

and ITPs are outstanding.<sup>5</sup> The goal of this component of the ITP program is to put the lessor in a similar position as if the lessor's membership was leased. The Exchange asserts that this goal would be frustrated if the lessor is charged dues, because the lessor would be subject to an obligation the lessor would otherwise not be subject to if the lessor's membership was leased.

In a separate proposed rule change, the Exchange instituted a waiver of member dues for any month that a lessor member receives a payment from the Exchange for an open lease under the ITP program, effective as of May 1, 2009.<sup>6</sup> The Exchange now proposes to rebate dues to any lessor member who received such a payment from the Exchange during the period of August 1, 2008 through April 30, 2009.

### 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 national securities exchange.<sup>7</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>8</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities.

As note above, CBOE recently adopted a waiver of member dues for any month that a lessor member receives a payment from the Exchange for an open lease under the ITP program, effective May 1, 2009.<sup>9</sup> The current proposal will effectively allow CBOE to apply this same waiver retroactively by rebating to a lessor member its member dues for any month in which the lessor member received a payment from the Exchange for an open lease under the ITP program for the period August 1, 2008 through April 30, 2009.

The Commission believes that the rebate will put lessor members who

received compensation from the Exchange for an open lease under the ITP program but who paid member dues since August 1, 2008 in the same position as those lessor members who are currently having their member dues waived pursuant to the fee waiver adopted as of May 1, 2009.<sup>10</sup> The Commission also believes that the proposed rebate will further the goal of the Exchange's ITP program to put the lessor of an "open lease" in the same position as if the lessor's membership had been leased. The Commission notes that the Exchange represented that lease agreements typically provide that the lessee member is responsible for all dues and thus the lessor would generally not have to pay such dues. Accordingly, the Commission finds that the proposed fee rebate is consistent with the Act.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-CBOE-2009-028), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. E9-15901 Filed 7-6-09; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60192; File No. SR-ISE-2009-42]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

June 30, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> notice is hereby given that on June 26, 2009, International Securities Exchange, LLC ("ISE" or 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 ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

<sup>10</sup> *Id.*

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

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

<sup>13</sup> 15 U.S.C. 78s(b)(1).

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

The ISE is proposing to amend its Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the principal office of the Exchange, 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, ISE 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 ISE 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, Proposed Rule Change

##### 1. Purpose

The purpose of this proposed rule change is to amend the Exchange's Schedule of Fees. First, ISE currently waives most customer transaction fees, with such waiver scheduled to expire on June 30, 2009.<sup>2</sup> Zero customer transaction fees in options are part of the competitive pricing landscape. Since its inception, ISE has not charged fees for customer transactions for most products by way of a fee waiver. Despite having an effective rate of \$0.00 per contract for customer transactions in these products, ISE's fee schedule reflects a customer fee of \$0.05 with a waiver to offset the fee. Instead of extending the waiver on a year-to-year basis, the Exchange proposes to remove the fee waiver language from its fee schedule and replace the \$0.05 fee with \$0.00 for First Market options, effective July 1, 2009. ISE believes this change will make its customer fees easier for market participants to understand. The Exchange will continue to charge \$0.05 per contract for customer transactions in Second Market options and proposes to create a new line item to reflect this.

Second, the Exchange currently has a fee cap for large-size foreign currency ("FX") options orders. This fee discount applies for orders of 5,000 contracts or more and waives fees on incremental

<sup>2</sup> See Securities Exchange Act Release No. 58139 (July 10, 2008), 73 FR 41142 (July 17, 2008).

<sup>5</sup> The ITP program is a program pursuant to which the Exchange has the authority to issue up to 50 ITPs. The ITP program is governed by CBOE Rule 3.27. The lessor compensation component of the ITP program is described in CBOE Rule 3.27(d). An "open lease" is defined in Rule 3.27(d) as a transferable Exchange membership available for lease.

<sup>6</sup> See Securities Exchange Act Release No. 59892 (May 8, 2009), 74 FR 22790 (May 14, 2009) (SR-CBOE-2009-027).

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>9</sup> See *supra*, note 5.

volume above 5,000 contracts. Contracts at or under the threshold are charged the constituent's prescribed execution fee. This waiver is for both Public Customer orders and Firm Proprietary orders. ISE adopted this fee incentive, on a pilot basis, to encourage members to execute large-sized FX options orders on the Exchange. The current pilot program is set to expire on June 30, 2009.<sup>3</sup> The Exchange now proposes to extend this fee waiver through June 30, 2010 in a continuing effort to attract more activity in its FX options.

## 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Exchange Act") for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the Exchange believes calculating the fee on a per symbol basis is necessary to allow the Exchange to target cancellations that do not have a valid justification.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not 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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and subparagraph (f)(2) of Rule 19b-4<sup>5</sup> thereunder. At any time within 60 days of the filing of the 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 Number SR-ISE-2009-42 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-ISE-2009-42. 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of ISE. 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-ISE-2009-42 and should be submitted on or before July 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9-15903 Filed 7-6-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60198; File No. SR-BX-2009-034]

### 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 Facility

June 30, 2009.

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 June 26, 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 and approves the proposal on an accelerated basis.

### 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/NASDAQOMXB/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 IV below.

<sup>3</sup> *Id.*

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</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.