

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60158; File No. SR-BX-2009-028)

June 22, 2009

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change to Adopt Rules to Implement the Options Order Protection and Locked/Crossed Market Plan

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 16, 2009, the NASDAQ OMX BX, Inc. (“BX” or “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 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 Rules of the Boston Options Exchange Group, LLC (“BOX”) to reflect the Exchange’s filing to become a participant in the proposed Options Order Protection and Locked/Crossed Market Plan (“Decentralized Plan”). 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 website 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange proposes to adopt certain rules and definitions necessary to implement the proposed Decentralized Plan. The proposed definitions and rules will replace current Chapter XII of the BOX Rules in its entirety. The proposed rule changes will also amend various other BOX Rules to accommodate the Decentralized Plan.

Background of the Decentralized Plan and Implementing Rules

The Exchange is presently a party to the Plan for the Purpose of Creating and Operating an InterMarket Option Linkage (“Linkage Plan”).³ The purpose of the Linkage Plan is to enable the options exchanges to act jointly in planning, developing, operating and regulating the systems and data communications network that electronically links the options exchanges to one another.⁴ Accordingly, current Chapter XII of the BOX Rules contains rule text adopted specifically to achieve the purpose of the Linkage Plan.

³ See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (File No. 4-429) (Order approving the Linkage Plan and the original parties thereto). The Exchange became a party to the Linkage Plan on January 14, 2004 by executing a copy of said Linkage Plan with the Commission as well as completing the other steps required. Terms not otherwise defined herein shall have the meaning assigned to them in the BOX Rules, the Decentralized Plan, or the Linkage Plan, respectively.

⁴ The systems and data communications network that link electronically the Eligible Exchanges for the purposes specified in the former Linkage Plan shall be referred to as the “OCC Hub”. See proposed Chapter XII, Section 4(g)(3) of the BOX Rules. See also proposed Chapter I, Section 1(a)(35) of the BOX Rules.

The Exchange proposes to amend Chapter XII of the BOX Rules, as necessary, to reflect the Exchange's filing to become a plan participant ("Plan Participant") in the proposed Decentralized Plan.⁵ Unlike the Linkage Plan which exclusively required use of the OCC Hub, the purpose of the Decentralized Plan is to enable the Plan Participants thereto to act jointly in establishing a framework for a non-exclusive method of providing and achieving order protection and addressing Locked and Crossed Markets in Eligible Options Classes. If approved, the Decentralized Plan would completely replace the current Linkage Plan.

Operation of the Decentralized Plan

The Decentralized Plan essentially would apply the Regulation NMS⁶ price-protection provisions to the options markets. Similar to Regulation NMS, the Decentralized Plan would require Plan Participants to adopt rules "reasonably designed to prevent Trade-Throughs", while exempting Intermarket Sweep Orders ("ISOs") from that prohibition.⁷ The proposed definition of an ISO is essentially the same as under Regulation NMS.⁸ The remaining exceptions to the

⁵ See Securities Exchange Act Release No. 59647 (March 30, 2009), 74 FR 15010 (April 2, 2009) (File No. 4-546) (Joint Industry Plan; Notice of Filing of Proposed Options Order Protection and Locked/Crossed Market Plan). The Exchange will also seek, upon approval of the Exchange's participation in the Decentralized Plan, the Commission's approval to contemporaneously withdraw from the Linkage Plan. This proposed rule change, if approved, will become effective upon the Exchange's withdrawal from the current Linkage Plan and the effectiveness of the new Decentralized Plan.

⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

⁷ See Sections 5(a)(i) and 5(b)(iv) of the proposed Decentralized Plan. See also proposed Chapter XII, Section 2(b)(4) of the BOX Rules.

⁸ See Section 2(9) of the proposed Decentralized Plan. See also proposed Chapter XII, Section 1(g) of the BOX Rules which, as proposed, defines the term ISO as "a Limit Order for an options series that, simultaneously with the routing of the ISO, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid, in the case of a Limit order to sell, or any Protected Offer, in the case of a Limit order to buy, for the options series with a price that is superior to the limit price of the ISO".

trade-through prohibition, discussed more specifically below, either track those under Regulation NMS or correspond to unique aspects of the options market, or both.

Description of the Implementing Rules

The proposal seeks to include rule text and definitions for certain terms within Chapter XII designed to accomplish the purpose of the new Decentralized Plan. As proposed, current Chapter XII rule text will be removed and replaced completely with new Chapter XII rule text titled “Order Protection; Locked and Crossed Markets”. The proposed ‘new’ Chapter XII will contain the following rules:

Chapter XII, Section 1-Definitions

The proposed rule change incorporates all the operative definitions from the Decentralized Plan into the BOX Rules. With one exception, the parties to the Decentralized Plan derived all such definitions either from the Linkage Plan⁹ or Regulation NMS.¹⁰ The one exception is the definition of “Complex Trade” in Section 1(d). A “Complex Trade” is exempt from trade-through liability. The exemption in the Linkage Plan simply refers to complex trades “as that term may be defined by the [Linkage] Operating Committee from time to time.” Based on that provision, the Exchange adopted current Chapter XII, Section 1(c) of the BOX Rules, which is substantially identical to the rules of the other options exchanges. The Exchange proposes to carry forward that definition unchanged into the new proposed Chapter XII.

