

All submissions should refer to File Number SR-CBOE-2009-025. 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 the 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-CBOE-2009-025 and should be submitted on or before December 15, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61017; File No. SR-BX-2009-072]

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

November 17, 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 November

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 website at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXB/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 recently submitted a proposed rule change, SR-BX-2009-071, which made several changes to the BOX Fee Schedule.<sup>5</sup> Certain of these changes eliminated references to outbound P/A Orders from the Fee Schedule as these order types are no longer sent by BOX.<sup>6</sup> Some of the text

that was removed from the Fee Schedule in SR-BX-2009-071 should not have been removed but rather amended to reflect applicability to Eligible Orders that are routed away by Routing Brokers.

The Exchange proposes to once again include the specific language in the BOX Fee Schedule, as appropriate, to reflect its applicability to Eligible Orders routed to Away Exchanges by Routing Brokers. Specifically, the Exchange proposes to exempt outbound Eligible Orders routed to Away Exchanges by Routing Brokers from the fees and credits of Section 7 of the BOX Fee Schedule, as these transactions are deemed to neither 'add' nor 'take' liquidity from the BOX Book.<sup>7</sup> Additionally, the Exchange proposes to impose a fee of \$0.50 per contract for all Eligible Orders routed to Away Exchanges by Routing Brokers in excess of 4,000 contracts per month for an individual BOX Options Participant, as was imposed for outbound P/A Orders.<sup>8</sup>

Additionally, the Exchange proposes a clarifying change to text of Section 7(d) of the BOX Fee Schedule regarding the volume discount applied to executions in Price Improvement Period ("PIP") auctions of the Participant that initiated the PIP which occur at a price at least better than the NBBO. To clarify the application of the volume discount the Exchange proposes that the final sentence of Section 7(d) will read as follows: "This discount is calculated monthly for the Participant's previous calendar month's executions in PIP auctions which it initiated and which were filled at a price at least better than the NBBO."

("Decentralized Plan"). See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4-546) (Order Approving the National Market System Plan Relating to Options Order Protection and Locked/Crossed Market Plan). Instead of routing P/A Orders BOX now sends Eligible Orders to Away Exchange(s), when such Away Exchange(s) display the Best Bid or Best Offer, in accordance with the Decentralized Plan, via certain non-affiliated third party routing broker/dealers ("Routing Broker(s)"). See Securities Exchange Act Release No. 60832 (October 16, 2009), 74 FR 54607 (October 22, 2009) (SR-BX-2009-66).

<sup>7</sup> See Securities Exchange Act Release No. 60504 (August 14, 2009), 74 FR 42724 (August 24, 2009) (SR-BX-2009-047).

<sup>8</sup> See Securities Exchange Act Release No. 60610 (September 1, 2009), 74 FR 46285 (September 8, 2009) (SR-BX-2009-058). The Exchange stated in SR-BX-2009-58 that "exempting all outbound P/A Orders from fees may tempt BOX Options Participants to increase non executable order flow to BOX in order to avoid fees on other exchanges." The Exchange proposed the \$0.50 fee "to eliminate the abusive use of this exemption." As proposed in SR-BX-2009-58, the proposed re-inclusion of this fee will have no effect on the billing of orders of non-BOX Options Participants.

<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> See Securities Exchange Act Release No. 60934 (November 4, 2009), 74 FR 58358 (November 12, 2009) (SR-BX-2009-071). The BOX Fee Schedule can be found on the BOX Website at <http://www.bostonoptions.com>.

<sup>6</sup> The Exchange is a participant in the Options Order Protection and Locked/Crossed Market Plan

<sup>7</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.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>9</sup> in general, and Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest, as well Section 6(b)(4) of the Act,<sup>11</sup> 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. The proposed changes will result in clarification of the fees charged for trading activity on BOX.

### *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>12</sup> and Rule 19b-4(f)(2) thereunder,<sup>13</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 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-2009-072 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-2009-072. 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 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-2009-072 and should be submitted on or before December 15, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61005; File No. SR-ISE-2009-90]

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change by International Securities Exchange, LLC Relating to Changes to the U.S. Exchange Holdings, Inc. Corporate Documents and International Securities Exchange Trust Agreement in Connection With the Form 1 Applications of EDGA Exchange, Inc. and EDGX Exchange, Inc.**

November 16, 2009.

Pursuant to Section 19(b)(1) of 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 9, 2009, the International Securities Exchange, LLC ("ISE" 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 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**

In connection with a transaction<sup>3</sup> which closed on December 23, 2008, the International Securities Exchange, LLC ("Exchange" or "ISE") merged the ISE Stock Exchange, LLC, a Delaware limited liability company, with and into Maple Merger Sub, LLC, a Delaware limited liability company and a wholly-owned subsidiary of Direct Edge Holdings LLC ("Direct Edge"). As part of the same transaction, the parent company of the Exchange, International Securities Exchange Holdings, Inc. ("ISE Holdings"), purchased a 31.54% equity interest in Direct Edge. ISE Holdings is a direct wholly-owned subsidiary of

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities and Exchange Act Release No. 59135 (December 22, 2008); 73 FR 79954 (December 30, 2008) (SR-ISE-2008-85).

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).