

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 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-Phlx-2011-137 and should be submitted on or before November 23, 2011.

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

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65642; File No. SR-BX-2011-072]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the BOX Trading Rules To Retire the Additional Expiration Months Pilot Program and To Harmonize the Rules Regarding Listing Expirations With the Existing Rules of Other Exchanges

October 27, 2011.

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 October 19, 2011, 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 Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the

Commission. 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 the Rules of the Boston Options Exchange Group, LLC ("BOX") to retire the Additional Expiration Months Pilot Program and to harmonize the BOX Trading Rules regarding listing expirations with the existing rules of other exchanges.

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 the proposed rule change is to retire the Additional Expiration Months Pilot Program ("Pilot Program") and to amend the BOX Trading Rules regarding listing expirations. This filing is based on the existing rules of other options exchanges.⁴

Pursuant to Chapter IV, Section 6(e) of the BOX Trading Rules, the Exchange usually will open four expiration months for each class of options open for trading on BOX: the first two being the two nearest months, regardless of the quarterly cycle on which that class trades; the third and fourth being the

next two months of the quarterly cycle previously designated by the Exchange for that specific class.

For competitive reasons, in 2010, a Pilot Program was established pursuant to which BOX could list up to an additional two expiration months, for a total of six expiration months for each class of options open for trading on BOX.⁵ The filing to establish the Pilot Program was substantially similar in all material respects to a proposal of the International Securities Exchange, LLC ("ISE").⁶

After ISE and BOX established their respective Pilot Programs, ISE submitted a filing in response to a PHLX filing regarding the listing of expirations.⁷ In the PHLX filing, PHLX amended its rules that so that it could open "at least one expiration month" for each class of standard options open for trading on PHLX.⁸ PHLX stated in its filing that this amendment was "based directly on the recently approved rules of another options exchange, namely Chapter IV, Sections 6 and 8" of NOM. Since PHLX's rules did not hard code an upper limit on the maximum number of expirations that may be listed per class, ISE believed that PHLX (and NOM) had the ability to list expirations that ISE would not be able to currently list under its rules. As a result, ISE amended its rules by adding new Supplementary Material .10 to ISE Rule 504 and Supplementary Material to .04 to ISE Rule 2009 to permit ISE to list additional expiration months on options classes opened for trading on ISE if such expiration months are opened for trading on at least one other national securities exchange.⁹

Because BOX had adopted a Pilot Program similar to ISE's, BOX adopted new Supplementary Material .09 to Chapter IV, Section 6 and Supplementary Material .03 to Chapter XIV, Section 10 of the BOX Trading Rules that permits BOX to list additional expiration months on options classes opened for trading on BOX if such expiration months are opened for trading on at least one other national securities exchange.¹⁰

⁴ See Chicago Board Options Exchange, Incorporated ("CBOE") Rule 5.5 (Series of Options Contracts Open for Trading, NASDAQ Options Market ("NOM") Chapter IV, Section 6 (Series of Options Contracts Open for Trading) and NASDAQ OMX PHLX, LLC ("PHLX") Rule 1012 (Series of Options Open for Trading). See also Securities Exchange Act Release Nos. 65241 (August 31, 2011), 76 FR 55249 (September 7, 2011) (SR-CBOE-2011-080); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080); and 63700 (January 11, 2011) 76 FR 2931 (January 18, 2011) (SR-PHLX-2011-04). The PHLX filing was based on NOM's existing rules.

⁵ See Securities Exchange Act Release No. 63321 (November 16, 2010), 75 FR 71163 (November 22, 2010) (SR-BX-2010-077).

⁶ See Securities Exchange Act Release No. 63104 (October 14, 2010), 75 FR 64773 (October 20, 2010) (SR-ISE-2010-91).

⁷ See Securities Exchange Act Release No. 64343 (April 26, 2011), 76 FR 24546 (May 2, 2011) (SR-ISE-2011-26).

⁸ See *id.* at 24546-24547.

⁹ See *id.* at 24547.