⁹ See e.g. the definitions of “Broker/Dealer” in Section 1(c), “NBBO” in Section 1(i), “Non-Firm” in Section 1(j), and “OPRA Plan” in Section 1(k).

¹⁰ See e.g. the definitions of “Best Bid” and “Best Offer” in Section 1(a), “Bid” or “Offer” in Section 1(b), “Intermarket Sweep Order (“ISO”)” in Section 1(g), and “Quotation” in Section 1(p).

Chapter XII, Section 2-Order Protection

Proposed Chapter XII, Section 2(a) provides that, subject to certain specified exceptions, Options Participants shall not effect trade-throughs. Proposed paragraph (b) provides for the following trade-through exceptions:

- System Issues: Section 5(b)(i) of the proposed Decentralized Plan corresponds to the system-failure exception in Regulation NMS¹¹ for equity securities and permits trading through an Eligible Exchange that is experiencing system problems.
- Trading Rotations: Section 5(b)(ii) of the proposed Decentralized Plan carries forward the current Trade-Through exception in the Linkage Plan¹² and is the options equivalent to the single price opening exception in Regulation NMS for equity securities.¹³ Options exchanges use a trading rotation to open an option for trading, or to reopen an option after a trading halt. The rotation is effectively a single price auction to price the option and there are no practical means to include prices on other exchanges in that auction.
- Crossed Markets: Section 5(b)(iii) corresponds to the crossed quote exception in Regulation NMS for equity securities.¹⁴ If a Protected Bid is higher than a Protected Offer, it indicates that there is some form of market dislocation or inaccurate quoting. Permitting transactions to be executed without regard to

¹¹ See Rule 611(b)(1) under the Exchange Act.

¹² See Section 8(c)(iii)(E) of the Linkage Plan.

¹³ See Rule 611(b)(3) under the Exchange Act.

¹⁴ See Rule 611(b)(4) under the Exchange Act.

Trade-Throughs in a Crossed Market will allow the market to quickly return to equilibrium.

- Intermarket Sweep Orders (“ISOs”): These two exceptions correspond to the ISO exceptions in Regulation NMS for equity securities.¹⁵ Section 5(b)(iv) of the proposed Decentralized Plan permits a Plan Participant to execute orders it receives from other Plan Participants or members that are marked as ISO even when it is not at the NBBO. Section 5(b)(v) of the proposed Decentralized Plan allows a Plan Participant to execute inbound orders when it is not at the NBBO, provided it simultaneously “sweeps” all better-priced interest displayed by Eligible Exchanges.
- Quote Flickering: Section 5(b)(vi) of the proposed Decentralized Plan corresponds to the flickering quote exception in Regulation NMS for equity securities.¹⁶ Options quotations change as rapidly, if not more rapidly, than equity quotations. Indeed, they track the price of the underlying security and thus change when the price of the underlying security changes. This exception provides a form of “safe harbor” to market participants to allow them to trade through prices that have changed within a second of the transaction causing a nominal Trade-Through.
- Non-Firm Quotes: Section 5(b)(vii) of the proposed Decentralized Plan carries forward the current non-firm quote Trade-Through exception in the Linkage Plan.¹⁷ By definition, an Eligible Exchange’s quotations may not be firm for

¹⁵ See Rule 611(b)(5) and (6) under the Exchange Act.

¹⁶ See Rule 611(b)(8) under the Exchange Act.

¹⁷ See Section 8(c)(iii)(C) of the Linkage Plan.

automatic execution during this trading state and thus should not be protected from Trade-Throughs. In effect, these quotations are akin to “manual quotations” under Regulation NMS.

- Complex Trades: Section 5(b)(viii) of the proposed Decentralized Plan carries forward the current complex trade exception in the Linkage Plan¹⁸ and will be implemented through rules adopted by the Plan Participants and approved by the Commission. Complex trades consist of multiple transactions (“legs”) effected at a net price, and it is not practical to price each leg at a price that does not constitute a Trade-Through. Narrowly-crafted implementing rules will ensure that this exception does not undercut Trade-Through protections.
- Customer Stopped Orders: Section 5(b)(ix) of the proposed Decentralized Plan corresponds to the customer stopped order exception in Regulation NMS for equity securities.¹⁹ It permits broker dealers to execute large orders over time at a price agreed upon by a customer, even though the price of the option may change before the order is executed in its entirety.²⁰
- Stopped Orders and Price Improvement: Section 5(b)(x) of the proposed Decentralized Plan would apply if an order is stopped at price that did not constitute a Trade-Through at the time of the stop. In this case, an exchange could seek price improvement for that order, even if the market moves in the interim, and the transaction ultimately is effected at a price that would trade

¹⁸ See Section 8(c)(iii)(G) of the Linkage Plan.

