

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59311; File No. SR-BX-2009-007)

January 28, 2009

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Effective Date of the Rule Governing Exchange's Directed Order Process on the Boston Options Exchange

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> notice is hereby given that on January 26, 2009, 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 Exchange has designated the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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 extend the effective date of the amended rule governing the Exchange's Directed Order Process on the Boston Options Exchange ("BOX") from January 31, 2009 to May 29, 2009. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference

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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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

Room and also on the Exchange's Internet website at

[http://nasdaqtrader.com/Trader.aspx?id=Boston\\_Stock\\_Exchange](http://nasdaqtrader.com/Trader.aspx?id=Boston_Stock_Exchange).

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

On March 14, 2006, the Exchange proposed an amendment to the BOX Rules governing the Directed Order<sup>5</sup> process on BOX.<sup>6</sup> The Rules were amended to clearly state that the BOX Trading Host identifies to an Executing Participant ("EP") the identity of the firm entering a Directed Order. The amended rule was to be effective until June 30, 2006 ("Pilot Program"), while the Commission considered a corresponding Exchange proposal<sup>7</sup> to amend its rules to permit EPs to choose the firms from whom they will accept Directed Orders, while providing complete anonymity of the firm entering a Directed Order.

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<sup>5</sup> Capitalized terms not otherwise defined herein shall have the meanings prescribed within the BOX Rules.

<sup>6</sup> See Securities Exchange Act Release No. 53516 (March 20, 2006), 71 FR 15232 (March 27, 2006) (SR-BSE-2006-14).

<sup>7</sup> See Securities Exchange Act Release No. 53357 (February 23, 2006), 71 FR 10730 (March 2, 2006) (SR-BSE-2005-52).

On June 20, 2006, the Exchange proposed extending the effective date of the rule governing its Directed Order process on BOX from June 30, 2006 to September 30, 2006,<sup>8</sup> while the Commission continued to consider the corresponding Exchange proposal.

On September 11, 2006; January 16, 2007; July 2, 2007; and January 18, 2008 the Exchange proposed extending the effective date of the amended rule governing the Directed Order process on BOX from September 30, 2006 until January 31, 2007;<sup>9</sup> from January 31, 2007 until July 31, 2007;<sup>10</sup> from July 31, 2007 until January 31, 2008;<sup>11</sup> and from January 31, 2008 until January 31, 2009,<sup>12</sup> respectively, while the Commission considered the corresponding Exchange proposal to amend the BOX Rules to permit EPs to choose the firms from whom they will accept Directed Orders, while providing complete anonymity of the firm entering a Directed Order.

This filing from the Exchange again proposes extending the effective date of the amended rule governing its Directed Order process on BOX, from January 31, 2009 to May 29, 2009.<sup>13</sup> In the event the Commission reaches a decision with respect to the

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<sup>8</sup> See Securities Exchange Act Release No. 54082 (June 30, 2006), 71 FR 38913 (July 10, 2006) (SR-BSE-2006-29).

<sup>9</sup> See Securities Exchange Act Release No. 54469 (September 19, 2006), 71 FR 56201 (September 26, 2006) (SR-BSE-2006-38).

<sup>10</sup> See Securities Exchange Act Release No. 55139 (January 19, 2007), 72 FR 3448 (January 25, 2007) (SR-BSE-2007-01).

<sup>11</sup> See Securities Exchange Act Release No. 56014 (July 5, 2007), 72 FR 38104 (July 12, 2007) (SR-BSE-2007-31).

<sup>12</sup> See Securities Exchange Act Release No. 57195 (January 24, 2008), 73 FR 5610 (January 30, 2008) (SR-BSE-2008-04).

<sup>13</sup> In the event that the issue of anonymity in the Directed Order process is not resolved by May 29, 2009 the Exchange will consider whether to submit another filing under Rule 19b-4(f)(6) extending this rule and system process.

corresponding Exchange proposal to amend the BOX Rules before May 29, 2009, the amended rule governing the Directed Order process on the BOX will cease to be effective at the time of that decision.

## 2. Statutory Basis

The amended rule is designed to clarify the information contained in a Directed Order. This proposed rule filing seeks to extend the amended rule's effectiveness from January 31, 2009 to May 29, 2009. This extension will afford the Commission the necessary time to consider the Exchange's corresponding proposal to amend the BOX rule to permit EPs to choose the firms from whom they will accept Directed Orders while providing complete anonymity of the firm entering a Directed Order. Accordingly, the Exchange believes that this proposal is consistent with the requirements of Section 6(b) of the Act,<sup>14</sup> in general, and Section 6(b)(5) of the Act,<sup>15</sup> 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.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>14</sup> 15 U.S.C. 78f(b).

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

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)<sup>16</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>17</sup> As required under Rule 19b-4(f)(6)(iii),<sup>18</sup> the Exchange provided 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 the filing of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>19</sup> normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>20</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>21</sup> which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would continue to conform the BOX rules to BOX's current practice and clarify that Directed Orders on BOX are not anonymous without interruption.<sup>22</sup> Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of such 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](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2009-007 on the subject line.

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<sup>21</sup> Id.

<sup>22</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2009-007. 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, 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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-2009-007 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.<sup>23</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).