

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60832; File No. SR-BX-2009-066)

October 16, 2009

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Chapter XII of the BOX Rules

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 October 14, 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

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

The Exchange proposes to amend Chapter XII of the Boston Options Exchange (“BOX”) Rules by adding a new Section 5. The text of the proposed rule change is available at the Commission’s Public Reference Room, the principal office of the Exchange, and on its 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 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 in 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.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

1. Purpose

The Exchange amended Chapter XII of the BOX Rules to reflect the Exchange’s filing to become a participant in the Options Order Protection and Locked/Crossed Market Plan (“Decentralized Plan”).<sup>3</sup> The Decentralized Plan applies many of the Regulation NMS<sup>4</sup> price-protection provisions to the options markets. Similar to Regulation NMS, the Decentralized Plan requires Plan Participants to, among other things, adopt rules “reasonably designed to prevent Trade-Throughs<sup>5</sup> in Eligible Options Classes<sup>6</sup>”, while providing exceptions for certain

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<sup>3</sup> See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009)(File No. 4-546)(Order Approving the National Market System Plan Relating to Options Order Protection and Locked/Crossed Market Plan). Terms not otherwise defined herein shall have the meaning proscribed in the BOX Rules.

<sup>4</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>5</sup> A “Trade-Through” is defined as a transaction in an options series, either as principal or agent, at a price that is lower than a Protected Bid or higher than a Protected Offer. See Section 2(21) of the Decentralized Plan; see also Chapter XII, Section 1(q) of the BOX Rules. A “Protected Bid” or a “Protected Offer” means a Bid or Offer in an option series, respectively, that is disseminated pursuant to the OPRA Plan and is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. See Section 2(17) of the Decentralized Plan; see also Chapter XII, Section 1(n) of the BOX Rules. A “Best Bid” or “Best Offer” means the highest priced Bid or the lowest priced Offer. See Section 2(1) of the Decentralized Plan; see also Chapter XII, Section 1(a) of the BOX Rules. A “Bid” or “Offer” means the bid price or the offer price communicated by a member of an Eligible Exchange to any Broker/Dealer, or to any customer, at which it is willing to buy or sell, as either principal or agent, but would not include indications of interest. See Section 2(2) of the Decentralized Plan; see also Chapter XII, Section 1(b) of the BOX Rules.

<sup>6</sup> An “Eligible Options Class” is defined as all options series overlying a security (as that term is defined in Section 3(a)(10) of the Exchange Act) or group of securities, including both put options and call options, which class is traded on BOX and at least one other Eligible Exchange. See Section 2(7) of the Decentralized Plan; see also Chapter XII, Temporary Section 4(g)(2) of the BOX Rules. An “Eligible Exchange” means a national securities exchange registered with the Commission in accordance with Section 6(a) of the Securities Exchange Act of 1934 (“Act”) that is a Participant Exchange in OCC (as

transactions that track those provided under Regulation NMS, correspond with unique aspects of the options market, or both.<sup>7</sup>

The Commission previously approved certain Exchange rules and definitions necessary to implement the Decentralized Plan.<sup>8</sup> The purpose of this filing is to amend Chapter XII of the BOX Rules to provide for the use by BOX of certain non-affiliated third party routing broker/dealers (“Routing Broker(s)”) to route options orders to one or more Away Exchange(s) when such Away Exchange(s) display the Best Bid or Best Offer in accordance with the Decentralized Plan. In particular, the Exchange proposes to add to Chapter XII of the BOX Rules, a new rule that would govern the outbound order routing process (“Order Routing Rule”).<sup>9</sup>

The use of the Routing Broker to route orders to one or more Away Exchange(s) will be optional and available only to BOX Options Participants. In the event an Options Participant does not want to use the Routing Broker it must simply designate the order as do not route.<sup>10</sup> Only orders that are specifically designated by Options Participants as eligible for routing will be routed to an Away Exchange (“Eligible Orders”). However, Market-on-Opening Orders, any Improvement Auction orders or any order identified with the condition “Fill and Kill” shall not

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that term is defined in Section VII of the OCC by-laws), is a party to the OPRA Plan (as that term is defined in Section I of the OPRA Plan), and if the national securities exchange is not a party to the Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection. See Section 2(6) of the Decentralized Plan; see also Chapter XII, Section 1(f).