¹⁹ See Rule 611(b)(9) under the Exchange Act.

²⁰ For a further discussion on how this exemption operates refer to the Regulation NMS Adopting Release. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) at notes 322-325.

through the then currently-displayed market. This exception would be particularly useful for executions effected pursuant to such mechanisms as BOX's Price Improvement Period ("PIP").²¹

- Benchmark Trades: Section 5(b)(xi) of the proposed Decentralized Plan would cover trades executed at a price not tied to the price of an option at the time of execution, and for which the material terms were not reasonably determinable at the time of the commitment to make the trade. An example would be a volume-weighted average price trade, or "VWAP". This corresponds to a Trade-Through exemption in Regulation NMS for equity trades.²² BOX does not currently permit these types of options trades, and any transaction-type relying on this exemption would require the Plan Participant to adopt implementing rules, subject to Commission review and approval.

Chapter XII, Section 3-Locked and Crossed Markets

The proposed Decentralized Plan also addresses locked and crossed markets.²³ Similar to Regulation NMS, the proposed Decentralized Plan requires the Plan Participants to adopt, maintain and enforce rules requiring exchange Options Participants: to reasonably avoid displaying locked and crossed markets; to reconcile such markets; and to prohibit Options Participants from engaging in a pattern or practice of displaying locked and crossed markets. However, the Plan Participants in the proposed Decentralized Plan, including the Exchange, have

²¹ See Chapter V, Section 18 of the BOX Rules.

²² See Rule 611(b)(7) under the Exchange Act.

²³ See Section 6 of the proposed Decentralized Plan. See also proposed Chapter XII, Section 3 of the BOX Rules.

proposed certain exceptions, as detailed below, from the aforementioned prohibition. The Exchange's proposed exceptions are as follows:

- The locking or crossing Quotation was displayed at a time when BOX was experiencing a failure, material delay, or malfunction of its systems or equipment;
- The locking or crossing Quotation was displayed at a time when there is a Crossed Market;
- The BOX Options Participant simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer; or
- With respect to a locking Quotation, the order entered on the Eligible Exchange that will lock a Protected Bid or Protected Offer, is:
 - not a Public Customer order, and the Eligible Exchange can determine via identification available pursuant to the Options Price Reporting Authority (“OPRA”) Plan that such Protected Bid or Protected Offer does not represent, in whole or in part, a Public Customer order; or
 - a Public Customer order, and the Eligible Exchange can determine via identification available pursuant to the OPRA Plan that such Protected Bid or Protected Offer does not represent, in whole or in part, a Public Customer order, and, on a case-by-case basis, the Public Customer specifically authorizes the Participant to lock such Protected Bid or Protected Offer.

Chapter XII, Temporary Sec. 4-Temporary Rules Governing P and P/A Orders

If this proposal is approved, the current text within Chapter XII corresponding to the Linkage Plan will be completely removed and replaced with the new proposed rule text

corresponding to the proposed Decentralized Plan. Included within the proposed rule changes is certain rule text from current Chapter XII which the Exchange proposes to retain and continue to enforce regarding the sending and receipt of P and P/A orders.²⁴ BOX and BOX Options Participants currently utilize the sending of P and P/A orders to fulfill their obligations to seek the best price available for their customers and to prevent Trade-Throughs. Although ISOs will be accepted and executed on the BOX market as of the Decentralized Plan's implementation date, the BOX facility itself will not send ISOs or route orders through private routing arrangements to away exchanges until some time after such implementation.²⁵

In connection with approval of this proposal the Exchange will also request, under separate cover, that the Commission grant a temporary limited exemption from Section 5(a) of the proposed Decentralized Plan to permit BOX Options Participants to send P and P/A Orders to prevent Trade-Throughs on the BOX market. Subject to the Commission's approval of the aforementioned request for exemption from Section 5(a) of the Decentralized Plan, BOX and its Options Participants will continue to utilize the sending of P and P/A orders to away markets in order to fulfill their obligations to seek the best available price for customers.

BOX has negotiated with the OCC to arrange for the continued maintenance, operation and functionality of the OCC Hub during this period of time to accommodate BOX.

Additionally, the other options exchanges which have similarly filed proposals to become Plan

²⁴ These rules are within proposed Chapter XII, Temporary Section 4.

