

meet either of those requirements before the proposed rule change is approved.²²

With respect to the proposed changes to the compliance plan process, if a company has not yet submitted its plan of compliance when the proposed rule change is approved, the deadline to submit that plan would be extended until 45 days from the date of staff's notification of the deficiency. If the company had submitted its plan of compliance when the proposed rule change is approved, but staff has not yet made a determination with respect to whether to grant additional time, staff would be permitted to grant the company up to 180 days from staff's notification of the deficiency to regain compliance. If the company has already received an extension of time to regain compliance from staff when the proposed rule change is approved,²³ at the end of that exception staff could, based on a review of the company at the time, grant additional time for the company to regain compliance, up to 180 days from staff's original notification of the deficiency.²⁴ No additional time would be provided to a company that had already received a Staff Delisting Determination at the time the proposed rule change is approved.²⁵

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,²⁶ in general and with Sections 6(b)(5) of the Act,²⁷ in particular, which requires, among other things, that a national securities exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule change is consistent with these

²² For example, if a company had been notified that its security was below either the market value of listed securities or market value of publicly held shares requirement 95 days before the proposed rule is approved, the company would not receive any additional time as a result of the proposed rule change. Such companies would continue through the Hearings and Appeals process, however, and could receive additional time as provided for in Rules 5815(c)(1)(A) and 5820(d)(1).

²³ Rule 5810(c)(2)(B)(i).

²⁴ The proposal to allow a company additional time at the end of its extension based on staff's further review of the company is consistent with Nasdaq's current practice of potentially allowing a company additional time if it was not initially granted the full 105 days allowed by current Rule 5810(c)(2)(B)(i).

²⁵ Such companies would continue through the Hearings and Appeals process, however, and could receive additional time as provided for in Rules 5815(c)(1)(A) and 5820(d)(1).

²⁶ 15 U.S.C. 78f.

²⁷ 15 U.S.C. 78f(b)(5).

requirements in that it would enhance consistency within Nasdaq's rules and between Nasdaq and other markets, thereby reducing investor confusion and facilitating capital formation, while permitting reasonable periods of time for companies to address instances of non-compliance with Nasdaq rules.

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

Nasdaq 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2009-077 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-NASDAQ-2009-077. 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-NASDAQ-2009-077 and should be submitted on or before September 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60609; File No. SR-BX-2009-056]

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")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 31, 2009, NASDAQ OMX BX, Inc. (the "Exchange") filed with the

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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

The Exchange proposes to eliminate the Liquidity Make or Take Pricing Structure on BOX, as described in Sections 7(a) and 7(b) of the current BOX Fee Schedule. The Liquidity Make or Take Pricing Structure, and its respective charges and credits, currently applies to most classes listed for trading on BOX that are included in the Penny Pilot Program, as referenced in Chapter V, Section 33 of the BOX Rules ("Penny Pilot Classes").⁵

As proposed, the Liquidity Make or Take Pricing Structure will no longer apply and instead 'standard' execution fees will be applied to executions in all Penny Pilot Classes, except with regard to inbound P and P/A Order executions.⁶ The Exchange believes that this proposed fee change will align its pricing so as to better compete with other exchanges for executions in Penny Pilot Classes.

The Exchange is proposing that these changes become effective on September 1, 2009. In conjunction with this proposal, the Exchange proposes to issue a Regulatory Circular notifying BOX Options Participants of the impending change to pricing for executions on the BOX Market.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁷ in general, and Section 6(b)(4) of the Act,⁸ 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, this proposed fee change will apply to all member order types and amend pricing for executions on BOX so as to better compete with the current pricing in place on other 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

structure: (1) Standard & Poor's Depository Receipts® (SPY); (2) Powershares® QQQ Trust Series 1 (QQQQ); and (3) iShares Russell 2000® Index Fund (IWM). See Securities Exchange Act Release No. 60221 (July 1, 2009), 74 FR 32996 (July 9, 2009) (SR-BX-2009-033). These three classes will remain subject only to 'standard' fees.

