

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62103; File No. SR-BX-2010-036)

May 13, 2010

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reduce the Required Number of Market Makers Appointed in a Particular Class for the Opening of Trading

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 May 4, 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 self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

NASDAQ OMX BX, Inc. (the “Exchange”) proposes to amend Chapter IV, Section 5 (Minimum Participation Requirement for Opening Trading of Option Classes) of the Rules of the Boston Options Exchange Group, LLC (“BOX”) to reduce the required number of Market Makers appointed in a particular class for the opening of trading in series of an options class from at least two (2) Market Makers to at least one

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

(1) Market Maker. The text of the proposed rule change is attached as Exhibit 5.⁵ 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 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 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

Chapter IV, Section 5(a) of the BOX Rules currently provides, in relevant part, that after a particular class of options has been approved for listing on BOX, BOXR⁶ will open trading in series of options in that class only if there are at least two (2) Market Makers⁷ appointed for trading that particular class. Additionally, Chapter IV, Section

⁵ The Commission notes that the text of the proposed rule change is attached as Exhibit 5 to the Form 19b-4, but is not attached to this Notice.

⁶ The term "BOXR" or "BOX Regulation" means Boston Options Exchange Regulation LLC, a wholly-owned subsidiary of the Exchange. See Chapter I, Section 1(a)(9) of the BOX Rules.

⁷ The term "Market Maker" means an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the BOX Rules. All Market Makers are designated as specialists on the Exchange for all purposes under the Exchange Act or Rules thereunder. See Chapter I, Section 1(a)(31) of the BOX Rules. The term "Options Participant" or "Participant" means a firm, or organization that is registered with the Exchange

5(c) of the BOX Rules currently provides, in relevant part, that BOXR may continue trading in a class where subsequently only one (1) Market Maker remains appointed to that class.⁸

The Exchange is proposing to reduce the requirement of Section 5(a), from at least two (2) Market Makers to at least one (1) Market Maker, in order to expand the number of options classes available to investors for trading on BOX and for hedging risks associated with securities underlying those options classes, as well as to enhance the BOX Market in products which are likely to receive customer order flow. Reducing this listing requirement on BOX to one (1) Market Maker would provide BOX with the opportunity to trade options classes that may have interest but that do not have the presently required interest to meet the two (2) Market Maker requirement.

Additionally, the reduction of the requirement of Section 5(a), from at least two (2) Market Makers to at least one (1) Market Maker, requires that Section 5(c) be amended to reflect that once a class is opened for trading and subsequently zero (0) Market Makers remain appointed to that class, an Options Official shall halt trading in such options class until such time when at least one (1) Market Maker is again appointed for trading in that particular class. In such a case BOX will not execute any orders

pursuant to Chapter II of the BOX Rules for purposes of participating in options trading on BOX as an “Order Flow Provider” or “Market Maker”. See Chapter I, Section 1(a)(48) of the BOX Rules.

⁸ If an Options Official makes an affirmative determination that halting of trading in such class is detrimental to the remaining Market Maker, and that continued trading in such class by one Market Maker is in the interest of maintaining a fair and orderly marketplace and would not create adverse consequence to an existing Customer of BOX or an Options Participant. The term “Options Official” means an officer of BOXR vested by the BOXR Board with certain authority to supervise option trading on BOX. See Chapter I, Section 1(a)(44) of the BOX Rules.

whatsoever, whether against the BOX Book, or otherwise, and will not accept any incoming orders from BOX Options Participants or from Away Exchanges.⁹

The Exchange also proposes adding new rule text to Section 5 to address the circumstance where a particular class of options has been approved for listing on BOX and there is not at least one (1) series of options in that class open for trading. In this circumstance the class shall be halted from trading until such time as a series of options in that class may be opened for trading and BOX will neither execute orders on its book nor accept inbound orders from BOX Options Participants or from away markets.¹⁰

The Commission previously stated, in its approval order for the proposed rule change establishing the NASDAQ Options Market (“NOM”), that it does not believe that the Act requires an exchange to have market makers and that although market makers could be an important source of liquidity on NOM, they likely would not be the only source.¹¹ Furthermore, the Commission also recently approved a proposed rule change establishing rules governing the trading of standardized options contracts on the BATS Exchange (“BATS”). Specifically, after a particular class of options has been approved

⁹ The term “Away Exchange” means a national securities exchange that trades listed options, other than the Exchange. See Chapter XII, Section 1(a) of the BOX Rules.

¹⁰ The Exchange proposes inserting this rule text as new Section 5(b). This proposed insertion requires that current Sections 5(b) and (c) be re-numbered as Sections 5(c) and (d), respectively.

¹¹ See Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004). As the Commission noted in its approval order for the NOM market, in its release adopting Regulation ATS, the Commission rejected the suggestion that a guaranteed source of liquidity was a necessary component of an exchange. See Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) (“Regulation ATS Release”). The Exchange notes that NASDAQ recently submitted a proposed rule change with the Commission which, among other things, would eliminate, in its entirety, the requirement that at least one options market maker be registered for trading a particular series before it may be opened for trading on NOM.

for listing on BATS Options a series of options in that class will be opened for trading only if there is at least *one* (emphasis added) options market maker registered for trading that particular series.¹² Both NOM and BATS Options trading rules also place an options class in a ‘regulatory execution suspension,’ or halt, when there are no longer any NOM Market Makers or BATS Options Members, respectively, registered or appointed in the particular class as well in a ‘non-regulatory suspension,’ or halt, in the circumstance where a particular class of options has been approved for listing and there is not at least one (1) series of options in that class open for trading.¹³

With regard to the impact on system capacity, the Exchange has analyzed BOX’s capacity and represents that BOX and the Options Price Reporting Authority have the necessary systems capacity to handle any additional traffic associated with the listing and trading of an expanded number of options classes, and series within those classes, which may result from approval of this proposal.

2. Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,¹⁴ in general, and Section 6(b)(5) of the Act,¹⁵ 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

¹² See Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Establish Rules Governing the Trading of Options on the BATS Options Exchange).

¹³ See Chapter IV, Section 5 of the NOM Rules and BATS Options Rule 19.5, respectively.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

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. In particular, the proposal would expand the ability of investors to hedge risks associated with securities underlying options which are currently not listed on BOX and allow the BOX Rules to more closely conform to the rules of other options exchanges.

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: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)¹⁶ of the Act and Rule 19b-4(f)(6) thereunder.¹⁷

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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

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-2010-036 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-2010-036. 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

the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

(<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,¹⁸ 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, 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 available publicly. All submissions should refer to File Number SR-BX-2010-036 and should be submitted on or before [date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Elizabeth M. Murphy
Secretary

¹⁸ The text of the proposed rule change is available on the Commission's Web site at <https://www.sec.gov>.

¹⁹ 17 CFR 200.30-3(a)(12).