

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. In addition, the Commission seeks comment generally on whether the proposed assessment of transaction fees is consistent with the Act, in particular whether the proposal provides for an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities under Section 6(b)(4) of the Act or whether the proposal permits unfair discrimination between customers, issuers, brokers, or dealers under Section 6(b)(5) of the Act. Specifically:

1. The Exchange has determined that the previous \$0.20 rebate for a Customer account for removing liquidity resulted in disproportionate payment for Customer orders relative to order volume growth. Do commenters believe that eliminating the rebate to Customers removing liquidity in non-Penny Pilot options when that Customer trades against a Customer order, while retaining the rebate to Customers that trade against a Firm or Market Maker order is consistent with the Act, including whether it is an equitable allocation of fees under Section 6(b)(4) and not unfairly discriminatory under Section 6(b)(5)? Why or why not?

2. The Commission notes that the fee schedules of some options exchanges provide for different levels of transaction fees for different categories of market participants. Generally, if there is a distinction between transaction fees for market makers and other non-customers (e.g. broker-dealers, firms), the market maker transaction fee is less than the non-customer fee. However, the Exchange notes that one exchange charges away market makers more than non-customer orders.<sup>13</sup> The Exchange proposes to charge Market Makers \$0.45 per contract to remove orders in non-Penny Pilot options and to charge Firms \$0.20 per contract to remove such orders. Is this fee differential consistent with the Act, including whether it is an equitable allocation of fees under Section 6(b)(4) and not unfairly discriminatory under Section 6(b)(5)? Why or why not?

3. In non-Penny Pilot options, the Exchange proposes to lower the fees charged to firms that remove liquidity

from \$0.45 to \$0.20. The Exchange, however, maintains the fee of \$0.45 for sending orders via the Options Intermarket Linkage that execute on NOM. Is creating a differential in this manner consistent with the Act, including whether it is an equitable allocation of fees under Section 6(b)(4) and not unfairly discriminatory under Section 6(b)(5)? Why or why not?

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. Please include File Number SR-NASDAQ-2009-059 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-NASDAQ-2009-059. 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 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-NASDAQ-2009-059 and should be submitted on or before August 17, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60320; File No. SR-CTA-2009-01]

### Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of the Twelfth Charges Amendment to the Second Restatement of the Consolidated Tape Association Plan

July 16, 2009.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on July 13, 2009, the Consolidated Tape Association ("CTA") Plan Participants ("Participants")<sup>3</sup> filed with the Securities and Exchange Commission ("Commission") a proposal to amend the Second Restatement of the CTA Plan (the "CTA Plan"). The proposal represents the twelfth charges amendment to the Plan ("Twelfth Charges Amendment") and reflects changes unanimously adopted by the Participants. The Twelfth Charges Amendment would delete the ticker display charge from Schedule A-1 of Exhibit E of the CTA Plan.

Pursuant to Rule 608(b)(3)(ii) under the Act,<sup>4</sup> the Participants designated the Amendment as concerned solely with the administration of the Plan. As a result, the Amendment has become effective upon filing with the Commission. At any time within 60 days of the filing of the Amendment, the Commission may summarily abrogate the Amendment and require that the Amendment be refilled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(2) of Rule 608, if it appears to the

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> Each Participant executed the proposed amendment. The Participants are the American Stock Exchange LLC (n/k/a NYSE Amex LLC); Boston Stock Exchange, Inc. (n/k/a NASDAQ OMX BX, Inc.); Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange, LLC; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE Arca, Inc.; and Philadelphia Stock Exchange, Inc. (n/k/a NASDAQ OMX PHLX, Inc.).

<sup>4</sup> 17 CFR 242.608(b)(3)(iii).

<sup>13</sup> See *supra* note 10 and accompanying text.

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. The Commission is publishing this notice to solicit comments from interested persons on the proposed Twelfth Charges Amendment to the CTA Plan.

### **I. Rule 608(a)**

#### *A. Description and Purpose of the Amendment*

Schedule A–1 of Exhibit E to the CTA Plan sets forth the fees applicable to CTA Network A market data display services. The amendment proposes to delete from that schedule the monthly \$30 nonprofessional subscriber ticker display charge. That charge applied to a nonprofessional subscriber's receipt of a Network A ticker feed from a ticker network that Network A formerly maintained. Network A phased out that ticker network a number of years ago, but the Participants did not delete the charge from the fee schedule once they completed the phaseout. The Network A Participants have not imposed the nonprofessional subscriber ticker fee since then.

The text of the proposed Amendment is available on the CTA's Web site (<http://www.nysedata.com/cta>), at the principal office of the CTA, and at the Commission's Public Reference Room.

#### *B. Additional Information Required by Rule 608(a)*

1. Governing or Constituent Documents  
Not applicable.

2. Implementation of the Amendments  
Because the Amendment constitutes a "Ministerial Amendment" under clause (ii) of Section IV(b) of the CTA Plan, the Chairman of CTA may submit this amendment to the Commission on behalf of the CTA Plan Participants. Because the Participants designate the Amendment as concerned solely with the administration of the Plan, the Amendment becomes effective upon filing with the Commission.

3. Development and Implementation Phases  
Not applicable.

4. Analysis of Impact on Competition  
The proposed Amendment does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Participants do not believe that the proposed Amendment introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.<sup>5</sup>

5. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

6. Approval by Sponsors in Accordance With Plan

See Item I.B(2) above.

