

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65036; File No. SR-BX-2011-049)

August 4, 2011

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a Definition of “Professional” And Require That Professional Orders Be Appropriately Marked by BOX Options Participants

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 July 26, 2011, NASDAQ OMX BX (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ 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 Substance of the Proposed Rule Change

The Exchange proposes to amend proposes to amend [sic] Chapter I, Section 1 (Definitions) of the Trading Rules of the Boston Options Exchange Group, LLC (“BOX”) to adopt a definition of “Professional” on BOX and require that all Professional orders be appropriately marked by BOX Options Participants. The text of the proposed rule change is available on the Exchange’s website at <http://nasdaqomxbx.cchwallstreet.com>, on the Commission’s website at <http://www.sec.gov>, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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 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 purpose of this proposal is to amend Chapter I, Section 1 (Definitions) to adopt a definition of “Professional” on BOX and require that all Professional orders be appropriately marked.

This filing is similar to the recent filings of the NASDAQ Stock Market LLC (for the NASDAQ Options Market (“NOM”), PHLX NASDAQ OMX, Inc. (“Phlx”), the International Securities Exchange, Inc. (“ISE”), and Chicago Board Options Exchange, Incorporated, (“CBOE”), which dealt with establishing a new definition of “Professional” as a person or entity that places a certain high volume of orders in listed options per day on average during a calendar month in his or her own beneficial account.⁴

⁴ See Securities Exchange Act Release Nos. 63028 (October 1, 2010), 75 FR 62443 (October 8, 2010) (SR-NASDAQ-2010-099) (approval order), 61802 (March 30, 2010), 75 FR 17193 (April 5, 2010) (SR-Phlx-2010-05) (approval order); 61198 (December 17, 2009), 74 FR 68880 (December 29, 2009) (SR-CBOE-2009-078) (approval order); and 59287 (January 23, 2009), 74 FR 5694 (January 30, 2009) (SR-ISE-2006-26) (approval order). A filing by NYSE Amex LLC (“NYSE Amex”) proposing a similar Professional designation was based on the Phlx, ISE, and CBOE proposals. See Securities Exchange Act Release No. 61818 (March 31, 2010), 75 FR 17457 (April 6, 2010) (SR-NYSEAmex-2010-18) (approval order). The cited filings discuss, among other things, the need for a Professional designation to be applied by members of the respective

Background

A BOX Options Participant (“Participant”) is a firm or organization that is registered with the Exchange pursuant to Chapter II of the BOX Trading Rules for purposes of participating in options trading on BOX as an “Order Flow Provider” or “Market Maker.”⁵

Options traded by Participants (which may include trades on behalf of Public Customers)⁶ on BOX, a wholly electronic exchange, are electronically executable and routable. The BOX Trading Host⁷ and the BOX Trading Rules provide for the ranking, display, and execution of all orders in price/time priority without regard to the status of the person or entity entering an order.⁸ The Exchange notes that BOX has, similar to NOM and in contrast to certain other options markets, a “flat” system that does not differentiate for execution or processing purposes among orders on the basis of who or what entity enters an order on BOX.⁹ BOX notes

exchanges because the systems of such exchanges differentiate for execution or processing purposes based on order origin. BOX does not similarly differentiate among orders based on their origin.

⁵ See Chapter I, Section 1(a)(42) of the BOX Rules. Many BOX Participants are also members of other options exchanges such as, for example, ISE, CBOE, or Phlx. Order Flow Provider (“OFP”) is defined in Chapter I, Section 1(a)(48) as those Options Participants representing as agent Customer Orders on BOX and those non-Market Maker Participants conducting proprietary trading. Market Maker is defined in Chapter I, Section 1(a)(31) of the BOX Rules as 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.

⁶ Public Customer is defined in Chapter I, Section 1(a)(52) as a person that is not a broker or dealer in securities.

⁷ Trading Host is defined in Chapter I, Section 1(a)(67) of the BOX Rules as the automated system used by BOX for the trading of options contracts.

⁸ See Chapter V, Section 16(a)(iv) that discusses BOX’s price/time execution priority and states, in relevant part, that all options orders at the best price are executed based on the time the order was entered.

