



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

August 28, 2009

Maura A. Looney
Associate Vice President
NASDAQ OMX BX, Inc.
100 Franklin Street
Boston, MA 02110

Re: NASDAQ OMX BX, Inc.'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

Dear Ms. Looney:

Rule 608(e) of Regulation NMS under the Securities Exchange Act of 1934 ("Exchange Act") provides that the Securities and Exchange Commission ("Commission") may exempt from the provisions of Rule 608 of Regulation NMS, either unconditionally or on specified terms and conditions, any self-regulatory organization, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the removal of impediments to, and perfection of the mechanisms of, a national market system.¹ As discussed below, the Commission is exempting NASDAQ OMX BX ("BOX") from Rule 608(c) of Regulation NMS, which requires BOX to comply with, and enforce compliance by its members with, certain provisions of the Options Order Protection and Locked/Crossed Market Plan ("Plan").²

Exemption from Section 8(c) of the Linkage Plan

In the Exchange's letter, dated August 26, 2009, BOX seeks an exemption from Rule 608(c) of Regulation NMS, which requires BOX to comply with, and enforce compliance by its members with, the terms of the Plan regarding Trade-Throughs.³ Specifically, BOX

¹ 17 CFR 242.608. The Division of Trading and Markets has delegated authority to grant an exemption pursuant to 17 CFR 200.30-3(a)(42).

² The Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act, 15 U.S.C. 78k-1, and Rule 608 of Regulation NMS. See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009).

³ A "Trade-Through" is defined in Section 2(21) of the Plan 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."

requests that the Commission, pursuant to Rule 608(e) of Regulation NMS, exempt BOX from the requirement of Rule 608(c) of Regulation NMS that BOX comply, and enforce compliance by its members, with Section 5(a) of the Plan, subject to certain conditions. Section 5(a) of the Plan provides that each Participant shall establish, maintain and enforce written policies and procedures as approved by the Commission that are reasonably designed to prevent Trade-Throughs in that Participant's market that do not fall within an exception set forth in Section 5(b). BOX has requested an exemption to allow it to effect transactions that Trade-Through the NBBO by one minimum quoting increment if such transactions are effected in connection with the simultaneous routing of P/A Orders or Principal Orders⁴ to other Participants of the Plan that can execute against the full displayed size of all Participants that are disseminating a better price than BOX.

BOX has requested that the exemption be granted through October 31, 2009. Further, BOX has represented that it has negotiated with the OCC to arrange for the maintenance, operation and functionality of the OCC Hub during this period of time to accommodate BOX.

Response to Request for Exemption

On the basis of the representations and facts presented in your letter, the Commission grants an exemption to BOX from the requirement in Rule 608(c) of Regulation NMS that BOX comply, and enforce compliance by its members, with Section 5(a) of the Plan provided that: (1) the transaction that constitutes a Trade-Through is at a price only one minimum increment lower than the national best bid or offer ("NBBO"); and (2) BOX simultaneously routes a P/A Order or P Order that can execute against the full displayed size of all Participants that are disseminating a better price than BOX.

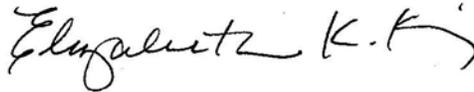
The Commission finds that it is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and Perfection of the mechanisms of, a national market system to grant the exemption described above because it will help the Exchange ensure that an orderly transition is achieved on BOX to the Plan's new structure without undermining the objectives of the Plan.

⁴ P/A Orders and Principal Orders are order types provided for by the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage. A P/A order is an order sent through the routing hub operated by the Options Clearing Corporation ("OCC Hub") on behalf of a non-broker-dealer customer. A Principal Order is an order sent through the OCC Hub for the principal account of an exchange market maker.

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This exemption is conditioned solely on the facts and representations presented in your letter. In the event that any material change occurs with respect to any of the facts or representations presented, the exemption will expire and BOX must immediately resume operating in accordance with all provisions of the Plan. The exemption will otherwise expire on October 31, 2009.

