Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–008. 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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–2009–008 and should be submitted on or before March 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–3741 Filed 2–20–09; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59407; File No. SR–BX–2009–008]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change Allowing Entry of Orders Into the PIP at a Price Matching the National Best Bid or Offer

February 13, 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 February 9, 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 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 V, Section 18 (Price Improvement Period) (''PIP'') of the Rules of the Boston Options Exchange Group, LLC (''BOX'') to allow Options Participants to enter orders into the PIP at a price that matches the national best bid or offer (''NBBO''). 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://nasdaqtrader.com/Trader.aspx?id=Boston_Stock_Exchange.*

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 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 purpose of this proposal is to expand the applicability of BOX's PIP auction.[3] The PIP currently allows Options Participants to enter two-sided orders for execution at a price that improves upon the NBBO. The customer side of these orders (''PIP Order'') is then exposed to all market participants to give them an opportunity to participate in the trade at the proposed cross price or better. This provides an opportunity for the PIP Order to receive additional price improvement. BOX proposes to extend the application of the PIP to permit an Options Participant to enter an order (''Improvement Order'') into the PIP at a price that is equal to the NBBO when BOX's best bid or offer (''BOX BBO'') is equal or inferior to the NBBO.[4] This will allow Options Participants to guarantee execution of their customer orders on BOX at a price that is at least as good as the NBBO, while providing the additional opportunity for price improvement over the NBBO.

PIP Orders are submitted to BOX with a matching guaranteed contra order, the ''Primary Improvement Order'', equal to the full size of the PIP Order. Under the proposal, the Primary Improvement Order must represent a price that is equal to or better than that of the NBBO at the time of the commencement of the PIP.[5] BOX will commence a PIP by broadcasting a message to all Participants that (1) states that a Primary Improvement Order has been processed; (2) contains information concerning series, size, price and side of the market, and; (3) states when the PIP will conclude (''PIP Broadcast''). At the commencement of the PIP, in order to maintain the price/time priority of any orders on the BOX Book, BOX proposes that all quotes and orders on the BOX Book prior to the PIP Broadcast that are equal to or better than the Primary Improvement Order price (i.e. the PIP start price), except any proprietary quote or order from the Options Participant who submitted the Primary Improvement Order, will be immediately executed against the PIP Order in price/time priority.[6]

In addition, such proprietary quote or order shall not be executed against the PIP Order during the PIP. However, these proprietary quotes or orders will continue to be available for execution with all other types of quotes and orders as currently permissible under BOX Rules. At the conclusion of the PIP, the PIP Order shall be matched against the best prevailing quote(s)[7] or order(s) on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* BOX Rules Chapter V, Section 18(e).

[4] Similarly, ISE Rule 723 permits ISE members to enter an order into the PIM at a price that is equal to the NBBO when the ISE's best bid or offer is inferior to the NBBO. *See* Securities Exchange Act Release No. 57847 (May 21, 2008), 73 FR 30987 (May 29, 2008) (SR–ISE–2008–29).

[5] *See* proposed BOX Rules Chapter V, Section 18(e).

[6] *See* proposed BOX Rules Chapter V, Section 18(e)(i). Orders on the BOX Book will include AAO Limit Orders on the BOX Book. The AAO will immediately execute against the PIP Order at the AAO Limit Order Price (*i.e.* the displayed price at the minimum trading increment).

[7] The proposal will also clarify that the PIP Order currently executes with the best prevailing order(s) *and* quote(s) on BOX.

BOX in accordance with the current PIP rule except that any pre-PIP Broadcast proprietary quote or order from the Options Participant who submitted the Primary Improvement Order will not be executed against the PIP Order.[8]

BOX believes that the proposal will continue to provide customers with an opportunity for price improvement over the NBBO. BOX notes that once a Primary Improvement Order is submitted into the PIP auction, the Primary Improvement Order may not be cancelled.[9] Therefore, the PIP Order submitted to the PIP auction when BOX's BBO is not equal to the NBBO will be guaranteed an execution price at least equal to the NBBO and, moreover, will be given an opportunity for execution at a price better than the NBBO.

BOX's PIP allows broad participation in its competitive auction by all types of market participants (e.g. customers, brokers and market makers). All Options Participants are able to receive the PIP Broadcasts and may respond by submitting Improvement Orders. Under the proposal, the PIP will continue to provide an opportunity for orders to receive price improvement. All PIP Orders entered into the PIP will continue to be broadly exposed in the auction to all BOX Options Participants before the submitting Options Participant can execute against the PIP Order. BOX believes the proposal will increase the likelihood of Options Participants starting auctions by entering PIP Orders into the PIP because the Options Participant will only be required to guarantee an execution at the NBBO, which will provide additional customer orders an opportunity for price improvement over the NBBO. The proposal also will encourage increased participation in a PIP auction by Options Participants willing to trade with the PIP Order at the NBBO but not better than the NBBO. Increased participation by Options Participants would increase competition in the PIP auction and may lower the proportion of a PIP Order that would be internalized by the submitting Options Participant.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[10] in general, and Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposal will allow Options Participants to guarantee execution of their customer orders on BOX at a price that is at least as good as the NBBO, while providing the additional opportunity for price improvement over the NBBO.

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

The Exchange 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.

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

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–BX–2009–008 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–2009–008. 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 self-regulatory organization. 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–2009–008 and should be submitted on or before March 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–3742 Filed 2–20–09; 8:45 am]

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[8] *See* proposed BOX Rules Chapter V, Section 18(e)(iii).

[9] *See* BOX Rules Chapter V, Section 18(e)(ii).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).