

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60594; File No. SR-DTC-2009-11]

### Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Eliminate One of the Indemnity Surety Programs in the Profile Modification System

August 31, 2009.

#### I. Introduction

On June 11, 2009, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2009-11 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The proposed rule change was published for comment in the **Federal Register** on July 20, 2009.<sup>2</sup> No comment letters were received on the proposal. This order approves the proposal.

#### II. Description

The proposed rule change eliminates one of the Indemnity Surety Programs ("PSP II") of DTC's Profile Modification System ("Profile").<sup>3</sup>

On April 19, 2000, the Commission approved a DTC rule filing to establish Profile,<sup>4</sup> an electronic communication system between transfer agents that are Direct Registration System ("DRS") Limited Participants ("Limited Participants") and broker-dealers that are DRS Participants ("Participants"). In May 2000, DTC implemented Profile. Profile allows Participants to submit electronically an instruction to move a share position from an account at the Limited Participant to the Participant's account at DTC ("Electronic Participant Instruction"). Profile also allows Limited Participants to submit an instruction for the movement of a share

position from a Participant's account at DTC to an account at the Limited Participant ("Electronic Limited Participant Instruction;" together with Electronic Participant Instruction, "Electronic Instruction"). A Participant or Limited Participant submitting an Electronic Instruction through Profile is required to agree to a Participant Terminal System ("PTS") screen indemnity ("Screen Indemnity").

On November 17, 2000, the Commission approved a DTC rule filing to establish the Profile Indemnity Surety Program ("PSP").<sup>5</sup> Under PSP, all users of Profile that agree to the Screen Indemnity as part of their use of Profile must procure a surety bond ("Surety Bond") to back the representations under the Screen Indemnity.<sup>6</sup>

On June 26, 2008, the Commission approved a DTC rule filing to establish PSP II,<sup>7</sup> which provides for a coverage limit of \$7.5 million per transaction with an annual aggregate limit of \$15 million. Users of PSP II are required to pay an annual premium of \$6,000 to a surety provider and a DTC administration fee of \$250.

On June 3, 2009, the Commission approved a DTC rule filing to establish a new Profile Indemnity Insurance Program ("PIP II") to replace PSP II.<sup>8</sup> PIP II will account for the additional, larger value Profile transactions that DRS currently handles by providing the same coverage limits (*i.e.*, \$7.5 million per transaction with an annual aggregate limit of \$15 million) at the same annual premium (*i.e.*, \$6,000 to a provider and a \$250 administration fee to DTC) as PSP II without requiring users of Profile to procure a surety bond. Since PIP II

will perform the same function of PSP II, DTC is eliminating PSP II.

#### III. Discussion

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 registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),<sup>9</sup> which requires, among other things, that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>10</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (File No. SR-DTC-2009-11) be, and hereby is, approved.<sup>12</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60610; File No. SR-BX-2009-058]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of the Boston Options Exchange Facility

September 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>10</sup> 15 U.S.C. 78q-1.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>2</sup> Securities Exchange Act Release No. 60304 (Jul. 14, 2009), 74 FR 35221.

<sup>3</sup> DTC has created a Profile Indemnity Insurance Program ("PIP II") to replace the PSP II. Securities Exchange Act Release No. 60036 (Jun. 3, 2009), 74 FR 28085 (Jun. 12, 2009) [File No. SR-DTC-2009-09].

<sup>4</sup> Securities Exchange Act Release No. 42704 (Apr. 19, 2000), 65 FR 24242 (Apr. 25, 2000) [File No. SR-DTC-2000-04].

<sup>5</sup> Securities Exchange Act Release No. 43586 (Nov. 17, 2000), 65 FR 70745 (Nov. 27, 2000) [File No. SR-DTC-2000-09].

<sup>6</sup> Participation in PSP requires the payment of an annual premium of \$3,150 to a surety provider and an administration fee of \$250 to DTC. The PSP surety provider provides for a coverage limit of \$3 million per transaction with an annual aggregate limit of \$6 million. On September 14, 2005, the Commission approved a DTC rule filing to establish the Profile Indemnity Insurance Program ("PIP"), which serves as an alternative to PSP. Securities Exchange Act Release No. 52422 (Sept. 14, 2005), 70 FR 55196 (Sept. 20, 2005) [File No. SR-DTC-2005-11]. PIP allows users of Profile that agree to the Screen Indemnity have the option to procure insurance relating to a particular securities transaction according to the value of the securities transaction. PIP provides a coverage limit of \$25 million per transaction with an annual aggregate limit of \$100 million. In addition to any pass-through fee from the insurer, DTC charges users participating in PIP an annual administration fee of \$250 and a per transaction fee of \$27.50.

<sup>7</sup> Securities Exchange Act Release No. 58042 (Jun. 26, 2008), 73 FR 39067 (July 8, 2008) [File No. SR-DTC-2008-04].

<sup>8</sup> Securities Exchange Act Release No. 60036 (Jun. 3, 2009) 74 FR 28085 (Jun. 12, 2009) [File No. DTC-2009-09].

thereunder,<sup>2</sup> notice is hereby given that on September 1, 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 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 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 Fee Schedule of the Boston Options Exchange Group, LLC ("BOX"). 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://nasdaqomxbx.cchwallstreet.com/NASDAQOMXB/Files/>.

