

Adviser), as well as in municipal bonds not included in the 2018 Index, but which Investment Adviser believes will help the 2018 Fund track the 2018 Index. The 2019 Fund may at times invest up to 20% of its assets in cash and cash equivalents (including money market funds affiliated with Investment Adviser), as well as in municipal bonds not included in the 2019 Index, but which the Investment Adviser believes will help the 2019 Fund track the 2019 Index.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Funds.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>20</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change (SR-NYSEArca-2012-92) be, and it hereby is, approved.

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

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67984; File No. SR-BOX-2012-015]

### Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule for Trading on BOX

October 4, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 25, 2012, BOX Options Exchange LLC (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

BOX Options Exchange LLC (the "Exchange") proposes to add language to its Fee Schedule for trading on its options facility, BOX Market LLC ("BOX") to specifically reference certain order types. The text of the proposed rule change is available from the principal office of the Exchange, on the Exchange's Internet Web site at <http://boxexchange.com>, and at the Commission's Public Reference Room.

#### 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 Exchange proposes additional language in Section I (Exchange Fees) of its Fee Schedule for trading on its options facility, BOX Market LLC ("BOX") to specifically reference Auction Transaction<sup>5</sup> order types, PIP Orders and Agency Orders. A PIP Order is a Customer Order (an agency order for the account of a Public Customer, Professional Customer, or a broker-dealer) designated for the BOX Price Improvement Period ("PIP"). An Agency Order is a block-size order that a BOX Order Flow Provider seeks to facilitate as agent through the BOX Facilitation Auction or Solicitation

Auction mechanism.<sup>6</sup> These Auction Transaction order types were assessed an Exchange Fee on BOX prior to May 14, 2012, and have continued to be assessed an Exchange Fee since the launch of trading on BOX on May 14, 2012. Note that prior to May 14, 2012, BOX was operated by Boston Options Exchange Group, LLC as an options trading facility of NASDAQ OMX BX, Inc. Upon the commencement of the Exchange's operations as a national securities exchange on May 14, 2012, the same automated trading system is now operated by BOX Market LLC as a facility of the Exchange. As such, the operation and functionalities of the system are the same as was in effect under the rules of the Boston Options Exchange Group, LLC facility. Additionally, the Exchange stated in its proposed rule change to establish fees for trading on BOX that all of the BOX fees as of May 14, 2012, were identical to fees in place prior to that date on the Boston Options Exchange Group, LLC options trading facility of NASDAQ OMX BX, Inc.<sup>7</sup> The Exchange Fee for Auction Transactions for Broker-Dealers (\$0.35) and Market Makers (a tiered fee set forth in Section I.B. of the fee schedule based on the Market Maker's average daily volume on BOX) were in place on the Boston Options Exchange Group, LLC facility and the Exchange fully intended for these Exchange Fees to be carried over and included on the BOX Market LLC facility of the Exchange. Similarly, the Exchange Fees for customer orders in Auction Transactions (\$0.00 for Public Customers and Professional Customers) were inadvertently omitted from the initial Exchange fee schedule. This proposal will correct these clerical errors as of the date of this filing.

##### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>8</sup> in general, and Section 6(b)(5) of the Act,<sup>9</sup> 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,

<sup>6</sup> Note that the addition of the definitions of these order types in proposed footnote 2 cause the remaining footnotes on the fee schedule to be renumbered to 3 through 5.

<sup>7</sup> See Securities Exchange Act Release No. 66979 (May 14, 2012) 77 FR 29740 (May 18, 2012) (Notice of Immediate Effectiveness of Proposed Rule Change To Adopt the Fee Schedule For Trading on BOX).

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> 15 U.S.C. 78s(b)(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> Auction Transactions are those transactions executed on BOX through the Price Improvement Period ("PIP"), the Solicitation Auction mechanism, and Facilitation Auction mechanism.

and, in general, to protect investors and the public interest.

The Exchange believes the exchange fees for agency orders in Auction Transactions are reasonable. The proposed fee structure is intended to attract order flow to BOX, and the PIP in particular, by offering market participants incentives to submit their agency orders to BOX.

Additionally, the Exchange believes it is equitable and not unfairly discriminatory for BOX Market Makers to have the opportunity to benefit from a potentially discounted fee less than that charged to broker-dealers. Market Makers have obligations that other Participants do not. In particular, they must maintain active two-sided markets in the classes in which they are appointed, and must meet certain minimum quoting requirements. As such, the Exchange believes it is appropriate that Market Makers be charged potentially lower transaction fees on BOX when they provide greater volumes of liquidity to the market.

Further, the Exchange believes that the proposed tiered and potentially discounted fees for Market Makers that on a daily basis, trade an average daily volume (as calculated at the end of the month) of 10,000 contracts or more on BOX represents a fair and equitable allocation of reasonable dues, fees, and other charges as it is aimed at incentivizing these participants to provide a greater volume of liquidity to the market. The Exchange believes that giving incentives for this activity results in increased volume on BOX. Such increased volume increases potential revenue to BOX, and would allow BOX and the Exchange to spread its administrative and infrastructure costs over a greater number of transactions, leading to lower costs per transaction.