⁶ Terms not otherwise defined herein shall have the meaning proscribed in the Options Order Protection and Locked/Crossed Market Plan or the BOX Rules, respectively.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

19(b)(3)(A)(ii) of the Exchange Act⁹ and Rule 19b-4(f)(2) thereunder,¹⁰ 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. Please include File Number SR-BX-2009-056 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-2009-056. 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 will also be

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ A recent proposal submitted by the Exchange for immediately [sic] effectiveness removed the following three (3) exchange-traded fund share classes from the Liquidity Make or Take pricing

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-2009-056 and should be submitted on or before September 29, 2009.¹¹

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60604; File No. SR-NYSEArca-2009-78]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Eliminating NYSE Arca Equities Rule 7.26, Adding New NYSE Arca Equities Rule 6.7 and Amending NYSE Arca Equities Rule 6.18

September 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 25, 2009, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE Arca. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

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

The Exchange proposes to (i) eliminate the requirement of NYSE Arca Equities Rule 7.26 that Market Makers establish and maintain certain specifically prescribed information barriers, (ii) add new NYSE Arca Equities Rule 6.7 regarding trading ahead of research reports, and (iii) revising NYSE Arca Equities Rule 6.18

to incorporate compliance with NASD Rule 3010. 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 III 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 Exchange proposes to eliminate the requirement set forth in NYSE Arca Equities Rule 7.26 that Market Makers on the Corporation maintain certain specifically prescribed information barrier procedures. At the same time, the Exchange further proposes new NYSE Arca Equities Rule 6.7, which (i) prohibits ETP Holders from trading ahead of research reports and (ii) requires each ETP Holder to establish, maintain and enforce procedures regarding the flow of information between research department personnel and trading department personnel. Finally, the Exchange proposes to revise NYSE Arca Equities Rule 6.18 to incorporate compliance with NASD Rule 3010.

All Members Must Maintain Policies Concerning the Misuse of Material Non-Public Information

Presently, NYSE Arca requires that each ETP Holder³ establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the ETP Holder or persons associated with the ETP Holder.⁴ For purposes of this requirement, conduct constituting the misuse of material, non-public information includes, but is not limited to, the following:

(a) trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material, non-public information concerning that issuer; or

(b) trading in a security or related options or other derivative securities, while in possession of material, non-public information concerning imminent transactions in the security or related securities; or

(c) disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material, non-public information.

The Exchange also has several rules prohibiting ETP Holders from disadvantaging their customers or other market participants by improperly capitalizing on the ETP Holders’ access to or receipt of material, non-public information. For example, NYSE Arca Equities Rule 6.16 prohibits an ETP Holder from trading ahead of its customer’s limit order.⁵ In addition, the Exchange prohibits the practice of “front-running” block transactions.⁶

Members Retain Responsibility for Compliance

In this context, by prohibiting the misuse of material, non-public information, the Exchange has appropriately defined the behavior that its participants must avoid. In the Exchange’s view, prescribing the form that these policies and procedures must take is unnecessarily burdensome. By defining certain prohibited behavior (e.g., Rules 6.3, 6.16, and 6.6) the Exchange has placed its participants on notice as to their specific compliance

⁵ See NYSE Arca Equities Rule 6.16: “No ETP Holder may accept and hold an unexecuted limit order from its customer * * * and continue to trade on the Corporation the subject security for its own account at prices that would satisfy the customer’s limit order without executing that limit order.”

⁶ See NYSE Arca Equities Rule 6.6: “An ETP Holder or associated person obtaining information of an immediate pending transaction or a transaction executed but not yet reported on any national securities exchange or association involving 5,000 shares or more of a security including an equivalent number of option contracts admitted to dealings on the NYSE Arca, Inc., or securities underlying the options so admitted, shall not initiate or transmit an order in the security involved, or options relating to that security, through the facilities of the Corporation for any account in which he or she or his or her organization are participants until after the transaction appears on the ticker or is otherwise disclosed, in the case of orders pertaining to equities, or until two minutes after such disclosure, in the case of orders pertaining to options. Exceptions will require prior approval from the Corporation.”

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See NYSE Arca Equities Rule 1.1(n).

⁴ See NYSE Arca Equities Rule 6.3.