

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61891; File No. SR-BX-2010-026)

April 13, 2010

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Chapter V, Section 7 (Customer Orders and Order Flow Providers)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 31, 2010, 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 Exchange. 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 Substance of the Proposed Rule Change

The Exchange proposes NASDAQ OMX BX, Inc. (the “Exchange”) proposes to amend Chapter V, Section 17 (Customer Orders and Order Flow Providers) of the Rules of the Boston Options Exchange Group, LLC (“BOX”). 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 on the Exchange’s Internet website 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 Exchange 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange is proposing to amend Chapter V, Section 17 (Customer Orders and Order Flow Providers) of the BOX Rules in order to eliminate some of its restrictions. Section 17(c) currently provides that an Order Flow Provider (“OFP”)³ shall not enter into BOX, as principal or agent, Limit Orders in the same options series, for the account or accounts of the same or related beneficial owners, in such a manner that the OFP or the beneficial owner(s) effectively is operating as a market maker by holding itself out as willing to buy and sell such options contract on a regular or continuous basis.

The Exchange is proposing that these restrictions be eliminated so that they are no longer applicable to instances where an OFP is acting as principal on its own behalf or is acting as agent on behalf of other broker-dealer or Public Customer orders.⁴ Because broker-dealer and Public Customer orders are not subject to priority on the BOX Book that is any better than Market Makers, BOX does not believe it is necessary to impose the Rule’s restrictions on the entry of

³ See Chapter I, Section 1 (Definitions) of the BOX Rules which defines the term “Order Flow Provider” or “OFP” to mean those Options Participants representing as agent Customer Orders on BOX and those non-Market Maker Participants conducting proprietary trading.

⁴ The Exchange notes that the Securities and Exchange Commission (“Commission”) has previously found that it is consistent with the Securities Exchange Act of 1934 (“the Act”) for an options exchange not to prohibit a user of its market from effectively operating as a market maker by holding itself out as willing to buy and sell options contracts on a regular or continuous basis without registering as a market maker. See Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080)(Order Approving, among other things, a Proposed Rule Change to Establish Rules Governing the Trading of Options on the NASDAQ Options Market (“NOM”).

broker-dealer and Public Customer orders. The Exchange believes that the elimination of these restrictions will permit entities other than Market Makers to enter orders on both sides of the market more freely, which may result in more orders on the BOX Book and therefore increased liquidity on the BOX market, all to the benefit of investors.

The Exchange notes that OFPs must register as BOX Options Participants as well as registering with the Commission under Section 15 of the Act,⁵ and the rules and regulations thereunder.⁶ Further, an entity which acts as a “dealer,” as defined in Section 3(a)(5) of the

⁵ 15 U.S.C. 78o.

⁶ The Exchange notes that this rule change would only eliminate the restrictions of Chapter V, Section 17 in the manner proposed. BOX Options Participants would continue to remain subject to the requirements of Chapter III, Section 4(a) (which requires BOX Options Participants to establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the Participant's business, to prevent the misuse of material nonpublic information by such Participant or persons associated with such Participant); Chapter III, Section 4(f) (which may consider it conduct inconsistent with just and equitable principles of trade for any Participant or person associated with a Participant who has knowledge of all material terms and conditions of (i) an order and a solicited order, (ii) an order being facilitated or submitted to the Price Improvement Period, or (iii) orders being crossed; the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option for the same underlying security as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until (a) the terms and conditions of the order and any changes in the terms and conditions of the order of which the Participant or person associated with the Participant has knowledge are disclosed to the trading crowd, or (b) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received); Supplementary Material .02 to Chapter V, Section 17 (which provides that if an Options Participant fails to expose its Customer Order[s] on BOX, it will be a violation of Section 17 for an Options Participant to cause the execution of an order it represents as agent on BOX through the use of orders it solicited from Options Participants and/or non-Participant broker-dealers to transact with such orders, whether such solicited orders are entered into the BOX market directly by the Options Participant or by the solicited party (either directly or through another Participant), unless the agency order is first exposed to the BOX Book for at least one (1) second); and Supplementary Material .03 to Chapter V, Section 17 (which provides that an OFP may not execute as principal an order it represents as agent unless, (i) the agency order is first exposed to the BOX Book for at least one (1) second, or (ii) the OFP has been bidding or offering on BOX for a least one (1) second prior to receiving an agency order that is executable

Act,⁷ must also register with the Commission under Section 15 of the Act,⁸ and the rules and regulations thereunder, or alternatively qualify for any exception or exemption from such registrations.⁹

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,¹⁰ in general, and Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed 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 for a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed changes should continue to contribute to the Exchange's ability to maintain a fair and orderly market in a manner that will limit unfair advantage and encourage competition. Specifically, because broker-dealer and Public Customer orders are not subject to priority on the BOX Book that is any better than Market Makers, the Exchange does not believe it is necessary to impose the Rule's restrictions

against such bid or offer; or (iii) the OFP sends the agency order to the Price Improvement Period or Universal Price Improvement Period process pursuant to Sections 18 and 29 of Chapter V of the BOX Rules).

⁷ 15 U.S.C. 78c(a)(5).

⁸ 15 U.S.C. 78o.

⁹ Activity that may cause a person to be deemed a dealer includes "quoting a market in or publishing quotes for securities (other than quotes on one side of the market on a quotations system generally available to non-broker-dealers, such as a retail screen broker for government securities)." See Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Securities Exchange Act Release No. 47364, 68 FR 8685, 8689, note 26 (February 24, 2003) (quoting OTC Derivatives Dealers, Securities Exchange Act Release No. 40594, 63 FR 59362, 59370, note 61 (November 3, 1998)).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

on the entry of broker-dealer and Public Customer orders. The Exchange believes that the elimination of these restrictions will permit entities other than Market Makers to enter orders on both sides of the market more freely, resulting in more orders on the BOX Book and therefore increased liquidity on the BOX market, all to the benefit of investors.

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.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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 Act¹² and Rule 19b-4(f)(6) thereunder.¹³

Because broker-dealer and Public Customer orders are not subject to priority on the BOX Book that is any better than Market Makers, the Exchange does not believe it is necessary to impose the Rule's restrictions on the entry of broker-dealer and Public Customer orders. The Exchange believes that the elimination of these restrictions will permit entities other than Market

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

Makers to enter orders on both sides of the market more freely, resulting in more orders on the BOX Book and therefore increased liquidity on the BOX market, all to the benefit of investors.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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. Please include File Number SR-BX-2010-026 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-2010-026. 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,¹⁴ 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 the 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-2010-026 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.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁴ The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/rules/sro.shtml>.

¹⁵ 17 CFR 200.30-3(a)(12).