7. Description of Operation of Facility Contemplated by the Proposed Amendment

a. Terms and Conditions of Access

Not applicable.

b. Method of Determination and Imposition, and Amount of, Fees and Charges

See Item I.A above.

c. Method of Frequency of Processor Evaluation

Not applicable.

d. Dispute Resolution

Not applicable.

### **II. Rule 601(a)**

*A. Equity Securities for Which Transaction Reports Shall be Required by the Plan*

Not applicable.

*B. Reporting Requirements*

Not applicable.

*C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information*

Not applicable.

*D. Manner of Consolidation*

Not applicable.

*E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports*

Not applicable.

*F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination*

Not applicable.

*G. Terms of Access to Transaction Reports*

Not applicable.

*H. Identification of Marketplace Execution*

Not applicable.

### **III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Plan Amendment 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-CTA-2009-01 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-CTA-2009-01. 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 Plan Amendment that are filed with the Commission, and all written communications relating to the proposed Plan Amendment 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 also will be available for inspection and copying at the principal office of the CTA. 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-CTA-2009-01 and should be submitted on or before August 17, 2009.

<sup>5</sup> 15 U.S.C. 78k-1(c)(1)(D).

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60349; File No. SR-BX-2009-035]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Procedures To Prevent Information Advantages Resulting From the Affiliation Between BOX and NOS

July 20, 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 July 17, 2009, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III 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,<sup>3</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 a rule change to establish procedures designed to prevent potential informational advantages resulting from the affiliation between the Boston Options Exchange ("BOX"), a facility of the Exchange, and NASDAQ Options Services, LLC ("NOS"), a registered broker-dealer and a BOX market participant. 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 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 NASDAQ OMX Group, Inc. ("NASDAQ OMX") acquired the Exchange in August 2008. Prior to the acquisition, the Exchange owned a 21.87% interest in Boston Options Exchange Group, LLC ("BOX LLC"), the operator of BOX, a facility of the Exchange. Boston Options Exchange Regulation, LLC ("BOXR") is a wholly-owned subsidiary of the Exchange, to which the Exchange has delegated, pursuant to a delegation plan, certain self-regulatory responsibilities related to BOX.

At the closing of the acquisition by NASDAQ OMX, the Exchange transferred its interest in BOX LLC to MX US, a wholly-owned subsidiary of the Montreal Exchange Inc. Although the Exchange no longer holds an ownership interest in BOX LLC, it continues to hold self-regulatory obligations with respect to BOX. The Exchange, together with BOXR, retains regulatory control over BOX and the Exchange, as the SRO, remains responsible for ensuring compliance with the federal securities laws and all applicable rules and regulations.

NASDAQ OMX also currently indirectly owns NASDAQ Options Services, LLC ("NOS"), a registered broker-dealer and a BOX market participant. Thus, NOS is deemed an affiliate of the Exchange, BOX and BOXR.

The Exchange is proposing that NOS be permitted to route certain orders from The NASDAQ Option Market ("NOM") to BOX without checking the NOM book prior to routing. NOM is an options market operated by The NASDAQ Stock Market (the "NASDAQ Exchange") and NOS is the approved outbound routing facility of the NASDAQ Exchange for NOM. With the

exception of Exchange Direct Orders, all routable orders for options that are trading on NOM check the NOM book prior to routing. In addition, NOS also routes orders in options that are not trading on NOM (referred to in the NOM Rules as "Non-System Securities"). When routing orders in options that are not listed and open for trading on NOM, NOS is not regulated as a facility of the NASDAQ Exchange but rather as a broker-dealer regulated by its designated examining authority. As provided by Chapter IV, Section 5 of the NOM Rules, all orders routed by NOS under these circumstances are routed to away markets that are at the best price, and solely on an immediate-or-cancel basis.

Under NOM Rule Chapter VI, Section 11: (1) NOM routes orders in options via NOS, which serves as the sole "routing facility" of NOM; (2) the sole function of the routing facility is to route orders in options to away markets pursuant to NOM rules, solely on behalf of NOM; (3) NOS is a member of an unaffiliated self-regulatory organization, which is the designated examining authority for the broker-dealer; (4) the routing facility is subject to regulation as a facility of the NASDAQ Exchange, including the requirement to file proposed rule changes under Section 19 of the Act; (5) NOM must establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the NASDAQ Exchange and its facilities (including the routing facility), and any other entity; and (6) the books, records, premises, officers, directors, agents, and employees of the routing facility, as a facility of the NASDAQ Exchange, shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the NASDAQ Exchange for purposes of and subject to oversight pursuant to the Act, and the books and records of the routing facility, as a facility of the NASDAQ Exchange, shall be subject at all times to inspection and copying by the NASDAQ Exchange and the Commission.

The Commission has approved NOS's affiliation with the Exchange subject to the conditions that: (1) NOS is a facility of the NASDAQ Exchange; (2) use of NOS's routing function by NASDAQ Exchange members is optional<sup>4</sup> and (3)

<sup>4</sup> Because only NASDAQ Exchange members who are Options Participants may enter orders into NOM, it also follows that routing by NOS is available only to NASDAQ Exchange members who are Options Participants. Pursuant to Chapter I, Section 1(a)(40) of the NOM Rules, the term "Options Participant" means a firm, or organization that is registered with the NASDAQ Exchange for

Continued

<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.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).