

characteristic, the Commission believes that the implementation of \$1 strike price intervals for SPBAS options, within the parameters of CBOE Rule 24.9, is appropriate.<sup>17</sup>

The Commission notes that the Exchange proposes to apply its existing index rules regarding the listing of new series and additional series to SPBAS options. Specifically, exercise prices will be required to be reasonably related to the value of the underlying index and generally must be within 30% of the current index value. The Exchange has clarified that for purposes of SPBAS options, “current index value” will be 100 because that is the single value that will be disseminated for SPBAS options during the life of an option, as discussed further below. Given the design of this product, the Commission believes that this is appropriate and consistent with the Act.

The Commission notes that an intraday value for SPBAS options will not be disseminated and that, prior to the open on all trading days other than the last trading day, CBOE will disseminate a single value of 100 for SPBAS options through OPRA, the CTA and/or the MDI feed. The Commission notes further that, after the close of trading on the last trading day, CBOE will disseminate the exercise settlement value for the expiring SPBAS contract. The value of the index may vary from 100 only on the last trading day and would remain 100 on all other trading days. Moreover, because the closing value of the S&P 500 on the last trading day is a necessary component of the SPBAS option settlement value calculation, that value cannot be calculated until the end of the day on the last trading day.

The Exchange has also proposed that SPBAS options be p.m.-settled. As discussed above, the Exchange asserts that p.m.-settlement is necessary because the closing settlement value of the S&P 500 on the third Friday of the month (a necessary component of the SPBAS option settlement value) cannot be determined until the close of trading. The Commission believes that the historic concerns regarding p.m.-settlement should not be raised by the introduction of SPBAS options.<sup>18</sup>

<sup>17</sup> In addition, the Commission notes that CBOE has represented that it has analyzed its capacity and believes the Exchange and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing and trading of \$1 strikes (where the strike price is less than \$200) for SPBAS options.

<sup>18</sup> For a detailed discussion of the Commission’s traditional concerns and policies regarding p.m.-settlement, see Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR-C2-2011-008) (“SPXPM Filing”).

The Exchange has proposed not to impose position or exercise limits on SPBAS options on the basis that SPBAS options should be treated similarly to SPX and SPXPM options, which are not subject to position or exercise limits. The Commission notes that the SPBAS exercise settlement value is based on the difference between the opening and closing values of the S&P 500 Index on expiration Fridays, and that SPX and SPXPM are based on the S&P 500 Index opening and closing values, respectively. Furthermore, as noted above, SPBAS options could be used to gain exposure to or hedge the basis risk between SPX and SPXPM options. As such, the Commission believes that CBOE’s proposal not to apply position or exercise limits to SPBAS options is appropriate and consistent with the Act.

CBOE also proposes to margin SPBAS options as broad-based index options. The Commission believes that CBOE’s proposed rules relating to margin requirements are appropriate. The Commission also believes that CBOE’s proposal to allow SPBAS options to be eligible for trading as FLEX options is consistent with the Act. The Commission previously approved rules relating to the listing and trading of FLEX options on CBOE, which give investors and other market participants the ability to individually tailor, within specified limits, certain terms of those options.<sup>19</sup>

The Commission notes that CBOE has represented that it has an adequate surveillance program to monitor trading of SPBAS options and intends to apply its existing surveillance program for index options to support the trading of these options. Further, CBOE is a member of the ISG and can obtain trading activity in information in the underlying securities (*i.e.*, S&P 500 component securities).

In approving the proposed listing and trading of SPBAS options, the Commission has also relied upon CBOE’s representation that it has the necessary systems capacity to support the new options series that will result from this proposal.

Lastly, the Commission believes that CBOE’s proposal to update CBOE Rule 24.9.01(d) with the correct cross-reference to Interpretation and Policy .04 to Rule 24.9 is consistent with the Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the

<sup>19</sup> See Securities Exchange Act Release No. 31910 (February 23, 1993), 58 FR 12056 (March 2, 1993).

<sup>20</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-CBOE-2012-042) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

Kevin M. O’Neill,  
Deputy Secretary.

[FR Doc. 2012-18243 Filed 7-25-12; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67474; File No. SR-BX-2012-051]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

July 20, 2012.

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 July 10, 2012, NASDAQ OMX BX, Inc. (“BX” 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

The Exchange proposes to amend Chapter XV, Section 2 entitled “BX Options Market—Fees and Rebates” to amend a Customer fee for routing options to The NASDAQ Options Market (“NOM”).

The text of the proposed rule change is available on the Exchange’s Web site at <http://www.nasdaqtrader.com/micro.aspx?id=BXRulefilings>, 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

<sup>21</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.

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

The Exchange recently filed a proposal to adopt fees for routing contracts to markets other than the BX Options market.<sup>3</sup> Specifically, the Exchange adopted the following routing fees in Chapter XV, Section 2(4):

| Exchange  | Customer | Firm/market maker/broker-dealer | Professional |
|---|----------|---------------------------------|--------------|
| BATS (Penny Pilot) .....  | \$0.55   | \$0.55                          | \$0.55       |
| BOX .....   | 0.11     | 0.55                            | 0.11         |
| CBOE .....  | 0.11     | 0.55                            | 0.31         |
| CBOE orders greater than 99 contracts in ETFs, ETNs and HOLDRS) ..... | 0.29     | N/A                             | 0.31         |
| C2 .....  | 0.55     | 0.55                            | 0.55         |
| ISE (Standard) .....  | 0.11     | 0.55                            | 0.29         |
| ISE (Select Symbols) * .....  | 0.31     | 0.55                            | 0.39         |
| NOM .....   | 0.11     | 0.55                            | 0.55         |
| NYSE Arca (Penny Pilot) .....   | 0.55     | 0.55                            | 0.55         |
| NYSE Amex .....   | 0.11     | 0.55                            | 0.31         |
| PHLX (for all options than PHLX Select Symbols) .....                 | 0.11     | 0.55                            | 0.36         |
| PHLX Select Symbols** .....   | 0.50     | 0.55                            | 0.55         |

The Exchange inadvertently noted that the NOM Customer routing fee is \$0.11 per contract. NOM assesses a Customer Fee to Remove Liquidity in Penny Pilot Options of \$0.45 per contract.<sup>4</sup> The routing fees are proposed to recoup costs that the Exchange incurs for routing and executing certain orders on away markets.

