

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66501; File No. SR-BX-2012-014)

March 1, 2012

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule to Amend the BOX LLC Agreement

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 February 22, 2012, 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 self-regulatory organization. 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 change from interested persons.

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

The Exchange proposes to amend the Sixth Amended and Restated Operating Agreement (“BOX LLC Agreement”) of the Boston Options Exchange Group LLC (“BOX LLC”), in connection with the proposed acquisition of TMX Group Inc., a company incorporated in Ontario, Canada (“TMX Group”) by Maple Group Acquisition Corporation, a company incorporated in Ontario, Canada (“Maple”). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also

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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).

on the Exchange's Internet Web site 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 self-regulatory organization 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 self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 13, 2004, the Commission approved four Exchange proposals that together established, through an operating agreement among its owners, BOX LLC, a Delaware limited liability company, to operate BOX as an options trading facility of the Exchange.<sup>5</sup>

Currently, the Montreal Exchange Inc., a company incorporated in Quebec, Canada ("MX"), is a direct subsidiary of TMX Group. MX US 2, Inc., a Delaware corporation and indirect, wholly owned subsidiary of MX ("MX US"), holds a 53.83% ownership interest in BOX LLC.

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<sup>5</sup> See Securities Exchange Act Release No. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (establishing a fee schedule for the proposed BOX facility); Securities Exchange Act Release No. 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (creating Boston Options Exchange Regulation LLC to which the Exchange would delegate its self-regulatory functions with respect to the BOX facility); Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (approving trading rules for the BOX facility); Securities Exchange Act Release No. 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (approving certain regulatory provisions of the operating agreement of BOX LLC).

The Exchange is submitting the proposed rule change to the Commission to amend the BOX LLC Agreement pursuant to the proposed Instrument of Accession in connection with the Acquisition (as defined below).

Maple's investors comprise Alberta Investment Management Corporation, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, CIBC World Markets Inc., Desjardins Financial Corporation, Dundee Capital Markets Inc., Fonds de solidarité des travailleurs du Québec (F.T.Q.), GMP Capital Inc., The Manufacturers Life Insurance Company, National Bank Financial & Co. Inc., Ontario Teachers' Pension Plan Board, Scotia Capital Inc. and TD Securities Inc. (collectively, the "Investors"). All of the Investors or their respective affiliates currently own common shares of Maple (the "Maple Shares"). Each of the Investors currently owns less than 12% of Maple. The Maple Shares are currently privately held, not listed on any recognized exchange and not qualified for public distribution. However, after the completion of the second step of the Acquisition, the Maple Shares will be freely tradable (subject to 5-year contractual standstill arrangements to which some of the Investors have agreed to comply) and will be listed for trading on the Toronto Stock Exchange. Following the Acquisition, each of the Investors will own less than 9% of Maple and current shareholders of TMX Group will own at least 26% of Maple.

The Acquisition will be effected in two steps - (1) an offer (the "Offer") by Maple to the shareholders of TMX Group to exchange a minimum of 70% and a maximum of 80% of the outstanding common shares of TMX Group ("TMX Group Shares") for cash, and (2) a subsequent transaction pursuant to a court-approved "plan of arrangement"<sup>6</sup> whereby TMX

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<sup>6</sup> A "plan of arrangement" is a statutory procedure available under the *Business Corporations Act* (Ontario) as well as under the *Canada Business Corporations Act* and provincial corporations statutes. Where a corporation wishes to combine (or to make any

Group shareholders whose TMX Shares have not been acquired under the Offer will receive Maple Shares in exchange for their TMX Group Shares (the “Subsequent Arrangement”, and collectively with the Offer, the “Acquisition”). The Offer is set to expire on February 29, 2012, unless extended in accordance with the terms thereof, and subject to the terms and the conditions of the Offer, Maple will pay for TMX Group Shares validly deposited under the Offer and not properly withdrawn, ten days after the expiration of the Offer. If the Offer is successful, Maple will use its best efforts to complete the Subsequent Arrangement within 35 days after the expiration of the Offer.

As a result of the Acquisition, if successful, TMX Group will become a direct, wholly owned subsidiary of Maple. Consequently, MX US (including MX US’s 53.83% ownership interest in BOX LLC) will become an indirect, wholly owned subsidiary of Maple. The Offer is subject to several conditions, including certain regulatory approvals, including, but not limited to, certain approvals from the Ontario Securities Commission, Autorité des marchés financiers (Québec), Alberta Securities Commission, British Columbia Securities Commission, Competition Bureau (Canada) and the Commission.

