SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60934; File No. SR-BX-2009-071)

November 4, 2009

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fee Schedule of 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 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 Exchange. 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"). 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/.

---

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

Section 7 of the BOX Fee Schedule currently applies 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"). The Exchange proposes to amend Section 7 to make the following changes.[5]

Extend Section 7 Fees and Credits to Penny Pilot Classes

The Exchange proposes to extend the applicability of Section 7 of the Fee Schedule to also include Penny Pilot Classes.[6] The Exchange proposes that the applicability of this pricing will apply to Penny Pilot Classes and Non-Penny Pilot Classes alike, whereby transactions that remove liquidity from the BOX Book will receive a 'removal' credit and transactions that add liquidity will be charged an 'add' fee.

However, the Exchange proposes that the level of credits and fees differ for Penny Pilot Classes as compared to Non-Penny Pilot Classes. Specifically, the Exchange proposes that both

---

[5] Changes to other sections of the Fee Schedule other than Section 7 are required for conformity purposes.

[6] Except for transactions within the PIP, as discussed below, SPY, QQQQ and IWM will remain subject only to 'standard' fees.

the fees and credits for Penny Pilot Classes be $0.20, in addition to the ‘standard’ fees.[7] The proposed lower fees and credits for Penny Pilot Classes, as compared to Non-Penny Pilot Classes, is based on the narrower spreads exhibited in Penny Pilot Classes.

For example, a Public Customer Order in a Penny Pilot Class 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 $0.20 ‘removal’ credit and the Broker Dealer will be charged a $0.20 ‘add’ fee. The Public Customer will receive a $0.20 total credit (free ‘standard’ charge plus the $0.20 ‘removal’ credit) and the Broker Dealer will be charged $0.40 total (the $0.20 ‘add’ fee for adding liquidity in addition to the ‘standard’ $0.20 transaction fee).

<u>Change the Title of Section 7 of the Fee Schedule</u>

The Exchange also proposes that the name of the pricing structure of Section 7 of the BOX Fee Schedule be changed to ‘Liquidity Fees and Credits’, as the name ‘Non-Penny Pilot Class Pricing Structure’ will no longer be appropriate once the inclusion of Penny Pilot Classes is implemented.[8]

<u>Increase Credits and Fees for Non-Penny Pilot Classes</u>

The Exchange also proposes to increase both the credits and fees for Non-Penny Pilot Classes from $0.30 to $0.75 within Section 7 of the Fee Schedule. These credits and fees apply equally to all account types, whether Public Customer, Firm or Market Maker and are in addition

---

7 The next 300 most actively traded classes, as per Options Clearing Corporation volume data, will be added to the Penny Pilot Program. <u>See</u> Securities Exchange Act Release No. 60886 (October 27, 2009) (SR-BX-2009-067). The first tranche of 75 classes will be eligible for quoting and trading in $0.01 increments on November 2, 2009.

8 The remainder of this proposal will refer to Section 7 of the Fee Schedule in generic terms rather than with the current Non-Penny Pilot Class Pricing Structure moniker.

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

For example, a Public Customer Order in a Non-Penny Pilot Class 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 $0.75 'removal' credit and the Broker Dealer will be charged a $0.75 'add' fee. The Public Customer will receive a $0.75 total credit (free 'standard' charge plus the $0.75 'removal' credit) and the Broker Dealer will be charged $0.95 total (the $0.75 fee for adding liquidity in addition to the standard $0.20 transaction fee).

The Price Improvement Period ("PIP")

Additionally, the Exchange proposes to make transactions within the PIP subject to Section 7, as described in new subsection 7(d) of the Fee Schedule.[9] Currently, transactions on both sides of a PIP are exempt from Section 7 and are charged 'standard' execution fees according to Sections 1 through 3 of the Fee Schedule. The Exchange proposes that the Section 7(d) fees and credits will be $0.20 for both Penny Pilot and Non-Penny Pilot Classes traded within the PIP.

For example, a BOX Participant submits a Public Customer Order ("Initiating Participant") in a Non-Penny Pilot Class into the BOX PIP ("PIP Order") with a matching contra order ("Primary Improvement Order") for the full size with a price at least equal to the National Best Bid or Offer ("NBBO"). The PIP runs for the specified duration period, currently one (1) second, and the Public Customer's PIP Order, which must be filled, executes against the Initiating Participant's Primary Improvement Order. The Public Customer will be charged the

9 This will be applicable for all classes trading on BOX, including transactions in the PIP in SPY, QQQQ and IWM.

'standard' transaction fee for orders submitted into the PIP and receive the 'removal' credit ($0.20).[10] The Initiating Participant will be charged the 'add' fee ($0.20) in addition to its 'standard' transaction fee ($0.20) for orders submitted in the PIP, resulting in a total fee of $0.40.

Alternatively, a Public Customer's PIP Order in a Penny Pilot Class executes in the PIP against a competing improvement order ("Improvement Order") in the PIP from a BOX Participant other than the Initiating Participant. The Public Customer will be charged the 'standard' transaction fee for orders submitted into the PIP and receive the 'removal' credit ($0.20) and the Participant whose Improvement Order executed against the Public Customer's PIP Order will be charged the 'standard' execution fee of $0.20 in addition to the fee for adding liquidity of $0.20, resulting in a total fee of $0.40.

