

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71025; File No. SR-BOX-2013-55]

### Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule to Permit the Exchange to Exclude from Its Average Daily Volume Calculations Any Trading Day on Which the Exchange Is Closed for Trading Due To an Early Closing Or a Market-Wide Trading Halt

December 6, 2013.

Pursuant to Section 19(b)(1) under 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 November 27, 2013, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission (the "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 is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Fee Schedule for trading on the BOX Market LLC ("BOX") options facility the Fee Schedule to permit the Exchange to adjust the average daily volume calculation for any trading day on which the Exchange is closed for trading due to an early closing or a market-wide trading halt. 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://boxexchange.com>.

#### 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 Exchange 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 Exchange 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, Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX to permit the Exchange to adjust the average daily volume ("ADV") calculation for any trading day on which the Exchange is closed for trading due to an early closing or a market-wide trading halt.

In Section I (Exchange Fees) of the BOX Fee Schedule, the Exchange provides volume-based incentives for certain transaction fees. In Section I.A the Exchange provides a volume-based incentive to Initiating Participants that submit Primary Improvement Orders, Facilitation Orders, or Solicitation Orders and, on a daily basis, trade a monthly ADV of more than 5,000 contracts in Auction Transactions on BOX. Similarly, in Section I.B. the Exchange provides a volume-based incentive on all standard transaction fees to Market Makers that, on a daily basis, trade a monthly ADV of more than 5,000 contracts on BOX. In both Sections the Participant's monthly ADV is calculated at the end of each month.

The Exchange is proposing to amend the BOX Fee Schedule to permit the Exchange to adjust the ADV calculation for any trading day where the market is not open for the entire trading day. Specifically, in these situations the Exchange could count any day when the market closes early due to a holiday observance as a half day in the calculation, or exclude from the calculation any day where the Exchange declares a trading halt in all securities or honors a market-wide trading halt declared by another market. For example, this would have allowed the Exchange to exclude August 22, 2013 when trading was halted in Nasdaq-listed securities for three hours across all exchanges. The Exchange is not proposing any changes to the monthly ADV thresholds required to achieve each volume tier and will issue an information circular to inform Participants of any trading day where the monthly ADV calculations will be

adjusted in connection with this proposed rule change.

The Exchange believes it is appropriate to adjust the calculation of monthly ADV for these days because a Participant will have artificially low trading volume if the market is not open for the entire trading day. In the corresponding monthly ADV calculation, the numerator for the calculation (trading volume) will decrease, while the denominator (the number of trading days) will remain the same and not reflect the irregularity that caused the decrease. This would result in a lower monthly ADV for the Participant and could mean that the Participant is not eligible for a higher volume tier, and corresponding lower fee. Accordingly, giving the Exchange the ability to exclude these days from the monthly ADV calculation will ensure this scenario no longer occurs.

###### 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) and 6(b)(5) of the Act,<sup>5</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that it is equitable and reasonable to adjust the monthly ADV calculations for any trading day on which the Exchange is closed for trading due to an early closing or a market-wide trading halt because it preserves the Exchange's intent behind adopting volume based fees. The proposed change is non-discriminatory because it applies equally to all Participants and to all volume tiers.

##### 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. With respect to monthly ADV calculations, the Exchange notes that there are very few instances where this change will actually be invoked, and when invoked, the Exchange believes the rule will have little or no impact on trading decisions or execution quality. To the contrary, the Exchange believes that the proposed modification to its ADV calculation is pro-competitive and will result in lower total costs to Participants, a positive

<sup>5</sup> 15 U.S.C. 78ff(b)(4) and (5).

<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).

outcome of competitive markets. Moreover, other options exchanges have adopted rules that are similar to the change in ADV calculation being proposed by the Exchange.<sup>6</sup>

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

No written comments were either solicited or 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 Exchange Act<sup>7</sup> and Rule 19b-4(f)(2) thereunder,<sup>8</sup> because it establishes or changes a due or fee.

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 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2013-55 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-BOX-2013-55. This file number should be included on the subject line if email 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 10:00 a.m. and 3:00 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-BOX-2013-55 and should be submitted on or before January 2, 2014.

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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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-71011; File No. SR-BX-2013-057]

**Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Amend the Restated Certificate of Incorporation and By-Laws of the NASDAQ OMX Group, Inc.**

December 6, 2013.

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 November

27, 2013, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 is filing this proposed rule change with respect to amendments of the Restated Certificate of Incorporation (the "Charter") and By-Laws (the "By-Laws") of its parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX" or the "Company"). The proposed amendments will be implemented on a date designated by NASDAQ OMX following approval by the Commission. The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxbx.cchwallstreet.com>, at the principal office of the Exchange, 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 Exchange 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 Exchange 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

NASDAQ OMX is proposing to make certain amendments to its Charter and By-Laws.

(i) Background

At NASDAQ OMX's 2012 annual meeting held on May 22, 2012, NASDAQ OMX's stockholders considered two proposals submitted by individual stockholders. The first proposal, which passed with 68% of the votes cast, requested that NASDAQ OMX's Board take steps to replace each supermajority voting standard in the

<sup>6</sup> See Securities Exchange Act Release Nos. 70472 (September 23, 2013), 78 FR 59738 (September 27, 2013)(Notice of Filing and Immediate Effectiveness of SR-PHLX-2013-93); 70470 (September 23, 2013) 78 FR 59740 (September 27, 2013)(Notice of Filing and Immediate Effectiveness of SR-NASDAQ-2013-117); and 70657 (October 10, 2013), 78 FR 62899 (October 22, 2013)(Notice of Filing and Immediate Effectiveness of SR-ISE-2013-51).

<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).

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

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