The Exchange also believes it is equitable and not unfairly discriminatory that Public and Professional Customers not be charged fees for their agency orders in Auction Transactions as compared to broker-dealers on BOX. The securities markets generally, and BOX in particular, have historically aimed to improve markets for investors and develop various features within the market structure for customer benefit. As such, the Exchange believes the exchange fees for Public and Professional Customer Auction Transactions are appropriate and not unfairly discriminatory. The Exchange believes comparably lower customer transaction fees are reasonable. The Exchange believes it promotes the best interests of investors to have lower transaction costs for Public and Professional Customer orders in Auction

Transactions, and that the low fees attract participants to submit order flow to the BOX Auction Transactions. The Exchange believes the fees charged to broker-dealers, and market makers are reasonable because they are designed to be comparable to the fees that such accounts would be charged at competing venues.<sup>10</sup>

Moreover, the Exchange believes the exchange fees for broker-dealer customer orders in Auction Transactions are reasonable. As stated above, BOX operates within a highly competitive business. The fees charged to broker-dealers are designed to be comparable to the fees that such accounts would be charged at competing venues. As stated, the Exchange believes it is equitable and not unfairly discriminatory to charge broker-dealer proprietary accounts comparably higher fees than BOX Market Makers and customers. As discussed, Market Makers have obligations that other Participants do not. In particular, they must maintain active two-sided markets in the classes in which they are appointed, and must meet certain minimum quoting requirements. As such, the Exchange believes it is appropriate that Market Makers be charged lower fees on BOX. The Exchange also believes it is equitable and not unfairly discriminatory that customers, including Professionals, be charged lower exchange fees for their customer orders in Auction Transactions than broker-dealers. The securities markets generally, and BOX in particular, have historically aimed to improve markets for investors and develop various features within the market structure for customer benefit. As such, the Exchange believes the proposed fees for broker-dealers, as compared to customers, is appropriate and not unfairly discriminatory.

The Exchange believes that the BOX Exchange Fees for customer orders in Auction Transactions will keep BOX competitive with other exchanges as well as apply in such a manner so as to be equitable among BOX Participants. The Exchange believes the BOX Exchange Fees are fair, reasonable, and competitive with fees in place on other exchanges. Further, the Exchange believes that this competitive marketplace impacts the fees proposed for BOX.

<sup>10</sup> See e.g., Taker Fees or Fees for Removing Liquidity on the ISE Fee Schedule and NASDAQ Options Pricing as of September 2012.

### *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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act<sup>11</sup> and Rule 19b-4(f)(2) thereunder,<sup>12</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 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 Exchange 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](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2012-015 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-BOX-2012-015. 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

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

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 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-BOX-2012-015 and should be submitted on or before November 1, 2012.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67979; File No. SR-NASDAQ-2012-108]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Fee Pilot Program for NASDAQ Last Sale

October 4, 2012.

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 September 24, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a 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

NASDAQ is proposing to extend for three months the fee pilot pursuant to which NASDAQ distributes the NASDAQ Last Sale ("NLS") market data products. NLS allows data distributors to have access to real-time market data for a capped fee, enabling those distributors to provide free access to the data to millions of individual investors via the internet and television. Specifically, NASDAQ offers the "NASDAQ Last Sale for NASDAQ" and "NASDAQ Last Sale for NYSE/Amex" data feeds containing last sale activity in U.S. equities within the NASDAQ Market Center and reported to the FINRA/NASDAQ Trade Reporting Facility ("FINRA/NASDAQ TRF"), which is jointly operated by NASDAQ and the Financial Industry Regulatory Authority ("FINRA"). The purpose of this proposal is to extend the existing pilot program for three months, from October 1, 2012 to December 31, 2012.

This pilot program supports the aspiration of Regulation NMS to increase the availability of proprietary data by allowing market forces to determine the amount of proprietary market data information that is made available to the public and at what price. During the pilot period, the program has vastly increased the availability of NASDAQ proprietary market data to individual investors. Based upon data from NLS distributors, NASDAQ believes that since its launch in July 2008, the NLS data has been viewed by over 50,000,000 investors on Web sites operated by Google, Interactive Data, and Dow Jones, among others.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

\* \* \* \* \*

#### 7039. NASDAQ Last Sale Data Feeds

(a) For a three month pilot period commencing on [July] *October* 1, 2012, NASDAQ shall offer two proprietary data feeds containing real-time last sale information for trades executed on NASDAQ or reported to the NASDAQ/FINRA Trade Reporting Facility.

(1)-(2) No change.

(b)-(c) No change.

\* \* \* \* \*

#### 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 those 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 parts of such statements.

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

###### 1. Purpose

Prior to the launch of NLS, public investors that wished to view market data to monitor their portfolios generally had two choices: (1) Pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. To increase consumer choice, NASDAQ proposed a pilot to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data at no cost to millions of internet users and television viewers. NASDAQ now proposes a three-month extension of that pilot program, subject to the same fee structure as is applicable today.

NLS consists of two separate "Level 1" products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF. First, the "NASDAQ Last Sale for NASDAQ" data product is a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. Second, the "NASDAQ Last Sale for NYSE/Amex" data product provides real-time last sale information including execution price, volume, and time for NYSE- and NYSE Amex-securities executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. By contrast, the securities information processors ("SIPs") that provide "core" data consolidate last sale information from all exchanges and trade reporting facilities ("TRFs"). Thus, NLS replicates a subset of the information provided by the SIPs.

NASDAQ established two different pricing models, one for clients that are able to maintain username/password

<sup>13</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.