

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 Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of NASDAQ. 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-NASDAQ-2011-062, and should be submitted on or before June 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64457; File No. SR-BX-2011-024]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify the Collection of the Covered Sales Fee

May 10, 2011.

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 May 2, 2011, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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 from interested persons.

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

The Exchange proposes to amend Chapter V, Sec. 2 (Fees and Charges) of the Rules of the Boston Options Exchange Group, LLC ("BOX") to codify the collection of the Covered Sales Fee. The text of the proposed rule change is available at the principal office of the Exchange, the Commission's Public Reference Room, on the Commission's Web site at <http://www.sec.gov>, 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

Pursuant to Section 31 of the Securities and Exchange Act of 1934 ("the Act")<sup>5</sup> and Rule 31 thereunder,<sup>6</sup> national securities exchanges and associations (collectively, "SROs") are required to pay a transaction fee to the Securities and Exchange Commission ("Commission") that is designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. To offset this obligation, Participants are assessed charges in connection with satisfaction of the Exchange's payment obligations under Section 31. This fee is collected indirectly from Participants through their clearing firms by the Options Clearing Corporation ("OCC") on behalf of the Exchange. The fee defrays the cost of the Section 31 fee triggered by the covered sale. The fee assessed to a Participant is equal to the Section 31 fee assessed by the Commission for the covered sale. The fee is collected by billing the Participant's designated

clearing firm for the amount owed by the Participant to the Exchange. Assessing a sale fee is common practice among national exchanges.<sup>7</sup>

The Exchange is now proposing to codify this process by adopting the proposed Section 2(c) to Chapter V of the BOX Trading Rules. This proposed amendment codifies that the fee now referred to as the Covered Sale Fee is collected indirectly from Options Participants through their clearing firms by a designated clearing agency, as defined by the Act, on behalf of the Exchange and that to the extent there may be any excess monies collected under this Rule, the Exchange may retain those monies to help fund its general operating expenses. In addition, newly proposed Section 2(c) sets forth and explains the circumstances when a Covered Sale Fee is assessed by the Exchange to an Options Participant as follows: (i) When a sale in option securities occurs with respect to which the Exchange is obligated to pay a fee to the Commission under Section 31 of the Act; and (2) when a sell order in option securities is routed for execution at an away market other than on BOX, resulting in a covered sale on that market and an obligation of the Routing Broker providing routing services for BOX, as described in Chapter XII, Sec. 5, Supp. Material .01 of the BOX Trading Rules, to pay the related sales fee of that away market.<sup>8</sup>

Finally, the Exchange proposes to reletter the remainder of Section 2.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>9</sup> in general, and furthers the objectives of Section (b)(4),<sup>10</sup> in particular, in that it

<sup>7</sup> See e.g. International Securities Exchange ("ISE") Rule 212 and NASDAQ OMX PHLX ("PHLX") Rule 607.

<sup>8</sup> Sell orders in options securities entered into BOX that are routed to another market for execution, however, do not result in a covered sale on the Exchange. Execution of such routed orders is facilitated by Routing Broker(s), which executes the routed order on the away market on behalf of the Participant. Such routed sell orders result in a covered sale on the away market, which incurs a Section 31 fee obligation. The away market assesses a sale fee on the Routing Broker to defray the cost of the Section 31 fee obligation. In turn, as proposed, the Exchange will assess the Participant, the original selling party, a Covered Sale Fee to defray the cost of the Section 31 fee passed on by the away market pursuant to its sale fee. As such, the Exchange's Covered Sale Fee offsets the sale fee the Routing Broker(s) is assessed by the away market, and BOX reimburses the amounts paid by the Routing Broker(s) to the away markets, the result of which is to place the parties involved in the transaction in the same position as if the covered sale had occurred on the Exchange.

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

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

<sup>6</sup> 17 CFR 240.31.

is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Participants and other persons using the facilities. The proposed rule is codifying a practice currently employed by Exchange and the OCC. By adopting this rule, the Exchange is providing Participants with a description of the Covered Sale Fee and the process by which the Covered Sale Fee is collected.

#### *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>11</sup> and Rule 19b-4(f)(2) thereunder,<sup>12</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 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-2011-024 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-2011-024. 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 Web site viewing and printing 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 available publicly. All submissions should refer to File Number SR-BX-2011-024 and should be submitted on or before June 6, 2011.

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

**Cathy H. Ahn,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-64463; File No. SR-NASDAQ-2011-037]

#### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change To Modify Chapter V, Section 4 and Chapter VI, Section 8 of the Exchange's Rules Relating to Opening and Halt Crosses on the NASDAQ Options Market**

May 11, 2011.

### **I. Introduction**

On March 15, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") 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 modify the procedures for the opening of trading at the start of the trading day and at the resumption of trading following a trading halt on the NASDAQ Options Market ("NOM"). The proposed rule change was published for comment in the **Federal Register** on April 4, 2011.<sup>3</sup> The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

### **II. Description of the Proposal**

The Exchange proposes to modify Chapter V, Section 4 and Chapter VI, Section 8 of the Exchange's rules ("NOM Rules") governing the opening of trading at the start of the trading day and at the resumption of trading following a trading halt on NOM. Specifically, the Exchange proposes to: (1) Eliminate one tie-breaker and modify a second tie-breaker used to establish the Current Reference Price and cross price; (2) modify the circumstances whereby the Exchange disseminates an indicative indicator of "market;" (3) change the start time for imbalance and indicative data dissemination; (4) clarify when an Order Imbalance Indicator is disseminated; and (5) establish a halt cross.

#### *A. Elimination of the Order Imbalance Tie-Breaker and Modification of the Mid-Point Tie-Breaker*

NOM currently employs a series of tie-breakers that resolve instances where multiple prices satisfy the conditions for

<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. 64143 (March 29, 2011), 76 FR 18589 (April 4, 2011) ("Notice").

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

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