

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60026; File No. SR-BX-2009-020)

June 2, 2009

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving Proposed Rule Change Regarding Market Maker Obligations

On April 8, 2009, NASDAQ OMX BX, Inc. (“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 regarding market maker obligations. The proposal was published in the Federal Register on April 28, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

The Exchange proposes to amend Chapter VI, Section 6 (Market Maker Quotations) of the BOX Rules to change certain obligations of a Market Maker regarding the Request for Quote (“RFQ”) process. The proposed rule change in Section 6(b)(ii) clarifies that within three seconds of receiving an RFQ, a Market Maker must continuously maintain, without interruption, a valid two-sided quotation for at least thirty seconds. If however, during that thirty second time span, the quotation becomes invalid, the Market Maker must post a valid two sided quotation as soon as practicable, but within five seconds. The Exchange also proposes to remove Section 6(d)(ii), which provided that a Market Maker may be required to submit a single quotation or maintain continuous quotations in one or more series when called upon by Options Official, if the official believes it is necessary to do so in the interest of a fair and orderly market, and replace it with Section 6(b)(iv).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59804 (April 21, 2009), 74 FR 19256 (April 28, 2009).

As proposed, Section 6(b)(iv) will provide that an Options Official may, in the interest of a fair and orderly market, call upon Market Makers to post a quotation in the same manner as if an RFQ was issued by an Options Participant.

Finally, the Exchange proposes to amend Section 6(d) to establish market maker quoting standards based upon a percentage of time measurement. As proposed, the section will clarify that “continuous quoting” reflects quoting parameters based on a daily time measurement and will remove references to series and replace them with class. Specifically, a Market Maker will be required to submit valid quotations on a daily basis for at least eighty percent (80%) of the time that a class is open for trading in at least ninety percent (90%) of its appointed classes. Further, on a daily basis, a Market Maker will be required to post valid quotations at least sixty percent (60%) of the time in each of its appointed classes during the time that the class is open for trading. The Exchange states that this proposed change should allow Market Makers to focus their strategy on the entire class to which it is appointed, rather than implementing a strategy utilizing each series within a class. At the same time, the proposal allows a Market Maker, if it chooses, to bring more liquidity to the more actively traded series, rather than focusing on series with less activity.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁵ which requires that an exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,

⁴ 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).

⁵ 15 U.S.C. 78f(b)(5).

to foster cooperation and coordination with persons engaged in 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. The Commission notes that under the proposal, Market Maker quoting obligations will be based on a daily time measurement, as opposed to a requirement to continuously provide quotations in a specified percentage of appointed options. Market Makers will, however, still be subject to requirements on how often they must quote. Specifically, Market Makers will be required to submit valid quotations on a daily basis for at least 80% of the time that a class is open in 90% of their appointed classes and be required to post valid quotations at least 60% of the time in each of its appointed classes during the time that the class is open for trading. The Commission also notes that the proposal helps to clarify Market Maker quoting obligations in response to an RFQ or a request by an Options Official to quote in the interest of a fair and orderly market. The Commission believes these changes are consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁶ that the

⁶ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-BX-2009-020) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).