⁹ In contrast to BOX, hybrid options exchanges such as, for example, Phlx and CBOE blend auction and electronic market structures that differentiate certain order priority and

that no change to execution priority, on the BOX Book or within the BOX Price Improvement Period, is being proposed as part of this rule change.¹⁰

BOX routes orders to other options exchanges (“Away Exchanges”) under certain circumstances through non-affiliated third-party broker-dealers and BOX’s general routing procedures are set forth in Chapter XII, Section 5 (Order Routing to Away Exchanges). These procedures state in subsection (b)(ii) that, among other things, once routed away from BOX, an order becomes subject to the rules and procedures of the destination market.¹¹

Many other options exchanges, namely the CBOE, ISE, NYSE AMEX, NOM and Phlx, already have rules that are similar to the Professional designation rule proposed by the Exchange (a “Professional” is a person or entity that places 390 or more orders in listed options per day on average during a calendar month in his or her own beneficial account). These above noted exchanges make differentiations based on whether an order is marked Professional or otherwise. Some BOX Options Participants, including its routing broker-dealers are, as noted, also members of other options exchanges that have a Professional designation. As members of these

execution functions based upon, among other things, the origin of the order (e.g. whether the order was a customer, market maker, broker or dealer, firm, or other type of order); these exchanges also charge different fees based on order origin. BOX does, like other exchanges, charge differing fees based on order origin (i.e. BOX trading fees for customers are different than for market makers and broker-dealer proprietary accounts). The Exchange is not proposing any changes in respect of the BOX fee structure and at this time, will continue to charge Professionals under the category of Customer.

¹⁰ See Chapter V, Section 16 regarding execution and price/time priority and Section 18 regarding the Price Improvement Period.

¹¹ Chapter XII, Section 5(b)(ii), “The Eligible Order that is routed away shall remain outside BOX for a period of time and may be executed in whole or in part subject to the applicable trading rules of the relevant Away Exchange. While an Eligible Order remains outside BOX, it shall have no time priority, relative to other orders received from Options Participants at the same price which may be executed against orders in the BOX Book. Requests from Options Participants to cancel their Eligible Orders while the order is routed away to an Away Exchange and remains outside BOX shall be processed, subject to the applicable trading rules of the relevant Away Exchange.”

exchanges, such Options Participants are subject to their Professional designation rules. And, as mentioned previously, exchange rules indicate that orders routed by these broker-dealers become subject to the rules and procedures of the Away Exchanges.¹²

The Exchange believes that disparate rules with respect to Professional order designation, and lack of uniform application of such rules, do not promote the best regulation and may, in fact, encourage regulatory arbitrage.¹³ The Exchange believes that it is therefore prudent and necessary to have a Professional designation rule as is commonplace in the industry, particularly where BOX's routing broker-dealers (like other BOX Options Participants) are members of several exchanges that have rules requiring Professional order designations.

The Proposal

The Exchange proposes new Chapter I, Section 1(a)(52) to state that the term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).¹⁴ Moreover, in order to properly represent orders entered on BOX according to the new definition, a Participant will be required to appropriately mark all Professional orders.¹⁵ To comply with this requirement, Participants will be required to review

¹² Once routed away from BOX, an order becomes subject to the rules and procedures of the destination market including, but not limited to, order cancellation. See Chapter XII, Section 5(b)(ii).

¹³ The Exchange believes that the risk of regulatory arbitrage is heightened where not all exchanges have Professional designation rules; and there is a lack of uniformity regarding exchanges marking orders as Professional when routing such orders away.

¹⁴ Each remaining sub-section of Chapter I, Section 1(a) is re-numbered by adding one to the current number (e.g. 52 becomes 53, and 53 becomes 54).

¹⁵ BOX intends to require Participants to identify Professional orders submitted electronically by identifying them in the account type field, and will notify Participants via an Information Circular regarding this requirement.

their Public Customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Professional orders.¹⁶

The Professional definition proposed is similar to the Professional designation that has been adopted by NOM, Phlx, ISE, CBOE, and NYSE Amex.¹⁷ Upon publication of the notice regarding this proposal, BOX will issue an Information Circular to Participants providing them at least ten business days notice of the procedures for the implementation of the proposal. As noted, the Professional definition will not impact BOX's price/time order entry (priority) system.¹⁸ Instead, this proposal will ensure that BOX Participants mark their Professional orders properly, that is, similarly in terms of Professional order identification regardless of whether the order is placed on BOX or another of the options exchanges with a Professional designation.

¹⁶ Participants will be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five business days after the end of each calendar quarter. While Participants will only be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as other than Professional orders but that has averaged more than 390 orders per day during a month, the Exchange will notify the Participant and the Participant will be required to change the manner in which it is representing the customer's orders within five business days. The Exchange will issue a Regulatory Circular to Participants providing more detailed information regarding the quarterly review process. This is similar to the process of other options exchanges that have adopted a Professional designation. *See, e.g.*, Securities Exchange Act Release Nos. 63028 (October 1, 2010) 75 FR 62443 (October 8, 2010) (SR-NASDAQ-2010-099) (approval order) and 61802 (March 30, 2010), 75 FR 17193 (April 5, 2010) (SR-Phlx-2010-05) (approval order).