¹⁰ See Securities Exchange Act Release No. 64570 (May 31, 2011), 76 FR 32383 (June 6, 2011) (SR-BX-2011-029).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

Now that BOX has the ability to match the expiration listings of other exchanges¹¹ (that may exceed six expirations and may occur on a regular basis) the Exchange believes that the Pilot Program is no longer necessary and is proposing to retire it. To affect this change, the Exchange is proposing to delete Supplementary Material .08 to Chapter IV, Section 6 that sets forth the terms of the Pilot Program, which is currently scheduled to expire on October 31, 2011.

In addition, BOX's ability to match the expirations listed by other exchanges is set forth in Supplementary Material .09 to Chapter IV, Section 6. This provision, however, only provides BOX with the ability to match expirations *initiated* by other options exchanges. To encourage competition and to place BOX on a level playing field, BOX should have the same ability as PHLX and NOM to initiate expirations. Therefore, as proposed the BOX Trading Rules will be harmonized with the rules of PHLX and NOM by clarifying that BOX will open at least one expiration month and one series of for each class open for trading on the Exchange. To affect this change, the Exchange is proposing to amend the text of Chapter IV, Section 6(b) of the BOX Trading Rules to track the rule text of NOM Chapter IV, Section 6 and PHLX Rule 1012, and to delete Section 6(e) in Chapter IV of the BOX Rules.

BOX believes the proposed rule change is proper, and indeed necessary, in light of the need to have rules that do not put BOX at a competitive disadvantage. This proposal puts BOX in the same position as PHLX and NOM and provides BOX with the same ability to initiate and match identical expirations across exchanges for products that are multiply-listed and fungible with one another. BOX believes that the proposed rule change should encourage competition and be beneficial to traders and market participants by providing them with a means to trade on BOX securities that are initiated by BOX and listed and traded on other exchanges.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act")¹² and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.¹³ Specifically, the Exchange

believes the proposed rule change is consistent with the Section 6(b)(5)¹⁴ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to 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 proposed rule change will permit BOX to accommodate requests made by BOX Options Participants and other market participants to list additional expiration months and thus encourage competition without harming investors or the public interest.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal will allow BOX to initiate the listing of series with the same range of expiration months as are

available to its competitor exchanges, subject to certain conditions. Therefore, the Commission designates the proposal operative upon filing.¹⁷

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.

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. Please include File Number SR-BX-2011-072 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-2011-072. 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 a.m. and 3 p.m. Copies of such filing

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ See Supplementary Material .09 to Chapter IV, Section 6 of the BOX Rules.

¹² 15 U.S.C. 78s(b)(1).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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. The Exchange has satisfied this requirement.

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 publicly available. All submissions should refer to File Number SR-BX-2011-072 and should be submitted on or before November 23, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65646, File No. SR-BATS-2011-033]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving Proposed Rule Change To Amend and Restate the Second Amended and Restated Certificate of Incorporation of BATS Global Markets, Inc.

October 27, 2011.

I. Introduction

On August 29, 2011, BATS Exchange, Inc. ("BATS" or "Exchange") 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 amend the certificate of incorporation ("Certificate of Incorporation") of BATS Global Markets, Inc. ("Corporation") in connection with its anticipated initial public offering of shares of its Class A Common Stock (the "IPO"). The proposed rule change was published for comment in the **Federal Register** on September 14, 2011.³ The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

On May 13, 2011, the Corporation filed a registration statement on Form S-1 with the Commission to register shares of Class A Common Stock (as

defined below) and disclose its intention to conduct its IPO and to list those shares for trading on the Exchange. In connection with its IPO, the Exchange filed this proposed rule change to amend and restate the Corporation's current Second Amended and Restated Certificate of Incorporation and adopt a Third Amended and Restated Certificate of Incorporation ("New Certificate of Incorporation").

