

- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2009–088 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–2009–088. 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, 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–NASDAQ–2009–088 and should be submitted on or before November 19, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, approval of the retroactive application of the proposal is consistent with Section 6(b)(4) of the Act,⁷ which requires that the rules of a national securities exchange provide for

⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(4).

the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities.

The Commission notes that the changes outlined in this proposed rule change were also contained in an September 30, 2009 submission by NASDAQ for immediate effectiveness pursuant to Section 19(b)(3)(A)⁸ of the Act and Rule 19b–4(f)(2)⁹ thereunder; however that submission was rejected because it was not filed in accordance with the requirements of the Act and the rules and regulations thereunder.¹⁰ The proposed fee changes would otherwise qualify for immediate effectiveness pursuant to Section 19(b)(3)(A)¹¹ of the Act and Rule 19b–4(f)(2).¹² However, because the proposed rule change seeks retroactive application of a fee change, NASDAQ filed pursuant to Section 19(b)(2) of the Act.¹³

The Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹⁴ for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** with such approval retroactive to October 1, 2009. Retroactive approval of this proposal allows the proposed rule change to take effect for the month of October 2009.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASDAQ–2009–088) is hereby approved on an accelerated basis.

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

Elizabeth M. Murphy,
Secretary.

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⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b–4(f)(6).

¹⁰ See 19 CFR 240.19b–4 and 19 CFR 249.819 Appendix A.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b–4(f)(6).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ *Id.*

¹⁵ 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60863; File No. SR–BX–2009–055]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving a Proposed Rule Change To Retroactively Correct an Error in Rule 7018

October 22, 2009.

On August 28, 2009, NASDAQ OMX BX, Inc. (the “Exchange” or “BX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change to apply retroactively to the period from April 1, 2009 through August 16, 2009 the correction made by SR–BX–2009–049³ of an error formerly in Rule 7018. BX believes that all of its members that trade on the NASDAQ OMX BX Equities System are cognizant of the correct fee. BX has been billing members in accordance with the correct fee since the effective date of April 1, 2009 in a previous BX proposed rule change,⁴ but due to an error the credit incorrectly appeared as “\$0.006” in Exhibit 5 to the BX Fee Filing. Notice of the proposed rule change was published for comment in the **Federal Register** on September 17, 2009.⁵ The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,⁷ which requires, among other things, that the rules of a national securities exchange remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission believes the proposed rule change matches both the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 60603 (September 1, 2009), 74 FR 46266 (September 8, 2009) (SR–BX–2009–049).

⁴ See Securities Exchange Act Release No. 59682 (April 1, 2009), 74 FR 16015 (April 8, 2009) (SR–BX–2009–018) (“BX Fee Filing”).

⁵ See Securities Exchange Act Release No. 60634 (September 8, 2009), 74 FR 47849.

⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

original intent of the BX Fee Filing and the fee BX currently charges its members. The proposed rule change will retroactively correct the error by assessing the fees pursuant to the now accurate Rule 7018. The Commission believes it is important for BX's rules to be accurate and applied correctly in order to remove impediments to and perfect the mechanism of a free and open market and a national market system.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-BX-2009-055), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9-26023 Filed 10-28-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60864; File No. SR-CBOE-2009-076]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Penny Pilot Program

October 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 20, 2009, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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

CBOE proposes to amend its rules relating to the Penny Pilot Program. The

text of the rule proposal is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary and at the Commission.

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 IV 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to extend and expand the Penny Pilot Program, which commenced on January 26, 2007, in accordance with the proposed expansion that the SEC approved on September 23, 2009.⁵

Background:

The Penny Pilot Program currently is in effect in fifty-eight multiply-listed option classes.⁶ For all classes in the Program except for the QQQs, the minimum increment for bids and offers is 0.01 for all option series below \$3 (including LEAPS), and \$0.05 for all option series \$3 and above (including LEAPS). For QQQs, the minimum increment is \$0.01 for all option series. The Penny Pilot Program is scheduled to expire on October 31, 2009.⁷

On May 20, 2009, CBOE filed SR-CBOE-2009-31, which filing proposed to extend the Pilot Program, and also proposed to significantly expand the Pilot Program to all equity and ETF option classes, such that at the end of a brief roll-out period all equity and ETF option classes would be included in the

⁵ See Securities Exchange Act Release No. 60711 (September 23, 2009), approving SR-NYSEArca-2009-44.

⁶ CBOE's rules also provide that for so long as SPDR options (SPY) and options on Diamonds (DIA) participate in the Penny Pilot Program, the minimum increments for Mini-SPX Index Options (XSP) and options on the Dow Jones Industrial Average (DJX), respectively, are \$0.01 for all option series below \$3, and \$0.05 for all option series \$3 and above. See CBOE Rule 6.42.03.

⁷ See Securities Exchange Act Release No. 60223 (July 1, 2009), 74 FR 32993 (July 9, 2009), granting immediate effectiveness to SR-CBOE-2009-43.

Penny Pilot Program.⁸ Moreover, in all Pilot classes, option series of less than \$1 premium value would be quoted in penny increments, and series at \$1 or above would be quoted in nickel increments. CBOE believed that extending and expanding the Penny Pilot Program as proposed was balanced, responsible, and reasonable. It would benefit investors by expanding the Pilot Program in all equity and ETF option classes over a relatively short period of time, which would enable investors to obtain the benefits of penny quoting and trading in those option contracts that customers actually trade. CBOE also believed that its proposal was balanced in that it recognized that the Pilot Program, while providing certain benefits such as reducing spreads, also resulted in a significant reduction in liquidity at the BBO, a decrease in volume in some classes, and a significant rise in quote traffic. Moreover, CBOE's plan eliminated investor confusion as to which options are quoted in penny increments, and helps to reduce the growth of quote traffic.

Proposed Expansion:

In light of the SEC's recent approval of the NYSEArca's proposed expansion of the Penny Pilot Program (see SR-NYSEArca-2009-44), CBOE has determined to withdraw its proposal to expand the Pilot Program as described in SR-CBOE-2009-31. Instead, CBOE now proposes to extend the Pilot Program from November 1, 2009 until December 31, 2010, and expand the Penny Pilot Program by adding the 300 most actively-traded, multiply-listed option classes that are not currently in the Pilot Program, excluding option classes with high premiums. An option class would be designated as "high premium" if, at the time of selection, the underlying security was priced at \$200 per share or above, or the underlying index level was at 200 or above. These determinations shall be based on the price at the close of trading on Expiration Friday prior to the class being added to the Pilot Program. CBOE believes that it is appropriate to exclude high priced underlying securities, as the benefit to the public from excluding such issues is minimal because of the high price of at-the-money options.

The 300 option classes would be added in groups of 75 classes each quarter beginning on the following dates: November 2, 2009, February 1, 2010, May 3, 2010, and August 2, 2010. The option classes will be identified based on national average daily volume

⁸ See Securities Exchange Act Release No. 60018 (June 1, 2009), 74 FR 27211 (June 8, 2009).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).