

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 60163; File No. SR-BX-2009-025]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving Proposed Rule Change To Retroactively Amend the Fee Schedule To Clarify and Correct References to the Volume Discount Given to Market Makers

June 23, 2009.

On May 8, 2009, NASDAQ OMX BX, Inc. filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend the Fee Schedule of the Boston Options Exchange Group, LLC ("BOX") on a retroactive basis to clarify and correct references relating to the volume discount ("Volume Discount") given to Market Makers. The proposed rule change was published for comment in the **Federal Register** on May 21, 2009.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

The Exchange proposes to amend Section 3 of the BOX Fee Schedule, dealing with Market Maker Trading Fees, on a retroactive basis. BOX currently applies, and historically has applied, a Volume Discount to the fees charged to BOX Market Makers who engage in particularly active trading volume on BOX. The proposed changes will clarify and correct the Fee Schedule to reflect that trading volume in options classes included within the Liquidity Make or Take Pricing Structure ("Make or Take"), as set forth in Section 7 of the BOX Fee Schedule, is excluded when determining a Market Maker's Volume Discount.<sup>4</sup> The text explicitly stating this used to be included in the BOX Fee Schedule, but was inadvertently removed in a prior filing, SR-BSE-2007-52.<sup>5</sup> The Exchange requests that the proposed rule change be made effective retroactive to November 30, 2007, which is the date of filing and effectiveness of SR-BSE-2007-52.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission believes that the proposal to retroactively modify the Exchange's fee schedule such that trading volume in options classes included within the Make or Take is excluded when determining a Market Maker's Volume Discount it is consistent with and Section 6(b)(4) of the Act,<sup>7</sup> in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Commission notes that the Exchange has represented that the inadvertent elimination of the language in question from the BOX Fee Schedule on November 30, 2007 did not alter BOX Market Makers' understanding that Make or Take volume was excluded from the calculation of the Volume Discount. The Commission also notes that the proposed change is intended to eliminate any gap in the actual treatment of Make or Take volume when calculating the Volume Discount. Accordingly, the Commission believes that the proposed changes to Section 3 of the BOX Fee Schedule do not raise any new or novel issues and merely are designed to accurately reflect the fee structure the Exchange and its participants understood to be in effect.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-BX-2009-025), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60158; File No. SR-BX-2009-028]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Adopt Rules To Implement the Options Order Protection and Locked/Crossed Market Plan

June 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 16, 2009, the NASDAQ OMX BX, Inc. ("BX" or "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 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 Rules of the Boston Options Exchange Group, LLC ("BOX") to reflect the Exchange's filing to become a participant in the proposed Options Order Protection and Locked/Crossed Market Plan ("Decentralized Plan"). 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 Web site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXB/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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

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

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

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

<sup>3</sup> See Securities Exchange Act Release No. 59919 (May 14, 2009), 74 FR 23915 (May 21, 2009).

<sup>4</sup> Make or Take volume is excluded when determining a Market Maker's monthly trading volume for purposes of the Volume Discount and is not eligible to have a Volume Discount applied to it.

<sup>5</sup> See Securities Exchange Act Release No. 56948 (December 12, 2007), 72 FR 72426 (December 20, 2007) (SR-BSE-2007-52).

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

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