

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61829; File No. SR-BX-2010-023)

April 1, 2010

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Maker Quoting Obligations

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 March 26, 2010, NASDAQ OMX BX, Inc. (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 the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

The Exchange proposes to amend Chapter VI, Section 6 (Market Maker Quotations) of the Rules 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, on the Exchange’s Internet website at

<http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>, and on the Commission’s Web site at <http://www.sec.gov/>.

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

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

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

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

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 purpose of this proposed rule change is to update certain quoting obligations of Market Makers.

Presently, a Market Maker must participate in the pre-opening phase and thereafter make markets such that on a daily basis a Market Maker posts quotes at least eighty percent (80%) of the time an appointed options class is open for trading, for at least ninety percent (90%) of the classes to which the Market Maker is appointed and for at least sixty percent (60%) of the time in each of its appointed classes during the time that the class(es) are open for trading.<sup>5</sup>

Due to the fact that all Market Makers on BOX will still have some minimum quoting obligations and that Market Makers are not the only source of liquidity on BOX (e.g., OFP and Public Customer Orders also provide liquidity), the Exchange no longer believes that it is necessary for a Market Maker to be held to this level of quoting to ensure adequate liquidity on BOX in a particular class. Therefore, the Exchange is proposing to update Chapter VI, Section 6(d) of the BOX Rules such that during continuous trading, on a daily basis, a Market Maker

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<sup>5</sup> See Chapter VI, Section 6(d) of the BOX Rules.

must post quotes at least sixty percent (60%) of the time that its appointed class(es) are open for trading. These obligations will apply to all of the Market Maker's appointed classes collectively, rather than on a class-by-class basis.

The Exchange notes that no changes are being proposed regarding Market Makers' other obligations, including obligations to participate in the pre-opening phase. Furthermore, a Market Maker may continue to be called upon by an Options Official<sup>6</sup> to submit a single valid two-sided quote in one or more of the series of an options class to which the Market Maker is appointed whenever, in the judgment of such official, it is necessary to do so in the interest of fair and orderly markets.<sup>7</sup> Because the Market Makers' remaining obligations, including those mentioned above, will continue, the Exchange believes this justifies any benefits they receive due to their appointment as Market Maker on BOX.

The Exchange also seeks to set forth certain exemptions within Chapter VI, Section 6(d). Specifically, when determining if a Market Maker has met its 60% quoting obligation, the Exchange would not consider the duration of any periods where a technical failure of the BOX Trading Host prevents the Market Maker from providing continuous quotations. Also, an Options Official of the Exchange would retain the discretion to consider other exceptions to this continuous electronic quoting obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances.

## 2. Statutory Basis

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<sup>6</sup> The term "Options Official" means an officer of BOX Regulation vested by the BOX Regulation Board with certain authority to supervise option trading on BOX. See BOX Rules Chapter I, Section 1(a)(44).

<sup>7</sup> See BOX Rules Chapter VI, Section 6(b)(iv).

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>8</sup> in general, and Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed 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 for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed changes will more closely align the quoting obligations of Market Makers with the levels the Exchange deems necessary to help ensure that there is adequate liquidity on BOX in each of the classes to which a particular Market Maker is appointed. Furthermore, the proposed changes will result in such quoting obligations being closer to the quoting obligations in effect on another options exchange.<sup>10</sup>

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See Rule 6.37B (Market Maker Quotations-OX) of the Rules of NYSE Arca, Inc ("NYSE Arca").

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

This proposed rule change is filed pursuant to paragraph (A) of section 19(b)(3) of the Exchange Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange notes that the changes proposed herein will align the quoting percentage obligations of Market Makers, as well as exceptions thereto, with those of market makers on NYSE Arca.<sup>13</sup> In addition, the Market Makers' other remaining obligations are substantially similar to those for market makers on NYSE Arca. The Exchange believes that this proposed rule change, which is essential for competitive purposes and to promote a free and open market for the benefit of investors, does not raise any new, unique or substantive issues from those attendant with the approved NYSE Arca rule.

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.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, as required under Rule 19b-4(f)(6)(iii), the Exchange has submitted to the Commission written notice of its intent to file the proposed rule change, along with a brief description and the 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.

<sup>13</sup> See supra note 10.

#### 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-BX-2010-023 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-BX-2010-023. 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 Web site viewing and printing 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 publicly available. All submissions should refer to File Number SR-BX-2010-023 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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