SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit the Minimum Price Variation for Mini Options To Be the Same as Permitted for Standard Options on the Same Security

March 19, 2013.

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 March 15, 2013, NASDAQ OMX BX, Inc. (“BX Options” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II 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

The Exchange proposes to modify Chapter IV (Securities Traded on BX Options), Supplementary Material .08 to Section 6 (Series of Options Contracts Open for Trading), and Chapter VI (Trading Systems), Section 5 (Minimum Increments) to permit the minimum price variation for Mini Options contracts that deliver 10 shares to be the same as permitted for standard options that deliver 100 shares on the same security. In addition to giving market participants clarity as to the minimum price variation for Mini Options contracts that deliver 10 shares, the Exchange proposes to allow for the listing of Mini Options contracts that deliver 10 shares to be the same as permitted for standard options on the same security.

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–MIAX–2013–07. 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 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 10:00 a.m. and 3:00 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–MIAX–2013–07 and should be submitted on or before April 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.21

Kevin M. O’Neill,
Deputy Secretary.

[FR Doc. 2013–06787 Filed 3–25–13; 8:45 am]

BILLING CODE 8011–01–P


options. The Exchange notes that GOOG is not in the Penny Pilot Program.\footnote{The minimum price variation for standard options on GOOG is $0.05 for all quotations in series that are quoted at less than $3 per contract and $0.10 for all quotations in series that are quoted at $3 per contract or greater. See Chapter VI, Section 5(a).}

The Exchange, therefore, is proposing to establish a pricing regime for Mini Options separate from the Penny Pilot Program that permits the minimum price variation for Mini Option contracts to be the same as permitted for standard options on the same security, which would encompass penny pricing for Mini Option contracts on securities that participate in the Penny Pilot Program.\footnote{As noted in the Exchange’s original Mini Option filing, Mini Options are limited to five securities and any expansion of the program would require that a subsequent proposed rule change be submitted to the Commission. The current proposal is limited to five securities that were originally approved to underlie Mini Options. The Exchange anticipates that a similar minimum pricing variation regime would be included in any rule change to expand the Mini Option program. See Securities Exchange Act Release No. 68719 (January 24, 2013), 78 FR 6391 (January 30, 2013) (SR–BX–2013–006) (notice of filing and immediate effectiveness of proposed rule change establishing Mini Options on BX).}

As to the Penny Pilot Program, the Exchange believes that there are several good reasons to allow penny pricing for Mini Options on securities that currently participate in the Penny Pilot Program, without requiring Mini Options to separately qualify for the Penny Pilot Program. First, the Penny Pilot Program applies to the most actively-traded, multiply-listed option classes. Likewise, the five securities which may underlie Mini Options were chosen because of the significant liquidity in standard options on the same security. The Exchange also believes that the marketplace and investors will be expecting the minimum price variation for contracts on the same security to be the same. Second, one of the primary goals of the Penny Pilot Program is to narrow the bid-ask spreads of exchange-traded options to reduce the cost of entering and exiting positions. This same goal can similarly be accomplished by permitting penny pricing for Mini Option contracts on securities that already participate in the Penny Pilot Program. Finally, the Exchange believes that penny pricing for Mini Options is desirable for a product that is geared toward retail investors. Mini Options are on high priced securities and are meant to be an investment tool with more affordable and realistic prices for the average retail investor. Penny pricing for Mini Options on securities that are currently in the Penny Pilot Program would benefit the anticipated users of Mini Options by providing more price points. The Exchange notes that it is not requesting penny pricing for all of the five securities eligible for Mini Options trading; but rather is seeking to permit matched penny pricing for Mini Options on those securities for which standard options already trade in pennies.

To effect the current proposed rule changes, the Exchange proposes to add new language in Chapter IV, Supplementary Material .08 to Section 6, and in Chapter VI, Section 5. As to Chapter VI, Section 5, the Exchange proposes adding new subsection [a](4) that has an internal cross reference to new proposed Chapter IV, Supplementary Material .08(d) to Section 6 as the provision that sets forth the minimum price variation for bids and offers for Mini Options. As to Supplementary Material .08 to Section 6, the Exchange proposes adding new subsection (d), which would provide as follows:

The minimum price variation for bids and offers for Mini Options shall be the same as permitted for standard options on the same security. For example, if a security participates in the Penny Pilot Program, Mini Options on the same underlying security may be quoted in the same minimum increments, e.g., $0.01 for all quotations in series that are quoted at less than $3 per contract and $0.05 for all quotations in series that are quoted at $3 per contract or greater, $0.01 for all SPY option series, and Mini Options do not separately need to qualify for the Penny Pilot Program.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it anticipates that the Options Price Reporting Authority (‘‘OPRA’’) have the necessary systems capacity to handle the potential additional traffic associated with this proposal. The Exchange does not believe that this increased traffic will become unmanageable since Mini Options are limited to a fixed number of underlying securities.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.\footnote{15 U.S.C. 78f(b).} In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)\footnote{15 U.S.C. 78f(b)(5).} requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative

In the lead up to the launch of Mini Options trading on an industry-wide basis, firms with customer bases of potential product users have indicated a preference that premium pricing for Mini Options match what is currently permitted for standard options that deliver 100 physical shares on the same securities. The Exchange understands that firms’ systems are configured using the “root symbol” of an underlying security and cannot differentiate, for purposes of minimum variation pricing, between contracts on the same security. Mini Options will be loaded into firms’ systems using the same “root symbol” that is used for standard options on the same security. As a result, it is believed that existing systems will not be able to assign different minimum pricing variations to different contracts on the same security. As a result, firms have indicated their preference that there be matched pricing between Mini Options and standard options on the same security because their systems, which are programmed using “root symbols,” would not be able to assign different minimum pricing variations to Mini Options and standard options on the same security.