A. Reclassification of Common Stock and Additional Authorized Shares

The Exchange has proposed to revise the Certificate of Incorporation to reclassify the Corporation's existing common stock, "Voting Common Stock" and "Non-Voting Common Stock." This reclassification will result in two classes of common stock, Class A and Class B. Class A will be designated as either "Class A Common Stock" or "Non-Voting Class A Common Stock." Class B will be designated as either "Class B Common Stock" or "Non-Voting Class B Common Stock." In connection with this reclassification, the Exchange has proposed certain voting rights,⁴ transfer restrictions⁵ and conversion features⁶ for each class. The Class A Common Stock will have the right to one vote per share, while the Class B Common Stock will have the right to 2½ votes per share.

The Exchange notes that the purpose of the reclassification of the Corporation's common stock is to encourage the Corporation's existing strategic investors to remain strategic investors of the Corporation after the IPO.⁷ In its proposal, BATS states that the Class B holders will in aggregate control a meaningful, but less than majority, percentage of the vote on matters coming before the stockholders.⁸ The Exchange also notes that the transfer restrictions balance the ability of existing strategic investors to orderly sell shares in the open market, while at the same time retaining strategic benefits to the Corporation of their significant ownership for a certain period of time, through their holdings of

Class B shares.⁹ Finally, the Exchange notes that its automatic conversion features are intended to ensure that only those investors with a significant economic investment in the company (approximately 2%) will own the Class B Common Stock.¹⁰

The proposed New Certificate of Incorporation would increase the number of shares the Corporation would be authorized to issue and would also give the Corporation the authority to issue 40 million shares of Preferred Stock, par value \$0.01 per share.¹¹

B. Limitations on Ownership and Voting Power

As noted by the Exchange, the proposal maintains and enhances the limitations on aggregate ownership and total voting power that exist under the current Certificate of Incorporation.¹² The Exchange has also proposed to aggregate all shares of Class A Common Stock, Non-Voting Class A Common Stock, Class B Common Stock, Non-Voting Class B Common Stock, and any series of Preferred Stock of the Corporation as a single class of capital stock of the Corporation for purposes of determining compliance with the ownership and voting limitations. The proposed New Certificate of Incorporation would explicitly include non-voting stock in the calculation of ownership applicable to non-Member shareholders.¹³

C. Bylaws and Future Amendments to the Certificate of Incorporation

Currently, the Certificate of Incorporation provides that either the Board of Directors or shareholders may adopt, amend, or repeal the Bylaws of the Corporation. The proposal would modify this provision so that, upon the change in ownership,¹⁴ stockholders

⁹ See *id.*

¹⁰ See *id.*

¹¹ See proposed Section 4.01 of the proposed New Certificate of Incorporation. The total number of authorized shares the Corporation has authority to issue is 614,607,649.

¹² The relevant provisions of the Certificate of Incorporation impose a 40% ownership limit on the amount of capital stock of the Corporation that any person, either alone or together with its related persons, may own, directly or indirectly, of record or beneficially; a 20% ownership limit on the amount of capital stock of the Corporation that any member of the Exchange, either alone, or together with its related persons, may own directly or indirectly, of record or beneficially, and prohibit any person, either alone or together with its related persons, from having or exercising more than 20% of the voting power of the capital stock of the Corporation. See proposed Section 5.01(a)(i)-(iii) of the New Certificate of Incorporation.

¹³ See proposed Section 5.01(b)(1) of the New Certificate of Incorporation.

¹⁴ "Change of Ownership" would be defined as a transaction or series of transactions which results

Continued

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 65298 (September 8, 2011), 76 FR 56840 (September 14, 2011) ("Notice").

⁴ See generally proposed Section 4.04(a) of the New Certificate of Incorporation.

⁵ See generally proposed Section 4.04(b) of the New Certificate of Incorporation.

⁶ See generally proposed Section 4.04(c) of the New Certificate of Incorporation. Among the conversion features proposed, the Corporation proposes to have Class B shares automatically convert into Class A shares upon a Class B holder owning less than a 4,960,491 (approximately 2%) of the Corporation's outstanding common stock. See proposed Section 4.04(c)(v)(B) of the New Certificate of Incorporation.

⁷ See Notice *supra* note 3, at 76 FR at 56841.

⁸ See *id.*