¹⁷ *See supra* note 3 [sic].

¹⁸ For example, unlike the Phlx proposal, (which among other things, discusses that Professional order on Phlx will be treated in the same manner as off-floor brokers in terms of certain priority rules), BOX's proposed rule change does not address or impact any priority relationship for Professional orders as opposed to other BOX orders.

Moreover, with the proposed Professional designation in place, BOX will be able to accept orders that are marked Professional.¹⁹

The designation of Professional or Professional order would not result in any different treatment of such orders for purposes of the BOX Trading Rules concerning order protection or routing to away exchanges. That is, all non broker or dealer orders, including those that meet the definition of Professional orders, would continue to be treated as Public Customers for purposes of the BOX Rules regarding order protection and routing to away exchanges.²⁰

BOX believes that identifying Professional accounts based upon the average number of orders entered in qualified accounts is an appropriately objective approach that will reasonably distinguish such persons and entities from retail investors or market participants. BOX proposes the threshold of 390 orders per day on average over a calendar month, because it believes that this number far exceeds the number of orders that are entered by retail investors in a single day.²¹ Moreover, the 390 orders per day threshold proposed by BOX directly corresponds to the daily order volume recognized by NOM, ISE, and other options exchanges that have, as previously

¹⁹ As proposed, the Professional order designation, may be used for customer orders only. While BOX does not intend to differentiate among Professional and other orders for priority purposes, it may, in the future, feel that it is appropriate to differentiate its routing or other fees in respect of Professional orders as opposed to other orders; and if so, the Exchange intends to file an appropriate fee-related rule filing(s). This filing does not address the current BOX fee structure.

²⁰ See Chapter XII of the BOX Rules.

²¹ 390 orders is equal to the total number of orders that a person would place in a day if that person entered one order every minute from market open to market close. Many of the largest retail-oriented electronic brokers offer lower commission rates to customers they define as “active traders.” Publicly available information from the websites of Charles Schwab, Fidelity, TD Ameritrade and OptionsXpress all define “active trader” as someone who executes only a few options trades per month. The highest required trading activity to qualify as an active trader among these four firms was 35 trades per quarter.

discussed, established Professional order designations.²² In addition, basing the standard on the number of orders that are entered in listed options for a qualified account(s) assures that Professional account holders cannot inappropriately avoid the purpose of the rule by spreading their trading over multiple exchanges, and using an average number over a calendar month will prevent gaming of the 390 order threshold.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act²³ in general, and furthers the objectives of Section 6(b)(5) of the Act²⁴ in particular, in that it is designed 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by defining Professional and indicating that all Professional orders shall be appropriately marked by Participants.

Further, the Exchange believes that disparate rules regarding Professional order designation, and a lack of uniform application of such rules, do not promote the best regulation and may, in fact, encourage regulatory arbitrage. The Exchange believes that it is therefore prudent and necessary to have a Professional designation rule as is commonplace in the industry, particularly where BOX's routing broker-dealers (like other BOX Options Participants) are members of several exchanges that have rules requiring Professional order designations. The designation of Professional or Professional order would not result in any different treatment of

²² The similarity of BOX's proposed Professional definition to that of other options exchanges is important from the regulatory perspective, that is, from a desire to promote a national market system that minimizes regulatory arbitrage.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

such orders for purposes of the BOX Trading Rules concerning order protection or routing to away exchanges. That is, all non broker or dealer orders, including those that meet the definition of Professional orders, would continue to be treated as Public Customers for purposes of the BOX Rules regarding order protection and routing to away exchange. As such, the Exchange believes the proposed rule change is consistent with the Act.

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

No written comments were either solicited or received.

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

(a) This proposed rule change is filed pursuant to paragraph (A) of section 19(b)(3) of the Exchange Act²⁵ and Rule 19b-4(f)(6) thereunder.²⁶

(b) This 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 after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.²⁷

The Exchange believes that uniform rules in respect of Professional order designation promotes the best regulation. The Exchange believes that it is therefore prudent and necessary to have a

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f)(6).

²⁷ As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the 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.

Professional designation rule as is commonplace in the industry, particularly where BOX's routing broker-dealers (like other BOX Options Participants) are members of several exchanges that have rules requiring Professional order designations. Additionally, the Exchange notes that the proposed rule change does not impact any priority relationship for Professional orders as opposed to other BOX orders, nor does it impact the treatment of Professional orders under the BOX Rules regarding order protection or routing to away exchanges.

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.

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-2011-049 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-2011-049. 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 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-2011-049 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Elizabeth M. Murphy
Secretary

²⁸ 17 CFR 200.30-3(a)(12).