Maple has developed a preliminary business plan that it anticipates would be implemented upon completion of the Acquisition. The operations of each of MX and TMX Group will continue to be located in the same province in which it is currently located, and each will remain subject to its existing regulatory framework and oversight, including any changes to the recognition orders governing MX and TMX Group and additional undertakings that may be required by Canadian securities regulators as a condition of approving the Acquisition. MX US's

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other "fundamental change") but cannot achieve the result it wants under another section of the statute, it can apply to the court for an order approving a proposed "plan of arrangement".

management of its ownership interest in BOX will remain essentially unaffected by the Acquisition. Ownership of BOX through TMX Group, MX and MX US will not be affected by, and the ability of these entities to influence BOX will not change as a result of, the Acquisition.

Pursuant to Section 8.4(g) of the BOX LLC Agreement, as previously approved by the Commission, BOX LLC is required to amend the BOX LLC Agreement to make a Controlling Person<sup>7</sup> a party to the BOX LLC Agreement if such Controlling Person establishes a Controlling Interest<sup>8</sup> in any member of BOX LLC that, alone or together with any Affiliate<sup>9</sup> of such member of BOX LLC, holds a Percentage Interest<sup>10</sup> in BOX equal to or greater than 20%.<sup>11</sup> Therefore,

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<sup>7</sup> A “Controlling Person” is defined as “a Person who, alone or together with any Affiliate of such Person, holds a controlling interest in a [BOX] Member.” See Section 8.4(g)(v)(B), BOX LLC Agreement.

<sup>8</sup> A “Controlling Interest” is defined as “the direct or indirect ownership of 25% or more of the total voting power of all equity securities of a Member (other than voting rights solely with respect to matters affecting the rights, preferences, or privileges of a particular class of equity securities), by any Person, alone or together with any Affiliate of such Person.” See Section 8.4(g)(v)(A), BOX LLC Agreement.

<sup>9</sup> An “Affiliate” is defined as “, with respect to any Person, any other Person controlling, controlled by or under common control with, such Person. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise with respect to such Person. A Person is presumed to control any other Person, if that Person: (i) is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions); (ii) directly or indirectly has the right to vote 25 percent or more of a class of voting security or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of the Person; or (iii) in the case of a partnership, has contributed, or has the right to receive upon dissolution, 25 percent or more of the capital of the partnership.” See Section 1.1, BOX LLC Agreement.

<sup>10</sup> The “Percentage Interest” is defined as “the ratio of the number of Units held by the Member to the total of all of the issued Units, expressed as a percentage and determined with respect to each class of Units, whenever applicable.” See Section 1.1, BOX LLC Agreement.

<sup>11</sup> See Section 8.4(g), BOX LLC Agreement.

since Maple is acquiring a Controlling Interest in TMX Group, whose wholly owned indirect subsidiary, MX US, owns a 53.83% ownership interest in BOX LLC, Maple, as a Controlling Person, is required to be, and will become, a party to the BOX LLC Agreement pursuant to the proposed Instrument of Accession. As a result, Maple will agree to abide by all the provisions of the BOX LLC Agreement, including those provisions requiring submission to the jurisdiction of the Commission.<sup>12</sup> The Exchange proposes to make this proposal operative upon the successful completion of the Offer, which is currently scheduled to expire on February 29, 2012.

For the reasons stated above, the Exchange is submitting to the Commission the proposed Instrument of Accession to the BOX LLC Agreement as a rule change.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(1),<sup>14</sup> in particular, in that it enables the Exchange to be so organized so as to have the capacity to be able to carry out the

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<sup>12</sup> The BOX LLC Agreement states, in part, that “the Members, officers, directors, agents, and employees of Members irrevocably submit to the exclusive jurisdiction of the U.S. federal courts, U.S. Securities and Exchange Commission, and the Boston Stock Exchange, for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws, the rules or regulations thereunder, arising out of, or relating to, BOX activities or Article 19.6(a), (except that such jurisdictions shall also include Delaware for any such matter relating to the organization or internal affairs of BOX, provided that such matter is not related to trading on, or the regulation, of the BOX Market), and hereby waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the U.S. Securities and Exchange Commission, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof may not be enforced in or by such courts or agency.” See BOX LLC Agreement, Section 19.6.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5) [sic].

purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Act<sup>15</sup> in that it is designed to facilitate transactions in securities, 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.

Additionally, the Exchange notes that the provisions of the BOX LLC Agreement, previously approved by the Commission, provide a framework for addressing the Acquisition. Accordingly, the Exchange believes the Acquisition does not present any novel issues that have not been anticipated and addressed by the BOX LLC Agreement.

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

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

Because the foregoing 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the Acquisition does not present any novel issues that have not been anticipated and addressed by the BOX LLC Agreement. Therefore, the Commission designates the proposal operative upon filing.<sup>18</sup>

At any time within 60 days of the filing of the 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.

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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>18</sup> For 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).

#### 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-2012-014 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-2012-014. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, 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-2012-014, 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>19</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).