For the Commission, by the Division of Market
Regulation, pursuant to delegated authority,⁵

A handwritten signature in cursive script, appearing to read "Elizabeth K. King".

Elizabeth K. King
Associate Director

⁵ 17 CFR 200.30-3(a)(42).

August 26, 2009

VIA UPS

Ms. Elizabeth Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549



Re: Request for Exemptive Relief

Dear Ms. Murphy:

NASDAQ OMX BX, Inc. (the "Exchange") respectfully requests that the U.S. Securities and Exchange Commission ("Commission" or "SEC"), under Rule 608(e)¹ of Regulation NMS under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), grant an exemption from Rule 608(c)² of Regulation NMS, which requires that the Exchange comply with the terms of any effective national market system plan of which it is a sponsor or a participant and enforce compliance with any such plan by its members. The Exchange requests that the Commission grant a temporary limited exemption from Section 5(a) of the Options Order Protection and Locked/Crossed Market Plan (the "Decentralized Plan").³

Commission's Exemptive Authority

The Decentralized Plan is an effective national market system plan pursuant to Rule 608 of Regulation NMS and the Exchange is a Plan Participant.⁴ Rule 608(e) authorizes the Commission to issue an exemption to the Exchange from Rule 608(c). In particular, Rule 608(e) provides:

The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any self-regulatory organization, [or] member thereof...if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.

¹ 17 CFR 242.608(e).

² 17 CFR 242.608(c).

³ 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 Decentralized Plan, the Linkage Plan or the BOX Rules, respectively.

⁴ The term "Plan Participant" shall mean an Eligible Exchange that is a party to the Decentralized Plan. See Securities Act Release No. 34-60530 (August 18, 2009) 74 FR 43200 (August 26, 2009) (SR-BX-2009-28) ("Release No. 34-60530").

Background

The Decentralized Plan will completely replace the Plan for the Purpose of Creating and Operating an InterMarket Option Linkage ("Linkage Plan").⁵ The Linkage Plan enabled the options exchanges to act jointly in planning, developing, operating and regulating the systems and data communications network, operated by the Options Clearing Corporation ("OCC"), that electronically links the options exchanges to one another (the "OCC Hub").⁶ The Linkage Plan required its participant exchanges to operate and utilize the OCC Hub for sending order-flow between exchanges to limit Trade-Throughs. The Linkage Plan provides for unique types of orders, such as P⁷ and P/A⁸ Orders (collectively referred to herein as "Linkage Orders") exclusively to be sent through the OCC Hub. However, under the Linkage Plan a Trade-Through does not include a transaction that occurs at a price one minimum quoting increment inferior to the national best bid or offer ("NBBO") provided a Linkage Order is contemporaneously sent to each options exchange disseminating the NBBO for the full size of the exchange's bid (offer) that represents the NBBO ("Trade and Ship Exemption"). Unlike the Linkage Plan, the Trade and Ship Exemption does not exist under the Decentralized Plan.

The purpose of the Decentralized Plan is to enable the Plan Participants 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. The Decentralized Plan applies many of the Regulation NMS⁹ price protection provisions to the options markets. The Decentralized Plan requires Plan Participants to adopt rules "reasonably designed to prevent Trade-Throughs", while providing for certain limited and specific exceptions to such Trade-Through¹⁰ prohibition.

As of the date of implementation of the Decentralized Plan (expected to be August 31, 2009), and for up to approximately 8 weeks thereafter, the BOX facility and BOX Options Participants will continue to 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. 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. The Exchange will include Temporary Section 4 within Chapter XII, as approved in Release No. 34-60530, 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.¹¹ Additionally, the other Plan Participants in the Decentralized Plan have agreed to accept and

⁵ 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.