The changes proposed herein are in response to various 'Payment for Order Flow' programs currently in operation on other options exchanges. The Exchange believes that the proposed fees are competitive, fair and reasonable, and non-discriminatory in that they apply equally to all BOX Participants.

The Exchange further proposes to implement a volume discount for the fees charged to Initiating Participants. The volume discount will only apply to executions in PIP auctions initiated by the particular Initiating Participant which occur at a price at least better than the NBBO.[11] A threshold average daily volume ("ADV") of 50,000 contracts per month is proposed for all such executions. Any executions of the Initiating Participant above this threshold will receive a $0.05 discount.

---

10 The PIP Order will always be treated as the remover of liquidity.

11 For purpose of this volume discount NBBO shall be determined at the time the PIP is initiated.

For Example, suppose that at the end of a calendar month a BOX Participant's executions in PIP auctions which it initiated and which were filled at a price better than the NBBO totaled 2.5 million contracts. For a month with 20 trading days this would average 125,000 such contracts per trading day. For these daily executions the Initiating Participant will be billed \$0.20 per contract (\$25,000) in 'standard' execution fees in addition to \$0.20 per contract (\$25,000) in Section 7 'add' fees. The 75,000 contracts over the 50,000 ADV threshold will be discounted by \$0.05 per contract (\$3,750 volume discount). The net daily transaction cost for the Initiating Participant is the initial \$25,000 'standard' transaction fee plus the \$25,000 in Section 7 'add' fees less the \$3,750 volume discount for a grand total of \$46,250.

The Exchange believes that providing a volume discount to the Initiating Participant's fees is appropriate to incent BOX Participants to submit their Public Customer Orders into the PIP for the possibility of price improvement. Furthermore, such a discount is necessary to limit the exposure that Initiating Participants will have to removal fees, because as Initiating Participants they will be adders of liquidity should the Primary Improvement Order execute against the PIP Order.

The Exchange believes that the proposed pricing changes are equitable in that they apply uniformly to all similarly situated Participants, specifically, Participants seeking price improvement for their customer order flow. The pricing changes are also consistent with industry precedent that allows for different prices to be charged for different orders types originated by dissimilarly classified market participants. The other options exchanges currently apply different rates to firms facilitating their own customer order flow as opposed to orders of other market participants.[12] The degree of difference between the rates charged for different order types is the result of competitive forces in the marketplace and reflects certain competitive differences amongst market participants.

For example, under the current fee schedule of the NYSE Arca ("NYSE Arca") a firm facilitation trade is charged $0.00[13] while manual broker dealer executions are charged $0.25 and market maker non-directed orders are charged $0.16. BOX believes that these differences exist, in part, because customers have historically been at a competitive disadvantage in the options markets as compared to firms actively engaged in the market, thus firms are appropriately incentivized to facilitate customer order flow.[14]

The Exchange believes that making executions within the PIP auction subject to Section 7 fees and credits as well as instituting the proposed volume discount follows existing precedent for rate differentials and further encourages BOX Participants to provide their customers' orders with the opportunity for price improvement, thereby assisting customers in their attempt to transact in the options markets at the best price and lower cost.

Finally, the Exchange proposes to make additional changes to Section 4 and Section 7 of the BOX Fee Schedule in order to eliminate all references to outbound P and P/A Orders. Effective November 1, 2009 BOX will no longer be sending outbound P and P/A Orders so references to these orders is no longer necessary.

---

12 See Securities Exchange Act Release No. 60379 (July 23, 2009), 74 FR 38244 (July 31, 2009) (SR-NYSEArca-2009-62). See also Securities Exchange Act Release No. 60378 (July 23, 2009), 74 FR 38245 (July 31, 2009) (SR-NYSEAmex-2009-38). See also Securities Exchange Act Release No. 60477 (August 11, 2009), 74 FR 41777 (August 18, 2009) (SR-Phlx-2009-67).

13 The NYSEArca firm facilitation fee applies to any transaction involving a firm proprietary trading account that has a customer of that same firm on the contra side of the transaction.

14 See also supra note 12.

The proposed rule change shall be implemented on November 2, 2009.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[15] in general, and Section 6(b)(5) of the Act,[16] in particular, in that it is not designed to permit unfair discrimination, as well as Section 6(b) of the Act,[17] in general, and Section 6(b)(4) of the Act,[18] 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 and treats similarly situated Participants uniformly.

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[19] and Rule 19b-4(f)(2) thereunder,[20] because it establishes or changes a due, fee, or other charge applicable only to a member.

---

15 15 U.S.C. 78f(b).

16 15 U.S.C. 78f(b)(5).

17 15 U.S.C. 78f(b).

18 15 U.S.C. 78f(b)(4).

19 15 U.S.C. 78s(b)(3)(A)(ii).

20 17 CFR 240.19b-4(f)(2).

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 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-2009-071 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-2009-071. 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 will also 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-2009-071 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.[21]

Florence E. Harmon
Deputy Secretary

---

21 17 CFR 200.30-3(a)(12).