BX currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating the order router, membership fees at away markets, and technical costs associated with routing.<sup>5</sup> For example, BX incurs costs related to the Nasdaq Options Services LLC ("NOS"), a member of the Exchange and the Exchange's exclusive order router.<sup>6</sup> Each time NOS routes an order to an away market, NOS is charged a \$0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange proposes to recoup a portion of the above costs along with the NOM Customer routing fee of \$0.45 per contract when routing Customer orders to NOM. The Exchange is proposing a NOM Customer routing fee of \$0.55 per contract.<sup>7</sup> While the Exchange would

incur a cost of \$0.56 per contract to route a Customer order to NOM, the Exchange has determined to assess a fee of \$0.55 per contract for routing Customer orders to NOM.

2. Statutory Basis

BX believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and with Section 6(b)(4) of the Act,<sup>9</sup> in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls.

The amended NOM Customer routing fee is reasonable because it seeks to recoup costs that are incurred by the Exchange when routing Customer orders to NOM on behalf of members. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange along with other administrative and technical costs<sup>10</sup> that are incurred by the Exchange. The Exchange believes that the proposed NOM Customer routing fee would enable the Exchange to recover the remove fee assessed to each market participant by NOM, plus clearing and other administrative and technical fees

for the execution of orders routed to BX and executed on NOM.

The Exchange also believes that the amended NOM Customer routing fee is equitable and not unfairly discriminatory because it would be uniformly applied to all market participant Customer orders that are routed to NOM to cover the cost to route the order. The Exchange applied a similar methodology in calculating the routing fees for each market participant by adding not more than a \$0.11 per contract fee to the away market's remove fee to determine BX routing fees.

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

BX 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. In addition, a BX Participant may designate an order as not available for routing to avoid routing fees.<sup>11</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.

<sup>3</sup> See Securities Exchange Act Release No. 67339 (July 3, 2012), 77 FR 405688 (July 10, 2012) (SR-BX-2012-043).

<sup>4</sup> See NOM Rules at Chapter XV, Section 2(4).

<sup>5</sup> In addition to membership fees and transaction fees, the Exchange also incurs an Options Regulatory Fee when routing to an away market that assesses that fee.

<sup>6</sup> See BX Rules at Chapter VI, Section 11(e) (Order Routing).

<sup>7</sup> The Exchange calculates its routing fees by totaling its costs which include the remove fee at the away market (\$0.45 per contract), a \$0.06 per contract clearing fee and another \$0.05 per contract fee associated with administrative and technical costs associated with operating NOS. This would total \$0.56 per contract to route a Customer order to NOM.

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> The Exchange utilizes the Nasdaq Options Services LLC ("NOS"), a member of the Exchange and the Exchange's exclusive order router to route orders in options listed and open for trading on the BX to destination markets. See Securities Exchange Act Release No. 67256 (June 26, 2012) (SR-BX-2012-030).

<sup>11</sup> See BX Rules at Chapter VI, Section 11(e).

### 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 Act.<sup>12</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. 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-BX-2012-051 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-2012-051. 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 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-BX-2012-051 and should be submitted on or before August 16, 2012.

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

Kevin M. O'Neill,

*Deputy Secretary.*

[FR Doc. 2012-18215 Filed 7-25-12; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67427; File No. SR-FINRA-2012-034]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend TRACE Reporting Rules Relating to Transfers of TRACE-Eligible Securities To Create or Redeem Instruments Such as ETFs

July 12, 2012.

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 July 11, 2012, Financial Industry Regulatory Authority, Inc. ("FINRA") 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 FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

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

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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

FINRA is proposing to amend FINRA Rule 6730(e) to expressly exclude from the Trade Reporting and Compliance Engine ("TRACE") trade reporting requirements transfers of TRACE-Eligible Securities for the sole purpose of creating or redeeming instruments such as exchange-traded funds ("ETFs").

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, 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, FINRA 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. FINRA 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Under the Rule 6700 Series (the TRACE rules), members are required to report transactions in debt securities that are TRACE-Eligible Securities as defined in Rule 6710(a) to FINRA unless they fall within an express exception listed in Rule 6730(e). Certain transactions and transfers are not reported to FINRA (e.g., trades executed and reported through an exchange and transfers made pursuant to an asset purchase agreement that has been approved by a bankruptcy court). Members must have policies and procedures and internal controls in place to determine whether a transaction qualifies for an exception under the TRACE rules.

FINRA proposes to amend Rule 6730(e) to provide that transfers of TRACE-Eligible Securities for the sole purpose of creating or redeeming an instrument that evidences ownership or otherwise tracks the underlying securities transferred, such as an ETF, shall be excluded expressly from the TRACE reporting requirements. The proposed amendment to Rule 6730(e) is similar to an exclusion for such

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