

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63731; File No. SR-BX-2010-083)

January 19, 2011

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving a Proposed Rule Change Relating to the Price Improvement Period to Permit an Initiating Participant to Designate a PIP Surrender Quantity

On November 24, 2010, NASDAQ OMX BX, Inc. (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to the Rules of the Boston Options Exchange Group, LLC (“BOX”) to permit an Options Participant initiating a Price Improvement Period (“PIP”) to designate a PIP Surrender Quantity. Notice of the proposed rule change was published for comment in the Federal Register on December 8, 2010.<sup>3</sup> The Commission received no comments on the proposal.

Currently, the BOX rules that govern the PIP (“PIP Rules”)<sup>4</sup> generally allow an Options Participant initiating a PIP (“Initiating Participant”) to retain priority and trade allocation privileges for forty percent (40%) of the size of a PIP Order upon conclusion of the PIP auction.<sup>5</sup> This proposed rule change will permit an Initiating Participant, when starting a PIP auction, to submit the Primary Improvement Order to BOX with a designation to specify a quantity of contracts that it is willing to “surrender” from the number of contracts to which it is entitled to

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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> See Securities Exchange Act Release No. 63416 (December 2, 2010), 75 FR 76503.

<sup>4</sup> See Chapter V, Section 18 of the Rules of the Boston Options Exchange Group, LLC (“BOX Rules”).

<sup>5</sup> See id., paragraphs f(i)-f(ii).

other Options Participants (“PIP Surrender Quantity”).<sup>6</sup> By designating a PIP Surrender Quantity, the Initiating Participant could potentially be allocated less than the forty percent (40%) to which it may be entitled under BOX Rules.<sup>7</sup>

The proposed rule change further makes clear that in no case shall the Initiating Participant’s use of the Surrender Quantity function result in an allocation to the Initiating Participant that would be greater than the maximum allowable allocation the Initiating Participant would otherwise receive in accordance with the allocation procedures set forth in the PIP Rules.<sup>8</sup> The proposal specifies that the PIP Surrender Quantity shall not be effective for an amount that is lesser than or equal to sixty percent (60%) of the size of the PIP Order.

Additionally, the proposed rule change will modify the BOX Trading Host’s trade allocation at the conclusion of the PIP auction to account for the PIP Surrender Quantity. The proposal specifies that when the BOX Trading Host determines the priority and trade allocation amounts for the Initiating Participant upon the conclusion of the PIP auction, the Trading Host

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<sup>6</sup> The Initiating Participant would specify the PIP Surrender Quantity as a number of contracts, not as a percentage of the total PIP Order. Telephone conversation between Michael Burbach, Vice President of Legal Affairs, BOX and Ira Brandriss, Special Counsel, Division of Trading and Markets, Commission, January 13, 2011.

<sup>7</sup> The Primary Improvement Order would also still yield priority to certain competing orders in certain circumstances. See PIP Rules, supra note 4, paragraph (f)(iii). In the case of a Max Improvement Primary Improvement Order, see subsection (e)(ii) of the PIP Rules, the Surrender Quantity would be deducted from the number of contracts, if any, remaining for the Initiating Participant at the last level of allocation – i.e., from the 40% share to which the Initiating Participant is entitled at that level – and ceded to any other Options Participants at that level. Thus it is possible, under the proposed rule change, that if the Surrender Quantity is greater than the number of contracts remaining for the Initiating Participant at the last level of allocation, the Initiating Participant will receive no contracts at that level. Telephone conversation between Michael Burbach, Vice President of Legal Affairs, BOX, and Ira Brandriss, Special Counsel and Nicholas Shwayri, Attorney-Advisor, Division of Trading and Markets, Commission, January 19, 2011.

<sup>8</sup> See, generally id., paragraph (f).

will automatically adjust the trade allocations to the other PIP Participants according to the priority set forth generally in the PIP Rules,<sup>9</sup> providing a total amount to the other PIP Participants up to the PIP Surrender Quantity. Under the proposal, the Primary Improvement Order is allocated the remaining size of the PIP Order, if any. If the aggregate size of other PIP Participants' contra orders is not equal to or greater than the PIP Surrender Quantity, then the remaining PIP Surrender Quantity shall be left unfilled by those participants and the Primary Improvement Order shall be allocated the remaining size of the PIP Order as set forth in the PIP Rules.<sup>10</sup> The Exchange has stated that it will provide Options Participants with three (3) business days notice, via Information Circular, about the implementation date of the PIP Surrender Quantity prior to its implementation in the BOX trading system.

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.<sup>11</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 Commission believes that Initiating Participant's use of the Surrender Quantity function could benefit investors by allowing an Initiating Participant the flexibility to designate a lower amount than the forty percent (40%)

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<sup>9</sup> See *id.*, paragraph (e).

<sup>10</sup> See *id.*, paragraph (f).

<sup>11</sup> 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).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

of the PIP Order to which the Initiating Participant is entitled, thereby providing the other PIP Participants with the opportunity to receive increased trade allocations.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-BX-2010-083), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Elizabeth M. Murphy  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).