

### 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

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>20</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>21</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE requests that the Commission waive the 30-day operative delay because the Exchange believes that the absence of such a rule in an automated and fast-paced trading environment poses a danger to the integrity of the markets and the public interest. NYSE notes that immediate effectiveness of the proposed rule change will immediately and timely enable NYSE to cancel or adjust clearly erroneous trades that may present a risk to the integrity of the equities markets and all related markets. The Commission believes that waiving the 30-day operative delay<sup>22</sup> is consistent with the protection of investors and the

public interest because such waiver will permit the Exchange to continue operation of interim NYSE Rule 128 on an uninterrupted basis, and therefore designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of 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-NYSE-2009-92 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-NYSE-2009-92. 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 a.m. and 3 p.m. 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 publicly available. All submissions should refer to File Number SR-NYSE-2009-92 and should be submitted on or before September 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-21636 Filed 9-4-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60592; File No. SR-BX-2009-050]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ OMX BX Equities System

August 31, 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 August 17, 2009, NASDAQ OMX BX, Inc. ("BX") 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 from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX is filing a proposed rule change to modify pricing for BX members using the NASDAQ OMX BX Equities System. BX will implement the proposed rule change on September 1, 2009. The text of the proposed rule change is attached as Exhibit 5 and is available at <http://nasdaqomxbx.cchwallstreet.com>.<sup>3</sup>

<sup>23</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.

<sup>3</sup> The Commission notes that Exhibit 5 is attached to the rule filing filed with the Commission but not to this release. The text of the proposed rule change is available at BX, on its Web site (<http://nasdaqomxbx.cchwallstreet.com>), and at the Commission's Public Reference Room.

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day pre-filing period in this case.

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

In its filing with the Commission, BX 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. BX 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

BX is proposing to modify its fees to execute transactions on the NASDAQ OMX BX Equities System.<sup>4</sup> For securities listed on The NASDAQ Stock Market ("NASDAQ") or the New York Stock Exchange ("NYSE"), BX currently provides a credit of \$0.0006 per share executed to members accessing liquidity, with no charge or credit to members providing liquidity. Under the modified fee schedule, BX will lower the credit for accessing liquidity to \$0.0001 per share executed and assess a charge of \$0.0003 per share executed to members providing liquidity. Although the change will result in a small fee increase, the fee change is designed to continue BX's strategy of becoming a preferred routing destination for firms seeking to access liquidity at extremely low cost and a preferred market for firms that wish to post liquidity in a venue to which growing numbers of firms route. The change also reverses an "inverted" fee structure in which rebates associated with the execution of an order exceeded charges.

For securities other than those listed on NASDAQ and NYSE, BX currently charges a fee of \$0.0014 per share executed to access liquidity and provides a credit of \$0.002 per share executed for providing liquidity. Under the modified fee schedule, BX will raise the fee to access liquidity to \$0.0016 and lower the liquidity provider credit to \$0.0014. Although the change will result in a small fee increase, the level of fees is consistent with BX's goal of offering liquidity at extremely low cost to investors, and also reverses an inverted fee structure.

<sup>4</sup> The changes all relate to transactions that execute at prices of \$1 or more. For transactions at prices below \$1, there is a charge of 0.1% of total transaction cost to remove liquidity and no charge or rebate to provide liquidity.

#### 2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with 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 members and issuers and other persons using any facility or system which BX operates or controls. The proposed fee change applies uniformly to all BX members. The impact of the changes upon the net fees paid by a particular market participant will depend upon the types of stocks that it trades, the order types that it uses, and the prices of its quotes and orders (*i.e.*, its propensity to add or remove liquidity). BX notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed changes will continue BX's goal of allowing members to access available liquidity at extremely low cost.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

## 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 Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>8</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of 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-2009-050 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-2009-050. 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 a.m. and 3 p.m. 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 publicly available. All submissions should refer to File Number SR-BX-2009-050 and should be submitted on or before September 29, 2009.

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

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

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

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

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

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-21635 Filed 9-4-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60594; File No. SR-DTC-2009-11]

### Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Eliminate One of the Indemnity Surety Programs in the Profile Modification System

August 31, 2009.

#### I. Introduction

On June 11, 2009, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2009-11 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The proposed rule change was published for comment in the **Federal Register** on July 20, 2009.<sup>2</sup> No comment letters were received on the proposal. This order approves the proposal.