Because Mini Options are a separate class from standard options on the same security, Mini Options would have to qualify separately for entry into the Penny Pilot Program. This, however, is not possible by product launch (or possibly ever) for a number of reasons. First, there is a six calendar month filing and immediate effectiveness of proposed rule change establishing Mini Options on BX).
accomplish one of the primary goals of penny pricing in Mini Options may also be benefited from the Penny Pilot Program will benefit the marketplace and investors by being able to enter and exit positions at lower prices. The Exchange believes that the ability to enter and exit positions at lower prices will help to eliminate unnecessary arbitrage opportunities that would result from having contracts on the same security traded at different minimum price increments. Similarly, matched minimum pricing would help to eliminate any unnecessary arbitrage opportunities that could result from having contracts on the same security traded at different minimum price increments.

While price protection between Mini Options and standard options on the same security is not required, the Exchange believes that the ability to enter and exit positions at lower prices will help to eliminate any unnecessary arbitrage opportunities that could result from having contracts on the same security traded at different minimum price increments. Similarly, matched minimum pricing would help to eliminate any unnecessary arbitrage opportunities that could result from having contracts on the same security traded at different minimum price increments.

The Exchange believes that the proposed rule change will enhance competition by allowing products on the same security to be priced in the same minimum price increments.

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: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.


12 17 CFR 240.19b–4(f)(6). In addition, Rule 19b– 4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its 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 furnished this requirement.
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 10:00 a.m. and 3:00 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-BX-2013-028 and should be submitted on or before April 16, 2013.

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

Kevin M. O’Neill,
Deputy Secretary.

[FR Doc. 2013–06790 Filed 3–25–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69196]

Order Granting a Limited Exemption From Rule 102 of Regulation M Concerning the NASDAQ Stock Market LLC Market Quality Program Pilot Pursuant to Regulation M Rule 102(e)

March 20, 2013.

The Securities and Exchange Commission (“Commission”) approved a proposed rule change of the NASDAQ Stock Market LLC (“Exchange” or “NASDAQ”) to add new NASDAQ Rule 5950 (“New Rule 5950”) to establish the Market Quality Program (“MQP” or “Program”).1 In connection with the Program, an MQP Company 2 may list an eligible MQP Security 3 on NASDAQ and in addition to the standard (non-MQP) NASDAQ listing fee, a sponsor may pay a fee (“MQP Fee”) 4 that will be used for the purpose of incentivizing one or more market makers to enhance the market quality of an MQP Security on a voluntary pilot basis. The Commission believes that payment of the MQP Fee, which is incurred by the MQP Company but paid by the sponsor associated with the MQP Company, for the purpose of incentivizing market makers to make a quality market in otherwise less liquid MQP Securities would constitute an indirect attempt by the issuer to induce a bid for or a purchase of a covered security during a restricted period. 5 As a result, absent exemptive relief, participation in the MQP by an MQP Company would violate Rule 102 of Regulation M. 6 This order grants a limited exemption from Rule 102 of Regulation M solely to permit MQP Companies to participate in the MQP during the pilot, subject to certain conditions described below.

NASDAQ represents that the MQP is designed to “promote market quality” in certain ETFs listed on NASDAQ. 7 NASDAQ represents that, pursuant to the MQP, the MQP Fee will be used for the purpose of incentivizing one or more market makers in the MQP Security (“MQP Market Maker”) 8 to make a quality market in the MQP Security. 9 An MQP Company participating in the MQP shall incur an annual basic MQP Fee of $50,000 per MQP Security. 10 An MQP Company may also voluntarily incur an annual supplemental MQP Fee per MQP Security. 11 The MQP Fee is in addition to the standard (non-MQP) NASDAQ listing fee applicable to the MQP Security. 12 NASDAQ will prospectively bill each MQP Company for the MQP Fee. 13 The MQP Fee will be credited to the NASDAQ General Fund. 14 MQP Credits for each MQP Security will be calculated monthly and credited out of the NASDAQ General Fund quarterly on a pro rata basis to one or more eligible MQP Market Makers. 15 The voluntary MQP established by New Rule 5950 will be effective on a pilot basis.16

16 On December 7, 2012, NASDAQ filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (“Act” or “Exchange Act”) and Rule 19b–4 thereunder, a proposed rule change to establish the

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See Securities Exchange Act Release No. 67411 (Jul. 11, 2012), 77 FR 42052 (Jul. 17, 2012) (stating “The Commission believes that issuer payments made under the SRO Proposals would constitute an indirect attempt by the issuer of a covered security to induce a purchase or bid in a covered security during a restricted period in violation of Rule 102 * * *”) under the NASDAQ Proposal, the issuer payments would be used for the purpose of incentivizing one or more Market Makers in the MQP Security, which could induce bids or purchases for the issuer’s security during a restricted period).

17 CFR 242.102.
18 New Rule 5950 Preamble.
19 The term “Market Maker” has the meaning given in Rule 506(a)(24).
20 New Rule 5950(e)(12).
21 New Rule 5950(e)(13).
22 New Rule 5950(e)(14).
23 New Rule 5950(e)(15).
24 New Rule 5950(e)(16).
25 New Rule 5950(e)(17).
26 New Rule 5950(e)(18).
27 New Rule 5950(e)(19).
28 New Rule 5950(e)(20).
29 New Rule 5950(e)(21).
30 New Rule 5950(e)(22).
31 New Rule 5950(e)(23).
32 New Rule 5950(e)(24).
33 New Rule 5950(e)(25).