⁶ See Chapter XII, Section 4(g)(3) and Chapter I, Section 1(a)(35) of the BOX Rules as approved in Release No. 34-60530.

⁷ The term "Principal or "P" Order", as approved in Release No. 34-60530, shall mean an order for the principal account of a Market Maker (or equivalent entity on another Eligible Exchange) and which is not a P/A Order.

⁸ The term "Principal Acting as Agent or "P/A" Order", as approved in Release No. 34-60530, shall mean an order for the principal account of a Market Maker (or equivalent entity on another Eligible Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the Market Maker is acting as agent.

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

¹⁰ The term "Trade-Through", as approved in Release No. 34-60530, shall mean as a transaction in an option series at a price that is lower than a Protected Bid or higher than a Protected Offer.

¹¹ The Exchange will submit a proposed rule change seeking Commission approval for such rule change.

execute P and P/A Orders, and maintain and enforce pertinent rule text, for a temporary period following the implementation of the Decentralized Plan.

Provision of Plan Requiring Exemption

In Section 5(a) of the Decentralized Plan each Plan Participant agrees that it "shall establish, maintain and enforce written policies and procedures that are reasonably designed to prevent Trade-Throughs in that Participant's market in Eligible Options Classes that do not fall within an exception." Section 5(b) provides for certain limited and specific exceptions to this prohibition against Trade-Throughs. However, the sending of P and P/A orders are not exceptions from the prohibitions against Trade-Throughs under the Decentralized Plan and thus, on their face, are not permissible methods by which a Plan Participant exchange or one of its members may satisfy the prohibition against Trade-Throughs.

Exemption Request

The Exchange requests that the Commission, under Rule 608(e)¹² of Regulation NMS under the Exchange Act, grant an exemption from Rule 608(c)¹³ of Regulation NMS. Specifically, the Exchange requests that the Commission grant a temporary limited exemption from Section 5(a) of the Decentralized Plan in order to permit BOX and its Options Participants¹⁴ to send Linkage Orders to prevent Trade-Throughs on the BOX market¹⁵ in conformance with the Trade and Ship exemption ("P and P/A Exemption" hereinafter). The Exchange requests the P and P/A Exemption be operative until and through October 31, 2009.

The Exchange believes the exemption requested satisfies the requirements of Rule 608(e) of Regulation NMS, in that it is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of mechanism of, a national market system. Specifically, the Exchange believes it should provide a smooth transition from the Linkage Plan to the Decentralized Plan without undermining the objectives of the Decentralized Plan. In addition, the Exchange believes that the P and P/A Exemption will enable the Exchange to comply with the provisions of the Decentralized Plan by means of an order type and under certain circumstances which the Decentralized Plan does not contemplate while certain technical developments are finalized and completed on the BOX market. The requested P and P/A Exemption is limited as to both scope and time as the Exchange has requested that, if granted, it will only apply as to the Exchange's obligations under Section 5(a) of the Decentralized Plan and will be operative only through October 31, 2009.

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¹² 17 CFR 242.608(e).

¹³ 17 CFR 242.608(c).

¹⁴ The term "Options Participant" is defined in the BOX Rules as a firm, or organization that is registered with the Exchange pursuant to the BOX Rules for purposes of participating in options trading on BOX as an "Order Flow Provider" or "Market Maker".

¹⁵ The BOX market is the options trading facility of the Exchange.

For the foregoing reasons, the Exchange respectfully requests that the Commission grant an exemption to the Exchange from Rule 608(c) of Regulation NMS, which requires the Exchange to comply with, and enforce compliance with, Section 5(a) of the Decentralized Plan, under the terms and conditions specified above. Please feel free to contact me at (617) 235-2073 or Wayne Pestone at (202) 261-6562 with any questions or comments you may have.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. Looney", with a long, sweeping flourish extending to the right.

Maura A. Looney

Cc: Elizabeth King
U.S. Securities and Exchange Commission

Wayne Pestone
BOX