SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61342; File No. SR-BX-2009-088)

January 13, 2010

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to 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 December 31, 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 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 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, on the Exchange's Internet Web site at http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/, and on the Commission's Web site at http://www.sec.gov.

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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

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.[5] These standard fees, specifically within Sections 2 and 3 of the BOX Fee Schedule, are applicable for Broker Dealer proprietary accounts and Market Maker accounts, respectively, and are currently set at $0.20 per contract executed.[6] The Exchange proposes to make the following adjustments to standard trading fees:

Broker Dealer Trading Fees:

Section 2 of the BOX Fee Schedule describes the current standard transaction fee applicable to Broker Dealer transactions which is currently set at $0.20. The Exchange proposes that the standard fee for Broker Dealer transactions in all options classes, excluding transactions

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5 See Section 7 of the BOX Fee Schedule which sets forth any applicable 'liquidity fees and credits'.

6 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". There are no other trading fees for any other Public Customer Orders which may be executed on BOX, including CPOs and Public Customer orders on the Book, except for the charges and credits described in Section 7 of the BOX Fee Schedule.

in Standard & Poor's Depositary Receipts® ("SPY"), Powershares® QQQ Trust Series 1 ("QQQQ") and iShares Russell 2000® Index Fund ("IWM") and transactions in the Price Improvement Period ("PIP"), be set at $0.25 per contract.

<u>Market Maker Trading Fees</u>:

The Exchange proposes to amend Section 3 of the BOX Fee Schedule relating to transaction fees applicable to BOX Market Makers.[7] Specifically, the Exchange proposes to adopt a per contract transaction fee that is based on the number of contracts a BOX Market Maker executes in a month, excluding transactions in SPY, QQQQ and IWM and transactions within the PIP, as follows:[8]

Average daily volume (ADV) for Market Maker	Per Contract
ADV of 150,001 contracts and greater	$0.13
ADV of 100,001 contracts to 150,000 contracts	$0.16
ADV of 50,001 contracts to 100,000 contracts	$0.18
ADV of 10,001 contracts to 50,000 contracts	$0.20
ADV of 0 contracts to 10,000 contracts	$0.25

This proposed tiered fee schedule is designed to incent BOX Market Makers to increase their quoting and trading activity on BOX. As a Market Maker's monthly trading volume increases the per-contract fee that a Market Maker is charged for such executions is decreased.

7 The fees proposed herein for Market Makers vary from the fees proposed for Broker Dealers as the obligations for the two are different. For example, 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 Broker Dealers on BOX.

8 The current standard Market Maker fee is $0.20 per contact.

The Exchange proposes that the new tiered fees apply to all BOX Market Makers for transactions in all classes traded on BOX (excluding executions which occur in the PIP auction and executions in SPY, QQQQ, & IWM). The BOX Market Maker's ADV will be calculated at the end of each trading month. All executions for that month will be charged the same per-contract fee rate according to the respective ADV achieved by the Market Maker.

Section 3(b) of the BOX Fee Schedule currently sets forth a volume discount that is applicable to the execution fees of BOX Market Makers. The volume discount currently is $0.03 and $0.05 per contract upon the Market Maker achieving an ADV of 25,000 and 50,000 contracts per month, respectively. The tiered fee schedule, as outlined above, will effectively apply the same goal as the Market Maker volume discount, which is to incent more quoting activity and trading volume by Market Makers on BOX. The Exchange therefore proposes to eliminate, in its entirety, the Market Maker volume discount of Section 3(b) of the BOX Fee Schedule.

Reduction of Fees and Credits in Section 7

The Exchange proposes to reduce the existing credits and fees within Section 7 for both Non-Penny Pilot Classes and Penny Pilot Classes, from $0.75 to $0.55 and from $0.20 to $0.15, respectively and for transactions in the PIP, from $0.20 to $0.15.[9] These credits and fees apply equally to all account types, whether Public Customer, Firm or Market Maker and are in addition to any applicable trading fees, as described in Sections 1 through 3 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

[9] The Exchange notes that prior to this proposal the fees and credits of Section 7 did not apply to transactions in SPY, QQQQ and IWM. Similarly, the reduction in fees discussed in this section ("Reduction of Fees and Credits in Section 7") do not apply to transactions in SPY, QQQQ and IWM.

