants to use PIP, resulting in potential benefit to customers through potential price improvement, and to all market participants from greater liquidity.

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 among all BOX Participants. The Exchange believes that the PIP transaction fees and credits it assesses are fair and reasonable and must be competitive with fees and credits in place on other exchanges. Further, the Exchange believes that this competitive

marketplace impacts the fees and credits present on BOX today and influences the proposal set forth above.

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 Act⁸ and Rule 19b-4(f)(2) thereunder,⁹ 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 temporarily suspend such 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

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. In addition, the Commission seeks comment generally on (1) whether the

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

proposed increases to the fees and credits for specified PIP transactions are consistent with Section 6(b)(8) of the Act, which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and (2) whether the proposed fees are equitable as that term is used in Section 6(b)(4) of the Act, and not unfairly discriminatory as that term is used in Section 6(b)(5) of the Act. The Commission notes that a commenter on previous proposals by the Exchange relating to these same fees and credits argued that the Exchange's fee structure discriminates against PIP auction responders in favor of PIP auction initiators.¹⁰

According to this commenter, the net cost to a responder is much more than the net cost to a PIP initiator because initiators may receive a credit for removing liquidity when a customer order is executed in the PIP, but no such credit is available to responders. As a result of these comparatively higher fees, according to this commenter, competitive responders will be less likely to participate in the PIP and will participate less aggressively when they do participate, thus burdening competition and reducing the likelihood and size of price improvement in the PIP. Do you agree with this commenter? Please explain why or why not.

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

¹⁰ See Letters to Elizabeth M. Murphy, Secretary, Commission, from John C. Nagel, Managing Director and General Counsel, Asset Management and Markets, Citadel LLC, dated August 30, 2010 and May 3, 2011.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2011-046 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-2011-046. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NW, Washington, D.C. 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-2011-046 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.¹¹

Elizabeth M. Murphy
Secretary

¹¹ 17 CFR 200.30-3(a)(12).