### **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**

Public Customer Orders on BOX which are not executable against the BOX Book are routed as Principal Acting as Agent ("P/A") Orders via the OCC Hub System<sup>5</sup> to away exchanges for execution. On August 12, 2009, the Exchange filed a fee amendment with the Commission exempting outbound P/A Orders from being charged transaction

fees.<sup>6</sup> The Exchange believes that exempting all outbound P/A Orders from fees may tempt BOX Options Participants to increase non executable order flow to BOX in order to avoid fees on other exchanges. In order to eliminate the abusive use of this exemption, the Exchange proposes to impose a fee of \$0.50 per contract for all transactions made in excess of 4,000 contracts per month for an individual BOX Options Participant. The proposed change will have no effect on the billing of orders of non-BOX Options Participants including any orders received through the OCC Hub. In addition, BOX Options Participants may avoid paying the proposed fee by choosing to designate their order as Fill and Kill ("FAK"). FAK orders are not eligible for routing to away exchanges. FAK orders are executed on BOX, if possible, and then cancelled.

For example, if a Public Customer Order is entered into the BOX Trading Host and is routed to an away market as an outbound P/A Order and subsequent to the routing executed, the trade execution will be free for the first 4,000 contracts traded each month, regardless of class. All subsequent Public Customer Orders traded as a result of an outbound P/A Order in excess of 4,000 contracts will be charged \$0.50 per contract. Previously, such a transaction was exempt from transaction charges.

The Exchange requests that the effective date of the proposed rule change be September 1, 2009.

##### **2. Statutory Basis**

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>7</sup> in general, and Section 6(b)(4) of the Act,<sup>8</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 proposed change will allow the Exchange to charge the appropriate fees and provide the appropriate credits with respect to orders routed by BOX to away exchanges.

#### **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**

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) thereunder,<sup>10</sup> 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-2009-058 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-2009-058. 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

<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> Terms not otherwise defined herein shall have the meaning proscribed in the BOX Rules.

<sup>6</sup> See Securities Exchange Act Release No. 60504 (August 12, 2009), 74 FR 42724 (August 24, 2009) (SR-BX-2009-047).

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

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

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

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 such filing will also 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-2009-058 and should be submitted on or before September 29, 2009.

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. 34-60596; File No. SR-BX-2009-057]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend the Fee Schedule of the Boston Options Exchange Group, LLC

August 31, 2009.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 ("Act") <sup>2</sup> and Rule 19b-4 thereunder, <sup>3</sup> notice is hereby given that on August 31, 2009, NASDAQ OMX BX, Inc. ("BX" or "Exchange") 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and grant accelerated approval of the proposed rule change.

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

The Exchange is proposing an amendment to the Fee Schedule of the Boston Options Exchange Group, LLC ("BOX"). 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://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 specified in Item III below, and the most significant aspects of such statements are set forth in Sections A, B, and C below.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange recently submitted a proposed rule change <sup>4</sup> with the Commission which eliminated the Liquidity Make or Take Pricing Structure on BOX, except for inbound P and P/A Order executions. <sup>5</sup> Instead of the fees and credits that had previously been applied under the Liquidity Make or Take Pricing Structure "standard" transaction fees now apply to all classes listed for trading on BOX that are included in the Penny Pilot Program, as referenced in Chapter V, Section 33 of the BOX Rules ("Penny Pilot Classes"). <sup>6</sup>

Executions on BOX resulting from inbound P and P/A Orders sent via the OCC Hub are subject to the same billing treatment as other executions on BOX.

<sup>4</sup> See SR-BX-2009-057.

<sup>5</sup> Terms not otherwise defined herein shall have the meaning proscribed in the Options Order Protection and Locked/Crossed Market Plan, or the BOX Rules, respectively.

<sup>6</sup> A recent proposal submitted by the Exchange for immediate effectiveness previously removed the following three (3) exchange-traded fund share classes from the Liquidity Make or Take pricing structure: (1) Standard & Poor's Depositary Receipts® (SPY); (2) Powershares® QQQ Trust Series 1 (QQQQ); and (3) iShares Russell 2000® Index Fund (IWM). See Securities Exchange Act Release No. 60221 (July 1, 2009), 74 FR 32996 (July 9, 2009) (SR-BX-2009-033). These three classes remain subject only to "standard" fees.

In conjunction with the above referenced rule change the Exchange is now proposing to remove Section 7 of the Fee Schedule in its entirety and the application of the Liquidity Make or Take Pricing to inbound P and P/A Orders sent to and executed on BOX in these Penny Pilot Classes. As a result the Liquidity Make or Take Pricing Structure will no longer exist on BOX. Standard P and P/A fees, as set forth in Section 4 of the BOX Fee Schedule, shall instead apply to inbound P and P/A Orders in all Penny Pilot Classes. In addition, the current Section 8 of the Fee Schedule will be renumbered as new Section 7. If approved, this proposal will conform inbound P and P/A fees with the fees charged to BOX Options Participants for the transactions in the same Penny Pilot Classes.

For example, an inbound P or P/A Order, routed to BOX from an away market executes against an order resting on the BOX Book. The inbound P or P/A Order is the remover of the liquidity. Prior to this proposal, such a transaction may have been subject to the fees set forth in the Liquidity Make or Take Pricing Structure, resulting in the applicable "take" fee (currently \$0.45) of Section 7 of the Fee Schedule. Under this proposal, the standard \$0.20 inbound P and P/A Order fee would apply.

###### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, <sup>7</sup> in general, and Section 6(b)(4) of the Act, <sup>8</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 for the purpose of executing inbound P and P/A Orders that are routed to BOX from other market centers. In particular, this proposed fee change will treat inbound P and P/A Orders the same as other orders in Penny Pilot Classes and amend pricing for executions on BOX so as to better compete with the current pricing in place on other exchanges.

##### 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.

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.