<sup>7</sup> See Section 5(b) of the Decentralized Plan.

<sup>8</sup> See Securities Exchange Act Release No. 60530 (August 18, 2009), 74 FR 43200 (August 26, 2009) (SR-BX-2009-028).

<sup>9</sup> See proposed Chapter XII, Section 5 of the BOX Rules.

<sup>10</sup> Options Participants must indicate for each order whether the order is eligible for routing or not.

be eligible for routing. BOX would only route an Eligible Order in order to avoid a Trade-Through or a locked or crossed market, pursuant to the requirements of Chapter XII, Sections 2 and 3 of the BOX Rules and consistent with the Decentralized Plan, when the order has not been executed in its entirety on BOX.<sup>11</sup> All Eligible Orders entered on BOX that are routed via the Routing Broker that result in an execution shall be binding on the Options Participant that entered such Eligible Order.

The full or remaining quantity of an Eligible Order will be routed to one or more Away Exchange(s) as Immediate or Cancel (“IOC”) limit order(s) priced at the current NBBO. Multiple IOC limit order(s) may be routed to Away Exchanges with the best Protected Bid or Protected Offer until the Eligible Order quantity is fully executed or the limit price is reached. If the Eligible Order is not executed in its entirety at the Away Exchange(s) or its limit price is reached, then it will be returned to BOX and the remainder of the Eligible Order will be treated as a new order. While an Eligible Order remains outside BOX, it would have no time standing relative to other orders received from Options Participants at the same price that could be executed against interest on the BOX Book. Requests from Options Participants to cancel their Eligible Order while routed to one or more Away Exchange(s) would be processed subject to the applicable trading rules of the Away Exchange(s).

As stated above, the Exchange proposes that BOX would route Eligible Orders to Away Exchanges under certain circumstances (“Routing Services”). BOX would provide its Routing Services pursuant to the terms of an agreement between BOX and each Routing Broker that provides Routing Services (“BOX Routing Agreement”).

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<sup>11</sup> At this time BOX will not be sending ISOs to Away Markets, as defined in Chapter V, Section 14(c)(vi) of the BOX Rules.

The Exchange proposes that BOX provide its Routing Services in compliance with its own rules and with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements in Sections 6(b)(4) and (5) of the Act<sup>12</sup> that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As a provider of Routing Services, the Exchange proposes that BOX would enter into a Routing Agreement for the necessary routing technology to be used in connection with its own systems and accordingly would control the logic that determines when, how, and where orders are routed to Away Exchanges. The Routing Broker cannot change the routing logic.

The Exchange also proposes that BOX establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between BOX and the Routing Broker, and any other entity, including any affiliate of the Routing Broker, and, to the extent the Routing Broker reasonably receives confidential and proprietary information, that adequately restrict the use of such information by the Routing Broker to legitimate business purposes necessary for routing orders at the direction of BOX; and, if the Routing Broker or any of its affiliates engages in any other business activities other than providing routing services to BOX, between the segment of the Routing Broker or affiliate that provides the other business activities and the segment of the Routing Broker that provides the routing services.<sup>13</sup> The Routing Agreement would include terms and conditions that enable BOX to comply with these proposed requirements.

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<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>13</sup> BOX may not use a Routing Broker for which the Exchange or any affiliate of the Exchange is the designated examining authority.

The Exchange requests that this proposal be approved on a pilot basis for three (3) months starting from the date of the approval of this filing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>14</sup> in general, and Section 6(b)(5) of the Act,<sup>15</sup> in particular, in that it will promote just and equitable principles of trade; facilitate transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest. The Exchange believes that the proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>16</sup> in that it seeks to assure economically efficient execution of securities transactions. In particular, the proposed rule change will allow BOX to establish and implement mechanisms to remain fully compliant with the Decentralized Plan, BOX Rules, and its best execution obligations.

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

The Exchange has neither solicited nor received comments on the proposed rule change.

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<sup>14</sup> 15 U.S.C. 78(f)(b).

