

Washington, DC 20549. 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-2011-084 and should be submitted on or before January 12, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65989; File No. SR-BX-2011-085]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the BOX Fee Schedule With Respect to the Delisting of the Russell 2000 Index Options (RUT)

December 16, 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 December 7, 2011, NASDAQ OMX BX, Inc. ("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 the self-regulatory organization. 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

NASDAQ OMX BX, Inc. proposes to amend the Fee Schedule of the Boston Options Exchange Group, LLC ("BOX") to remove references to the Russell®

2000 Index (RUT). 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

Because the Exchange is delisting the Russell® 2000 Index (RUT), the Exchange proposes to remove references to RUT from the BOX fee schedule. Currently, Section 3 of the BOX fee schedule provides for a surcharge to be applied to options on any index traded on BOX; \$0.15 per contract for options on RUT. The Exchange is delisting options on RUT and they will no longer be traded on BOX. As such, no related surcharge will apply, and the Exchange is proposing to remove references to such from the BOX fee schedule.

###### 2. Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>5</sup> in general, and 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 its members and issuers and other persons using its facilities. In particular, this proposed change removes from the BOX fee schedule references to a fee that will no longer be applicable after options on RUT are delisted and no longer traded 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) of the Act<sup>7</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>8</sup> 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2011-85 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-2011-85. 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

<sup>15</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. 78f(b).

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

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

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

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-2011-85 and should be submitted on or before January 12, 2012.

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

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65992, File No. SR-MSRB-2011-19]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Consisting of Amendments to Rule G-16, on Periodic Compliance Examination, and Rule G-9, on Preservation of Records

December 16, 2011.

#### I. Introduction

On October 13, 2011, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change consisting of amendments to Rule G-16, on periodic compliance examination, and Rule G-9, on preservation of records. The proposed

rule change was published for comment in the **Federal Register** on November 1, 2011.<sup>3</sup> The Commission received two comment letters regarding the proposed rule change and the MSRB's response to those comment letters.<sup>4</sup> On December 12, 2011, the MSRB filed with the Commission, pursuant to Section 19(b)(1) of the Exchange Act<sup>5</sup> and Rule 19b-4 thereunder,<sup>6</sup> Partial Amendment No. 1 ("Amendment No. 1") to the proposed rule change.<sup>7</sup> The Commission is publishing this notice and order to solicit comment on Amendment No. 1 and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### II. Description of the Proposed Rule Change, As Modified by Amendment No. 1 to the Proposed Rule Change

Pursuant to Section 15B(b)(2)(E) of the Exchange Act,<sup>8</sup> MSRB rules must provide for the periodic examination of municipal securities brokers, municipal securities dealers, or municipal advisors ("regulated entities") to determine compliance with Section 15B of the Exchange Act, the rules and regulations thereunder, and MSRB rules. The same provision requires that the MSRB specify the minimum scope and frequency of the examinations and that the examination rules be designed to avoid unnecessary regulatory duplication or undue regulatory burden for any regulated entity.

Section 15B(c)(7) of the Exchange Act<sup>9</sup> provides that the periodic examination of regulated entities shall be conducted by (a) A registered securities association in the case of dealers that are members of the registered securities association, (b) the appropriate regulatory agency ("bank regulators") in the case of dealers that

are not members of a registered securities association, and (c) the SEC, or its designee, in the case of municipal advisors. There is one securities association registered with the SEC—FINRA. Approximately 1,800 MSRB registered dealers are members of and examined by FINRA, with the remaining dealers registered with the SEC as municipal securities dealers and examined primarily by the various Federal bank regulators.

Rule G-16 currently provides that, at least once every two calendar years, dealers must be examined in accordance with Section 15B of the Exchange Act in order to determine whether the dealers are in compliance with all MSRB rules and applicable provisions of the Exchange Act. Separately, FINRA examines its members pursuant to a risk-based approach at least every four calendar years. In order to comply with Rule G-16, FINRA and the MSRB agreed to a protocol allowing for a questionnaire to be completed by certain firms every two calendar years. These dealers are typically less active in the municipal securities market and, therefore, pose less overall risk to market participants. The questionnaire, entitled the Alternative Municipal Examination ("AME") module, was implemented in 1998, after review by SEC and MSRB staff. The AME is used as an off-site examination for low-risk dealers that: (a) Conduct a limited municipal securities business; (b) do not conduct a public finance business; and (c) are not otherwise identified as high risk firms for regulatory purposes. The AME is necessarily general and not tailored to the specific business of any one firm. It relies on each responding dealer to self report rule violations and to certify that the information provided is truthful and accurate.

After many years of experience with the AME, the MSRB and FINRA believe that a more risk-based examination protocol should be implemented and that Rule G-16 should be amended to allow for up to a four year examination cycle for FINRA-member firms, consistent with FINRA's requirement for cycle examinations of all other FINRA members. This would also allow FINRA to integrate the municipal securities cycle examination program more closely with its overall cycle examination program, and redeploying staff resources from administering the AME to participating in the risk-based examination program would foster more meaningful oversight. Moreover, over the last few years, there have been significant advances in information technology, particularly with the development of the MSRB's Real-time

<sup>3</sup> See Securities Exchange Act Release No. 65631 (October 26, 2011), 76 FR 67503 (November 1, 2011) (the "Commission's Notice").

<sup>4</sup> See letter from David L. Cohen, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated November 21, 2011 ("SIFMA Letter"); letter from Tamara K. Salmon, Associate General Counsel, Investment Company Institute ("ICI"), dated November 22, 2011 ("ICI Letter"); and letter from Lawrence P. Sandor, Senior Associate General Counsel, Municipal Securities Rulemaking Board ("MSRB"), dated December 12, 2011 ("MSRB Letter").

<sup>5</sup> 15 U.S.C. 78s(b)(1).

<sup>6</sup> 17 CFR 240.19b-4.

<sup>7</sup> Amendment No. 1 to the proposed rule change requested that the Commission approve the amendment to Rule G-9 with an effective date that is six months from the date of the approval order. The text of Amendment No. 1 and the MSRB Letter are available on the MSRB's Web site at <http://www.msrb.org>, at the principal office of the MSRB, and at the Commission's Public Reference Room.

<sup>8</sup> 15 U.S.C. 78o(b)(2)(E).

<sup>9</sup> 15 U.S.C. 78o(c)(7).

<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.