

submissions should refer to File Number SR-NYSEArca-2010-31 and should be submitted on or before June 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62043; File No. SR-BX-2010-033]

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

May 5, 2010.

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 April 30, 2010, 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 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 from interested persons.

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

NASDAQ OMX BX, Inc. (the "Exchange") proposes to amend the Fee Schedule of the Boston Options Exchange Group, LLC ("BOX") to eliminate the minimum one-cent Options Regulatory Fee charged per trade. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room, on the Exchange's Internet Web site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXB/Filings/>, and on the

Commission's Web site at <http://www.sec.gov>.

#### 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 charges an Options Regulatory Fee ("ORF") of \$0.0030 per contract to each BOX Options Participant for all options transactions executed or cleared by the BOX Options Participant that are cleared by the Options Clearing Corporation ("OCC") in the customer range, excluding Linkage orders, regardless of the exchange on which the transaction occurs.<sup>5</sup> The ORF is collected indirectly from BOX Options Participants through their clearing firms by OCC on behalf of the Exchange.

There is presently a minimum one-cent (\$0.01) ORF charged per trade. The Exchange proposes to eliminate this minimum charge from its fee schedule and that this fee change be operative on May 3, 2010.

###### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(4) of the Act,<sup>7</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, the Exchange believes that this proposal will align the calculation of the ORF

with that of other options exchanges<sup>8</sup> while also simplifying the Exchange's administration of the ORF.

##### 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 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder, 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-2010-033 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.

<sup>8</sup> See Securities Exchange Act Release Nos. 61529 (February 17, 2010), 75 FR 8421 (February 24, 2010) (SR-PHLX-2010-17) and 61641 (March 3, 2010) 75 FR 11220 (March 10, 2010) (SR-CBOE-2010-20).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>22</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> The ORF was established in January 2010. See Securities Exchange Act Release No. 61388 (January 20, 2010), 75 FR 4431 (January 27, 2010) (SR-BX-2010-001) (Notice of Filings and Immediate Effectiveness of Proposed Rule Change Relating to Registered Representative Fee and Options Regulatory Fee).

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

All submissions should refer to File Number SR-BX-2010-033. 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 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 No. SR-BX-2010-033 and should be submitted on or before June 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62042; File No. SR-ISE-2010-42]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add 75 Options Classes to the Penny Pilot Program

May 5, 2010.

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 April 29, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. 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 ISE proposes to designate 75 options classes to be added to the pilot program to quote and to trade certain options in pennies (the "Penny Pilot") on May 3, 2010.

## 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

**Purpose**—ISE proposes to identify the next 75 options classes to be added to the Penny Pilot effective May 3, 2010. The Exchange recently received approval to extend and expand the Penny Pilot through December 31, 2010.<sup>3</sup> In that filing, the Exchange had proposed expanding the Penny Pilot on a quarterly basis to add the next 75 most actively traded multiply listed options classes based on national average daily volume for the six months prior to selection, closing under \$200 per share on the Expiration Friday prior to expansion, except that the month immediately preceding their addition to the Penny Pilot will not be used for the purpose of the six month analysis.<sup>4</sup>

ISE proposes to add the following 75 options classes to the Penny Pilot on May 3, 2010, based on national average daily volume for the six months ending March 31, 2010:

Nat'l ranking	Symbol	Security name	Nat'l ranking	Symbol	Security name
153 .....	XLV	Health Care Select Sector SPDR Fund.	247 .....	JCP	JC Penney Co Inc.
155 .....	CIEN	Ciena Corp.	248 .....	ACL	Alcon Inc.
157 .....	AMLN	Amylin Pharmaceuticals Inc.	249 .....	STP	Suntech Power Holdings Co Ltd.
158 .....	CTIC	Cell Therapeutics Inc.	250 .....	TLB	Talbots Inc.
159 .....	MDT	Medtronic Inc.	251 .....	SYMC	Symantec Corp.
162 .....	TIVO	TiVo Inc.	253 .....	AMED	Amedisys Inc.
163 .....	MNKD	MannKind Corp.	255 .....	TM	Toyota Motor Corp.
171 .....	MDVN	Medivation Inc.	257 .....	HK	Petrohawk Energy Corp.
176 .....	BRKB	Berkshire Hathaway Inc.	258 .....	ENER	Energy Conversion Devices Inc.
178 .....	APOL	Apollo Group Inc.	259 .....	STT	State Street Corp.
181 .....	BSX	Boston Scientific Corp.	260 .....	BHP	BHP Billiton Ltd.
185 .....	XLY	Consumer Discretionary Sel. Sec. SPDR Fund.	261 .....	NFLX	NetFlix Inc.
188 .....	CLF	Cliffs Natural Resources Inc.	262 .....	LDK	LDK Solar Co Ltd.
190 .....	ZION	Zions Bancorporation.	263 .....	SPG	Simon Property Group Inc.
194 .....	IOC	InterOil Corp.	264 .....	TIF	Tiffany & Co.
197 .....	ITMN	InterMune Inc.	265 .....	BCUY	Bucyrus International Inc.

<sup>11</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> See Securities Exchange Act Release No. 60865 (October 22, 2009), 74 FR 55880 (October 29, 2009)

(SR-ISE-2009-82). The Commission notes that this proposed rule change was submitted pursuant to Section 19(b)(3)(A)(iii) of the Act and was, therefore, effective upon filing. The Commission

does not approve proposed rule changes submitted pursuant to this section of the Act.

<sup>4</sup> Index products would be included in the expansion if the underlying index level was under 200.