

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59589; File No. SR-BX-2009-016)

March 17, 2009

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the \$1 Strike Price Program on the Boston Options Exchange Facility

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 March 16, 2009, NASDAQ OMX BX, Inc. (the “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 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

The Exchange proposes to amend Chapter IV, Section 6 (Series of Options Contracts Open for Trading) of the Rules of the Boston Options Exchange Group, LLC (“BOX”) to expand the \$1 Strike Price Program. 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 website 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

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

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

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 purpose of the proposed rule change is to expand the \$1 Strike Price Program (the “Program”).<sup>3</sup> The \$1 Strike Price Program currently allows BOX to select a total of 10 individual stocks on which option series may be listed at \$1 strike price intervals. In order to be eligible for selection into the Program, the underlying stock must close below \$50 in its primary market on the previous trading day. If selected for the Program, BOX may list strike prices at \$1 intervals from \$3 to \$50, but no \$1 strike price may be listed that is greater than \$5 from the underlying stock’s closing price in its primary market on the previous day. BOX may also list \$1 strikes on any other option class designated by another securities exchange that employs a similar Program under their respective rules. BOX may not list long-term option series (“LEAPS”) at \$1 strike price intervals for any class selected for the Program. BOX also is restricted from listing any series that would result in strike prices being \$0.50 apart.

The Exchange now proposes to expand the Program to allow BOX to select a total of 55 individual stocks on which option series may be listed at \$1 strike price intervals, and to expand

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<sup>3</sup> The \$1 Strike Price Program was established as a pilot in February 2004. See Securities Exchange Act Release Nos. 49292 (February 20, 2004), 69 FR 8993 (February 26, 2004) (SR-BSE-2004-01) (establishing the Pilot Program). The pilot was subsequently extended through June 5, 2008. See Securities Exchange Act Release Nos. 49806 (June 4, 2004), 69 FR 32640 (June 10, 2004) (SR-BSE-2004-22); 51778 (June 2, 2005), 70 FR 33562 (June 8, 2005) (SR-BSE-2005-18); 53855 (May 24, 2006), 71 FR 30973 (May 31, 2006) (SR-BSE-2006-19); and 55684 (April 30, 2007), 72 FR 26188 (May 8, 2007) (SR-BSE-2007-17). The pilot was subsequently expanded and made permanent in 2008. See Securities Exchange Act Release No. 57302 (February 11, 2008), 73 FR 8913 (February 15, 2008) (SR-BSE-2008-08).

slightly the price range on which BOX may list \$1 strikes, i.e., from \$1 to \$50. The existing restrictions on listing \$1 strikes would continue, i.e., no \$1 strike price may be listed that is greater than \$5 from the underlying stock's closing price in its primary market on the previous day, and BOX is restricted from listing any series that would result in strike prices being \$0.50 apart.

As stated in the filings establishing BOX's Program and in subsequent extensions and expansions of the Program, BOX believes that \$1 strike price intervals provide investors with greater flexibility in the trading of equity options that overlie lower price stocks by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. Indeed, Participants representing customers have repeatedly requested that BOX seek to expand the Program in terms of the number of classes on which option series may be listed at \$1 strike price intervals. The Exchange notes that current market conditions, in which the number of securities trading below \$50 has increased dramatically, further warrant the expansion of the Program.

The Exchange is also proposing to set forth a delisting policy. Specifically, BOX would, on a monthly basis, review series that were originally listed under the \$1 Strike Price Program with strike prices that are more than \$5 from the current values of the options classes in the Program. BOX would delist series with no open interest in both the put and the call series having a: (i) strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding the proposed delisting policy, BOX could grant Participant requests to add strikes and/or maintain strikes in certain options classes in series eligible for delisting.

Further, in connection with the proposed delisting policy, if BOX identifies series for delisting, BOX shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed options classes. The Exchange expects that the proposed delisting policy will be adopted by other options exchanges that amend their rules to employ a similar expansion of the Program.

With regard to the impact on system capacity, BOX has analyzed its capacity and the Exchange represents that BOX and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

The Exchange believes that the \$1 Strike Price Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. Furthermore, the Exchange has not detected any material proliferation of illiquid options series resulting from the narrower strike price intervals. For these reasons, the Exchange requests an expansion of the current Program.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>4</sup> in general, and Section 6(b)(5) of the Act,<sup>5</sup> in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove

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

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

impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes that expanding the current \$1 Strike Price Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. BX has met this requirement.

with the protection of investors and the public interest because such waiver will enable the Exchange to implement its proposed expansion of the Program contemporaneously with other exchanges,<sup>8</sup> and respond to increased customer demand for \$1 strikes without delay.<sup>9</sup> Therefore, the Commission designates the proposal operative upon filing. The Commission expects that the Exchange will continue to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BX-2009-016 on the subject line.

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<sup>8</sup> See Securities Exchange Act Release No. 59587 (March 17, 2009) (SR-ISE-2009-04, SR-CBOE-2009-001, SR-NYSEArca-2009-10, and SR-NYSEALTR-2009-11) (Order Granting Accelerated Approval of Proposed Rule Changes, as Amended, to Expand the \$1 Strike Program).

<sup>9</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2009-016. 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 10:00 a.m. and 3:00 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-2009-016 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).