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

<sup>16</sup> 15 U.S.C. 78k-1(a)(1).

### III. 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-BX-2009-066 on the subject line.

#### Paper Comments:

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

All submissions should refer to File Number SR-BX-2009-066. 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 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-2009-066 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

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>17</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>18</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, BOX Options Participants may designate orders to be routed to another market center when trading interest is not available on BOX. Orders designated for routing will be routed to avoid a Trade-Through or a locked or crossed market, when an order has not been executed in its entirety on BOX. Orders routed to other markets do not retain time priority with respect to orders on BOX. If a routed order is returned to BOX in whole or in part, that order (or remainder) will be treated as a new order, with a new time stamp. All orders entered on BOX that

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<sup>17</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>18</sup> 15 U.S.C. 78f(b)(5).



are routed via the Routing Broker that result in an execution shall be binding on the BOX Options Participant that entered such order.

Use of the Exchange's Routing Services will be optional,<sup>19</sup> and the Exchange will be responsible for routing decisions and will retain control of the routing logic.<sup>20</sup> Neither the Exchange, nor any affiliate of the Exchange, may be the designated examining authority for a Routing Broker.<sup>21</sup> The Commission also notes that the rule contemplates procedures and internal controls designed to protect confidential and proprietary information, which should help ensure that a Routing Broker does not misuse routing information obtained from the Exchange. In addition, the Exchange will provide its Routing Services in compliance with its own rules and with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements in Sections 6(b)(4) and (5) of the Act<sup>22</sup> that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.<sup>23</sup> In light of these protections, the Commission believes that BOX's rules and procedures regarding the Routing Services are consistent with the Act.

The Exchange has asked the Commission to accelerate approval of the proposed rule change. The Exchange notes that its proposal is consistent with prior Commission action,<sup>24</sup> and

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<sup>19</sup> See supra note 10.

<sup>20</sup> See supra note 13.

<sup>21</sup> See proposed BOX Rule Chapter XII, Section 5, Supplementary Material .01(d).

<sup>22</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>23</sup> See proposed BOX Rule Chapter XII, Section 5, Supplementary Material .01(a).

<sup>24</sup> See SR-BX-2009-066, Item 7; see also Securities Exchange Act Release No. 60551 (August 20, 2009), 73 FR 43196 (August 26, 2009) (SR-CBOE-2009-040).

that accelerated approval will allow BOX to establish and implement mechanisms to remain fully compliant with the Decentralized Plan and BOX Rules. The Exchange also states that accelerated approval will allow BOX to be fully compliant with the Decentralized Plan and no longer rely on a Commission-granted exemption<sup>25</sup> from Rule 608(c) of Regulation NMS, which requires BOX to comply with, and enforce compliance by its members with, certain provisions of the Decentralized Plan.<sup>26</sup> The exemption is currently set to expire on October 31, 2009.<sup>27</sup> The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission notes that the Exchange's proposal is consistent with rules approved for other national securities exchanges.<sup>28</sup> Also, approval on an accelerated basis will allow BOX an opportunity to comply with the terms of the Decentralized Plan prior to the expiration of its exemption, while the proposed pilot period will allow interested parties an opportunity to comment on the proposal before permanent approval. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>29</sup> to approve the proposed rule change on an accelerated basis for a pilot period expiring January 15, 2010.

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<sup>25</sup> See letter from Elizabeth K. King, Associate Director, Division of Trading and Markets, Commission, to Maura A. Looney, Associate Vice President, NASDAQ OMX BX, Inc., dated August 28, 2009 (granting the Exchange's request under Rule 608(e) of Regulation NMS for a Temporary Exemption from Certain Provisions of the Options Order Protection and Locked/Crossed Market Plan) ("Exemption Letter").

<sup>26</sup> See SR-BX-2009-066, Item 7.

<sup>27</sup> See Exemption Letter, supra note 25.

<sup>28</sup> See, e.g., supra note 24.

<sup>29</sup> 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-BX-2009-066) is hereby approved on an accelerated basis for a pilot period to expire on January 15, 2010.

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

Florence E. Harmon  
Deputy Secretary

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<sup>30</sup> 17 CFR 200.30-3(a)(12).