

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60504; File No. SR-BX-2009-047]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of the Boston Options Exchange Facility

August 14, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 12, 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<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 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 Web site 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

Orders on BOX which are not executable against the BOX Book are routed via the InterMarket Linkage System (“Linkage Orders”) to away exchanges for execution. The Exchange proposes to exempt outbound Principal Acting as Agent (“P/A”) Linkage Orders from both the Liquidity Make or Take Pricing Structure and the Non-Penny Pilot Class Pricing Structure as these transactions are deemed to neither “add” nor “take” liquidity from the BOX Book. Instead these orders will follow the Intermarket Linkage pricing as described in Section 4(a)2 of the Fee Schedule (*i.e.*, free), regardless of whether the class is contained in the Liquidity Make or Take Pricing Structure or the Non-Penny Pilot Class Pricing Structure or not. The proposed change will have no effect on the billing of orders of non-Participants, including any orders received through Intermarket Linkage.

For example, if a Public Customer order is entered into the BOX Trading Host and is routed to an away market as an outbound P/A Order, the routing of the Public Customer’s order will be free, regardless of class. Prior to this proposal such a transaction may have been subject to the fees and credits set forth in either the Liquidity Make or Take Pricing Structure, resulting in the applicable “take” fee (currently \$0.45), or the Non-Penny Pilot Class Pricing Structure, resulting in the applicable “removal” credit (currently \$0.30), of Sections 7 and 8 of the Fee Schedule, respectively.

The Exchange requests that the effective date of the proposed rule change be August 12, 2009.

##### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) of the Act, 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 Exchange to charge the appropriate fees and provide the appropriate credits with respect to orders routed by BOX to away exchanges.

#### 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 and Rule 19b-4(f)(2) 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](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2009-047 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-2009-047. 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/>

<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).

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 a.m. and 3 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-2009-047 and should be submitted on or before September 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

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

[FR Doc. E9-20192 Filed 8-21-09; 8:45 am]  
BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60518; File No. SR-NYSEArca-2009-70]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Rule 10.12 (Minor Rule Plan)

August 18, 2009.

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 July 29, 2009, NYSE Arca, Inc. ("NYSE Arca" 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 self-regulatory organization. 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 Rule 10.12—Minor Rule Plan. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room.

#### 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.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The NYSE Arca Minor Rule Plan ("MRP") fosters compliance with applicable rules and also helps to reduce the number and extent of rule violations committed by Options Trading Permit ("OTP") Holders, OTP Firms and associated persons. The prompt imposition of a financial penalty helps to quickly educate and improve the conduct of OTP Holders, OTP Firms and associated persons that have engaged in inadvertent or otherwise minor violations of the Exchange's rules. By promptly imposing a meaningful financial penalty for such violations, the MRP focuses on correcting conduct before it gives rise to more serious enforcement action.

The Exchange is now proposing to incorporate additional violations into the MRP, these violations include (i) trading in restricted classes; and (ii) failure to report position and account information. The Exchange is also proposing to increase fine levels for certain violations presently included in the MRP. The increases [sic] fine levels will be applicable for violations of due diligence, priority rules and order exposure rules. A brief description of

each proposed changes [sic] is shown below.

Proposed Rules 10.12(h)(22) and 10.12(k)(i)(22)

NYSE Arca Rule 5.4(a) provides, with limited exceptions, that the Exchange may prohibit any opening purchase transactions in a series of options to the extent it deems such action necessary or appropriate. Accordingly, OTP Holders effecting opening transactions in restricted series, that are inconsistent with the terms of any such restriction, will be considered to be in violation of Rule 5.4(a). The Exchange is proposing to incorporate violations related to trading in restricted series into the MRP under Exchange Rule 10.12(h)(22).

The Exchange is proposing to implement a fine of \$1,000 for the first violation in a rolling twenty-four month period. A second violation within the same period would be allocated a \$2,500 fine and a third violation would be allocated a \$5,000 fine. The schedule of fines will be included under Rule 10.12(k)(i)(22). Any subsequent violations within a rolling twenty-four month period would be subject to formal disciplinary proceedings by the Exchange. NYSE Arca believes that establishing a rolling twenty-four month period for cumulative violations will serve as an effective deterrent to future violative conduct.

NYSE Arca believes that in most cases these violations may be handled efficiently through the MRP, however, as with other violations, any egregious activity or activity that is believed to be manipulative will continue to be subject to formal disciplinary proceedings.

Proposed Rules 10.12(h)(23) and 10.12(k)(i)(23)

Among other things, Rule 6.6(a) requires each OTP Holder and OTP Firm to report to the Exchange the account and position information of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange. OTP Holders and OTP Firms report this information on the Large Option Position Report ("LOPR").

NYSE Arca is proposing to incorporate violations for failing to accurately report position and account information in accordance with Rule 6.6(a) into the MRP. The Exchange believes most of these violations are inadvertent and technical in nature. Not having LOPR reporting violation necessarily subject to formal

<sup>5</sup> 17 CFR 200.30-3(a)(12).

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

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