

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65337; File No. SR-BX-2011-064)

September 14, 2011

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

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 September 1, 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,<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

NASDAQ OMX BX, Inc. (the “Exchange”) proposes to amend the Fee Schedule of the Boston Options Exchange Group, LLC (“BOX”). The changes to the BOX Fee Schedule pursuant to this proposal will be effective upon filing and operative on September 1, 2011. The text of the proposed changes is attached as Exhibit 5. The text of the proposed rule change is available from the principal office of the Exchange, at the

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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).

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 proposes to implement a routing fee structure that provides a discount to BOX Options Participants ("Participants") that execute transactions on BOX.

Public Customer Orders on BOX which are not executable against the BOX Book are routed to an away exchange for execution. Currently, BOX does not assess any fee to Participants for doing so. The Exchange, however, believes that exempting all outbound customer orders from routing fees will result in some Participants sending a substantial and increasing amount of non-executable orders to BOX so as to evade fees on other exchanges. In order to curtail this abusive use of BOX routing, the Exchange proposes to impose a routing fee structure that provides a volume discount to Participants that execute transactions on BOX. The proposed change will have no effect on the billing of orders of non-Participants, including any orders routed to BOX from away exchanges.

The Exchange proposes to continue to route up to 200,000 contracts per month of Participant customer orders to an away exchange without imposing any fee. For each contract thereafter, BOX will assess a fee based on each Participant's total monthly volume of contracts executed on BOX. Participants that execute less than 300,000 contracts on BOX per month will pay a routing fee of \$0.50 per contract. BOX Participants that execute 300,000 or more contracts on BOX per month will pay a routing fee of \$0.01 per contract.

Instructing BOX to route orders away if they are non-executable on BOX is voluntary for BOX Participants. Participants may choose not to route their customer orders to another exchange. Participants may also avoid paying the proposed routing fee by choosing to designate their orders as Fill and Kill ("FAK"). FAK orders are not eligible for routing to away exchanges. FAK orders are executed on BOX, if possible, and then cancelled. Imposing a routing fee structure that provides a volume discount to Participants for trading on BOX will allow BOX to recoup a portion of its costs incurred in providing routing services and provide an incentive to Participants to trade on BOX to benefit from the potential discount on routing fees.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>5</sup> in general, and Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes the changes

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

proposed are an equitable allocation of reasonable fees and charges among BOX Options Participants.

The Exchange believes that assessing a fee to Participants for routing orders to other market venues is reasonable, equitable, and non-discriminatory in that the fee will allow BOX to recoup a portion of its transactions costs attendant with offering routing services. BOX uses third-party broker-dealers to route orders to other exchanges and incurs charges for each order routed to an away market, in addition to the fees charged by other exchanges. BOX has been providing its routing services to Participants at no cost and has been able to cover such costs with revenue generated from transactions on BOX. In order to better recover costs for routing orders, the Exchange is proposing a routing fee structure to provide a discounted fee for Participants that trade a certain amount of volume on BOX.

The Exchange believes the proposed volume discount being provided to Participants that execute orders on BOX is equitable and not unfairly discriminatory because they are open to all Participants on an equal basis. The Exchange believes it is equitable to provide Participants that trade on BOX a discount on fees for routing customer orders that may not be executed on BOX because transactions executed on BOX increase BOX market activity and market quality. Greater liquidity and additional volume executed on BOX aids the price and volume discovery process. The Exchange believes it is reasonable and equitable to provide incentives to Participants to trade on BOX. Participant trading on BOX also results in revenue that BOX is able to use to provide routing services at a discounted cost to Participants. Accordingly, the Exchange believes that the proposal is not unfairly discriminatory because it promotes enhancing

BOX market quality. The changes proposed by this filing are intended to provide an incentive to BOX Participants to submit orders for execution on BOX and not engage in abusive and predatory practices to evade fees on other exchanges.

Finally, the Exchange notes that although routing is available to BOX Participants for customer orders, Participants are not required to use the routing services, but instead, BOX routing services are completely optional. As discussed above, BOX Participants can manage their own routing to different options exchanges or can utilize a myriad of other routing solutions that are available to market participants.

**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>7</sup> and Rule 19b-4(f)(2) thereunder,<sup>8</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 temporarily suspend the rule change if it appears to the

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

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](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2011-064 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-2011-064. 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. The text of the proposed rule change is available on the Commission's website at <http://www.sec.gov>. 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-2011-064 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.<sup>9</sup>

Elizabeth M. Murphy  
Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).