²⁵ This period of delay is anticipated to last approximately 2-8 weeks past the prospective implementation date. Although the BOX facility does not contemplate sending ISOs itself immediately upon implementation of the Decentralized Plan, BOX Options Participants that have developed the systems capability to send ISOs will immediately be able to do so via their own order routing arrangements, separate and independent from BOX, on the prospective implementation date. See Supplementary Material .01 to proposed Chapter XII, Section 2.

Participants in the proposed Decentralized Plan have agreed to accept and execute P and P/A Orders, and maintain and enforce pertinent rule text, for so long as BOX shall continue to send them through the OCC Hub. The Exchange proposes to include Temporary Section 4 within Chapter XII until BOX no longer sends or receives P and P/A orders and such rules are no longer deemed necessary, at which point, upon approval of the Commission, they will be removed from Chapter XII.²⁶

When BOX develops the ability to send ISOs, or a similar order type to accomplish the same end result, and the ability to route orders through private routing arrangements,²⁷ the Exchange will submit a proposal to remove Temporary Section 4 of Chapter XII, at which point, if approved by the Commission, this requested exemption shall lapse and the Exchange will no longer utilize P and P/A Orders to prevent Trade-Throughs on the BOX market.

Other Proposed Amendments to BOX Rules to Accommodate Decentralized Plan

The Exchange additionally proposes to amend several sections of the BOX Rules other than within Chapter XII. These changes are as follows:

- Chapter I, Section 1: Section 1 defines certain terms which are referenced throughout the BOX Rules. The Exchange proposes to include “OCC Hub” as a defined term, not only within Chapter XII, but within the entirety of the BOX Rules.

²⁶ The Exchange will submit a proposed rule change seeking Commission approval for such rule change.

²⁷ The Exchange will submit a separate filing with the Commission discussing the details of the BOX private routing arrangements and certain proposed rule text pertaining to such routing.

- Chapter V, Section 14: Section 14 governs order entry on BOX and the types of orders permissible for entry. The Exchange proposes to include “ISO” as a permissible order type for entry on BOX.
- Chapter V, Section 16: Section 16 governs execution and price/time priority and, in particular, the circumstances under which inbound orders will be ‘filtered’ against the NBBO. The Exchange proposes to exclude ISOs from those orders that are filtered against NBBO. The Exchange also proposes to remove references to “Intermarket Linkage”, as such a term will not exist upon implementation of the Decentralized Plan, and, where appropriate, replace such term with “OCC Hub”. The Exchange also proposes to correct cross-references to certain sections of Chapter XII, as the referenced text within Chapter [sic] will continue to exist, but will be located in updated subsections. The Exchange also proposes to remove references to “Firm Principal Quote Size” and replace such references with the term “Displayed Size”, as this term is defined in proposed Chapter XII, Section 4(g).
- Chapter V, Section 20: Section 20 governs Obvious and Catastrophic Errors. The Exchange proposes to revise a cross-reference to the defined term, “primary market,” resulting from the renumbering of certain defined terms in Chapter I, Section 1.
- Chapter V, Section 29: Section 29 governs the Universal Price Improvement Period (“UPIP”) and, in particular, when BOX, upon satisfaction of certain conditions, will automatically initiate a UPIP auction. The Exchange proposes to add to the list of conditions that the eligible order *not* (emphasis added) be an

ISO. Section 29 also includes rule text describing the filtering of UPIP Orders to prevent trade throughs. The Exchange proposes to replace specific circumstances upon which UPIP Orders will be filtered with a general reference to the trade through exceptions in proposed Chapter XII, Section 2(b).

- Chapter VI, Section 5: Section 5 governs the obligations of BOX Market Makers and certain of these obligations with respect to P and P/A Orders. As described above, the Exchange proposes to remove references to Intermarket Linkage and replace them with OCC Hub where appropriate.
- Chapter X, Section 2: Section 2 governs penalties for violations of the BOX Minor Rule Violation Plan and such penalties as they pertain to violations of the respective rules governing locked and crossed markets and trade throughs on BOX. As described above, the Exchange proposes to correct cross-references to the locked and crossed markets and trade through rules, as the respective subsection numbering is modified in proposed Chapter XII.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,²⁸ in general, and Section 6(b)(5) of the Act,²⁹ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the

²⁸ 15 U.S.C. 78f(b).

²⁹ 15 U.S.C. 78f(b)(5).

proposed rule change will allow the Exchange to implement and enforce the rules as made necessary by its filing to become a Plan Participant in the proposed Decentralized Plan.

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

The Exchange does not believe that the proposed rule change will result in 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 neither solicited nor received comments on the proposed rule change.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File No. SR-BX-2009-028 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2009-028. 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, 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 Number SR-BX-2009-028 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Florence E. Harmon
Deputy Secretary

³⁰ 17 CFR 200.30-3(a)(12).