

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59638; File No. SR-BX-2009-015)

March 27, 2009

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to Reduction of Certain Order Handling and Exposure Periods on the Boston Options Exchange Facility from Three Seconds to One Second

I. Introduction

On February 27, 2009, NASDAQ OMX BX, Inc. (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to reduce certain order exposure periods on the Boston Options Exchange Facility from three seconds to one second. The proposed rule change was published for comment in the Federal Register on March 11, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposal

The purpose of the proposed rule change is to reduce certain order handling and exposure periods in the rules of the Boston Options Exchange (“BOX”) from three seconds to one second. Specifically, BOX rules provide that an Options Participant may not cause the execution of an order it represents as agent on BOX through the use of orders it solicited unless the agency order is first exposed to the BOX Book for at least three seconds.⁴ BOX rules also provide that an order flow provider (“OFP”) may not execute as principal an order it represents as agent unless

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59497 (March 4, 2009), 74 FR 10634 (“Notice”).

⁴ See BOX Rules, Chapter V, Section 17, Supplementary Material .02.

the OFP (i) exposes the order to the BOX Book for three seconds; (ii) has been bidding or offering on BOX for at least three seconds prior to receiving an agency order that is executable against such bid or offer; or (iii) sends the agency order to the Price Improvement Period (“PIP”) or Universal Price Improvement Period (“UPIP”).⁵ Finally, the duration of the PIP, which allows Options Participants to designate certain orders for price improvement and submit such orders to the PIP with a matching contra order, is three seconds.⁶ Under the proposal, these time periods would be reduced to one second.

III. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,⁹ which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁵ See BOX Rules, Chapter V, Section 17, Supplementary Material .03.

⁶ See BOX Rules, Chapter V, Section 18(e)(i).

⁷ 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).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(8).

The Commission believes that, given the electronic environment of BOX, reducing each of these exposure periods from three seconds to one second could facilitate the prompt execution of orders, while continuing to provide market participants with an opportunity to compete for exposed bids and offers. To substantiate that BOX Options Participants could receive, process, and communicate a response back to BOX within one second, BOX stated that it distributed a survey to its members that would be affected by this proposal or that regularly participate in the PIP. BOX stated that the survey indicated that it typically takes at most 110 milliseconds for Participants to receive, process, and respond to broadcast messages related to the PIP or facilitation or solicitation related broadcasts and for such responses to reach BOX.¹⁰ BOX also stated that the Participants indicated that reducing the order exposure period to one second would not impair their ability to participate in solicitation or facilitation orders or orders executed through the PIP.¹¹ Based on BOX's statements regarding the survey results, the Commission believes that market participants should continue to have opportunities to compete for exposed bids and offers within a one second exposure period. Accordingly, the Commission believes that it is consistent with the Act for the Exchange to reduce the order handling and exposure times discussed herein from three seconds to one second.

The Commission finds good cause to approve the proposed rule change prior to the thirtieth day after publication for comment in the Federal Register. The Commission notes that the proposed rule change was noticed for a fifteen-day comment period, and no comments were received. The Commission believes that the Exchange has provided reasonable support for its belief that its market participants would continue to have an opportunity to compete for exposed bids and offers if the exposure periods were reduced to one second as proposed. Finally, the

¹⁰ See Notice.

¹¹ Id.

Commission also notes that the proposed rule change is similar to recently approved proposals submitted by other exchanges.¹² Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹³ to approve the proposed rule change on an accelerated basis.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-BX-2009-015), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon
Deputy Secretary

¹² See e.g., Securities Exchange Act Release Nos. 58088 (July 2, 2008), 73 FR 39747 (July 10, 2008)(SR-CBOE-2008-16); 58224 (July 25, 2008), 73 FR 44303 (July 30, 2008) (SR-ISE-2007-94); and 59081 (December 11, 2008), 73 FR 76432 (December 16, 2008) (SR-Phlx-2008-79).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).