Public Customer is the remover of liquidity and the Broker Dealer is the adder of liquidity. The Public Customer will receive a $0.55 'removal' credit and the Broker Dealer will be charged a $0.55 'add' fee. The Public Customer will receive a $0.55 total credit (zero charge from Section 1 plus the $0.55 'removal' credit) and the Broker Dealer will be charged $0.80 total (the $0.55 fee for adding liquidity in addition to the standard $0.25 transaction fee).[10]

Fees and Charges to SPY, QQQQ, and IWM:

The Exchange Traded Fund Shares ("ETFs") SPY, QQQQ and IWM are among the most actively traded multiply listed options classes across all of the options exchanges. The Exchange believes that the characteristics that these ETFs share among themselves make it appropriate that pricing for transactions in these classes be set on par with each other. Furthermore, the Exchange believes that the volume and liquidity exhibited in these classes is such that the pricing applicable to these classes be set apart from the pricing applicable to all other options classes listed and traded on BOX.

Therefore, the Exchange proposes that the standard fee for transactions in SPY, QQQQ and IWM be set at $0.10 per contract for Broker Dealers and at $0.05 per contract for BOX Market Makers.[11] The proposed different rate as between Broker Dealers and BOX Market Makers is based upon the obligations that Market Makers undertake on BOX, such as posting continuous two-sided quotes, which Broker Dealers are not subject to.

The credits and fees of Section 7 of the BOX Fee Schedule currently do not apply to executions in the classes SPY, QQQQ or IWM. The Exchange proposes to apply Section 7's

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10 This example presupposes that the proposed increase in Broker Dealer fees, from $0.20 to $0.25, is in effect.

11 Currently the standard fees charged for transactions in SPY, QQQQ and IWM are $0.20 for both Market Maker and Broker Dealer transactions. As is currently the case, most executions on BOX on behalf of Public Customers will be free.

credits and fees to transactions in these three classes as is currently applied to transactions in all other classes on BOX. The Exchange proposes that the fees and credits apply equally for these three classes at $0.05 for both the fees and credits.

Transactions in the PIP:

The BOX PIP is a mechanism by which BOX Participants can obtain executions and price improvement of their customers' orders. Because executions in the PIP are separate and distinct from non-PIP executions the Exchange believes that pricing for executions that take place within the PIP also be separate and distinct from non-PIP execution rates.[12] Therefore, the Exchange proposes that the standard fee for transactions within the PIP, including transactions in SPY, QQQQ and IWM, be set at $0.20 per contract, both for Broker Dealers and for BOX Market Makers.[13]

Non-Substantive Changes:

The Exchange is also proposing various non-substantive changes to the BOX Fee Schedule. These changes are necessary for reasons such as the elimination of certain Fee Schedule text (e.g. the proposed elimination of the Market Maker Volume Discount of Section 3(b)) or the renumbering of certain sections of the Fee Schedule (e.g. Section 2(b) renumbered to Section 2(c)). Further non-substantive changes have been proposed either to add greater clarity or remove language from the Fee Schedule which is now considered confusing in light of the substantive changes that are being proposed herein.

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[12] BOX Options Participants are able to compete within the PIP auction for a portion of the order on the opposite side of the Public Customer PIP Order that must be filled by submitting Improvement Orders.

[13] Transactions within the PIP are presently subject to a $0.20 fee. This proposal merely breaks fees for PIP transactions into their own distinct line item in the Fee Schedule. See Ex. 5. Transactions within the PIP will also be subject to the fees and credits of Section 7 of the BOX Fee Schedule, as proposed and discussed above.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[14] in general, and Section 6(b)(5) of the Act,[15] in particular, as well as Section 6(b) of the Act,[16] in general, and Section 6(b)(4) of the Act,[17] 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. Market Maker or Broker Dealer, for which such transactions are executed. The obligations of 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 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 that is 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

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14 15 U.S.C. 78f(b).

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

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

17 15 U.S.C. 78f(b)(4).

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[18] and Rule 19b-4(f)(2)[19] thereunder, 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 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-2009-088 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-2009-088. 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

18 15 U.S.C. 78s(b)(3)(A)(ii).

19 17 CFR 240.19b-4(f)(2).

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 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-2009-088 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.[20]

Florence E. Harmon
Deputy Secretary

[20] 17 CFR 200.30-3(a)(12).