

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63364; File No. SR-BX-2010-078)

November 23, 2010

Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period for Boston Options Exchange to Receive Inbound Routes of Orders from Nasdaq Options Services

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on November 17, 2010, NASDAQ OMX BX (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 Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

The Exchange submits this proposed rule change to extend the pilot period of the Exchange’s prior approval for Boston Options Exchange (“BOX”) to receive inbound routes of certain option orders from Nasdaq Options Services, LLC (“NOS”) through May 18, 2011.

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

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

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

Currently, NOS is the approved outbound routing facility of the NASDAQ Exchange for NOM, providing outbound routing from NOM to other market centers.<sup>4</sup> The Exchange and the NASDAQ Exchange have previously adopted rules to permit BOX to receive inbound routes of certain option orders by NOS in its capacity as an order routing facility of the NASDAQ Exchange for NOM.<sup>5</sup> The Exchange specifically has adopted a rule to prevent potential informational advantages resulting from the affiliation between BOX and NOS, as related to NOS's authority to route certain orders from NOM to BOX without checking the NOM book prior to routing.<sup>6</sup> NOS's authority to route these orders to BOX is subject to a pilot period

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<sup>4</sup> NOM Rule Chapter VI, Section 11(c). Under NOM Rule Chapter VI, Section 11(c): 1) NOM routes orders in options via NOS, which serves as the sole "routing facility" of NOM; 2) the sole function of the routing facility is to route orders in options to away markets pursuant to NOM rules, solely on behalf of NOM; 3) NOS is a member of an unaffiliated self-regulatory organization, which is the designated examining authority for the broker-dealer; 4) the routing facility is subject to regulation as a facility of the NASDAQ Exchange, including the requirement to file proposed rule changes under Section 19 of the Act; 5) use of NOS to route order to other market centers is optional; 6) NOM must establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the NASDAQ Exchange and its facilities (including the routing facility), and any other entity; and 7) the books, records, premises, officers, directors, agents, and employees of the routing facility, as a facility of the NASDAQ Exchange, shall be subject at all times to inspection and copying by the NASDAQ Exchange and the Commission.

<sup>5</sup> See Securities Exchange Act Release No. 60349 (July 20, 2009), 74 FR 37071 (July 27, 2009)(SR-BX-2009-035); Securities Exchange Act Release No. 60354 (July 21, 2009), 74 FR 37074 (July 27, 2009)(SR-NASDAQ-2009-065).

<sup>6</sup> See Chapter XXXIX, Section 2(c) of the Grandfathered Rules of the Exchange.

ending November 17, 2010.<sup>7</sup> The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional 6 months, through May 18, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and with Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that the proposal is 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.

Specifically, the proposed rule change will allow BOX to continue receiving inbound routes of equities orders from NOS, acting in its capacity as a facility of the NASDAQ Exchange, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for three [sic] months is of sufficient length to permit both the Exchange and the Commission to assess the impact of the Exchange's authority to permit BOX to receive direct inbound routes of certain option orders via NOS (including the attendant obligations and conditions).

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<sup>7</sup> See Securities Exchange Act Release No. 62555 (July 22, 2010), 75 FR 44835 (July 29, 2010)(SR-BX-2010-051).

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

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

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

No written comments were either solicited or received.

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

Because the foregoing rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>12</sup> However, Rule 19b-4(f)(6)(iii)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange notes that the proposal will allow BOX to continue receiving inbound routes of equities orders from NOS, in a manner consistent with prior approvals and established

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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. The Exchange has satisfied this requirement.

<sup>13</sup> Id.

protections, while also permitting the Exchange and the Commission to assess the impact of the pilot.<sup>14</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot period to be extended without interruption delay through May 18, 2011. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.<sup>15</sup>

At any time within 60 days of the filing of such proposed rule change the Commission summarily may temporarily suspend 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.

#### 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-2010-078 on the subject line.

##### Paper Comments:

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<sup>14</sup> See supra Section II.A.2.

<sup>15</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- 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-2010-078. 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 available publicly. All submissions should refer to File Number SR-BX-2010-078 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>16</sup>

Elizabeth M. Murphy  
Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).