#### II. Description

The proposed rule change eliminates one of the Indemnity Surety Programs ("PSP II") of DTC's Profile Modification System ("Profile").<sup>3</sup>

On April 19, 2000, the Commission approved a DTC rule filing to establish Profile,<sup>4</sup> an electronic communication system between transfer agents that are Direct Registration System ("DRS") Limited Participants ("Limited Participants") and broker-dealers that are DRS Participants ("Participants"). In May 2000, DTC implemented Profile. Profile allows Participants to submit electronically an instruction to move a share position from an account at the Limited Participant to the Participant's account at DTC ("Electronic Participant Instruction"). Profile also allows Limited Participants to submit an instruction for the movement of a share

position from a Participant's account at DTC to an account at the Limited Participant ("Electronic Limited Participant Instruction;" together with Electronic Participant Instruction, "Electronic Instruction"). A Participant or Limited Participant submitting an Electronic Instruction through Profile is required to agree to a Participant Terminal System ("PTS") screen indemnity ("Screen Indemnity").

On November 17, 2000, the Commission approved a DTC rule filing to establish the Profile Indemnity Surety Program ("PSP").<sup>5</sup> Under PSP, all users of Profile that agree to the Screen Indemnity as part of their use of Profile must procure a surety bond ("Surety Bond") to back the representations under the Screen Indemnity.<sup>6</sup>

On June 26, 2008, the Commission approved a DTC rule filing to establish PSP II,<sup>7</sup> which provides for a coverage limit of \$7.5 million per transaction with an annual aggregate limit of \$15 million. Users of PSP II are required to pay an annual premium of \$6,000 to a surety provider and a DTC administration fee of \$250.

On June 3, 2009, the Commission approved a DTC rule filing to establish a new Profile Indemnity Insurance Program ("PIP II") to replace PSP II.<sup>8</sup> PIP II will account for the additional, larger value Profile transactions that DRS currently handles by providing the same coverage limits (*i.e.*, \$7.5 million per transaction with an annual aggregate limit of \$15 million) at the same annual premium (*i.e.*, \$6,000 to a provider and a \$250 administration fee to DTC) as PSP II without requiring users of Profile to procure a surety bond. Since PIP II

will perform the same function of PSP II, DTC is eliminating PSP II.

#### III. Discussion

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 registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),<sup>9</sup> which requires, among other things, that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>10</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (File No. SR-DTC-2009-11) be, and hereby is, approved.<sup>12</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-21619 Filed 9-4-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60610; File No. SR-BX-2009-058]

### 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

September 1, 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

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>10</sup> 15 U.S.C. 78q-1.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

<sup>5</sup> Securities Exchange Act Release No. 43586 (Nov. 17, 2000), 65 FR 70745 (Nov. 27, 2000) [File No. SR-DTC-2000-09].

<sup>6</sup> Participation in PSP requires the payment of an annual premium of \$3,150 to a surety provider and an administration fee of \$250 to DTC. The PSP surety provider provides for a coverage limit of \$3 million per transaction with an annual aggregate limit of \$6 million. On September 14, 2005, the Commission approved a DTC rule filing to establish the Profile Indemnity Insurance Program ("PIP"), which serves as an alternative to PSP. Securities Exchange Act Release No. 52422 (Sept. 14, 2005), 70 FR 55196 (Sept. 20, 2005) [File No. SR-DTC-2005-11]. PIP allows users of Profile that agree to the Screen Indemnity have the option to procure insurance relating to a particular securities transaction according to the value of the securities transaction. PIP provides a coverage limit of \$25 million per transaction with an annual aggregate limit of \$100 million. In addition to any pass-through fee from the insurer, DTC charges users participating in PIP an annual administration fee of \$250 and a per transaction fee of \$27.50.

<sup>7</sup> Securities Exchange Act Release No. 58042 (Jun. 26, 2008), 73 FR 39067 (July 8, 2008) [File No. SR-DTC-2008-04].

<sup>8</sup> Securities Exchange Act Release No. 60036 (Jun. 3, 2009) 74 FR 28085 (Jun. 12, 2009) [File No. DTC-2009-09].

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

<sup>2</sup> Securities Exchange Act Release No. 60304 (Jul. 14, 2009), 74 FR 35221.

<sup>3</sup> DTC has created a Profile Indemnity Insurance Program ("PIP II") to replace the PSP II. Securities Exchange Act Release No. 60036 (Jun. 3, 2009), 74 FR 28085 (Jun. 12, 2009) [File No. SR-DTC-2009-09].

<sup>4</sup> Securities Exchange Act Release No. 42704 (Apr. 19, 2000), 65 FR 24242 (Apr. 25, 2000) [File No. SR-DTC-2000-04].