

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59654; File No. SR-BX-2009-008)

March 30, 2009

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving Proposed Rule Change Allowing Entry of Orders Into the PIP at a Price Matching the National Best Bid or Offer

I. Introduction

On February 9, 2009, 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 allow Exchange Options Participants to enter orders into the Price Improvement Period (“PIP”) at a price that matches the national best bid or offer (“NBBO”). The proposed rule change was published for comment in the Federal Register on February 23, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange’s PIP currently allows Options Participants to enter two-sided orders for execution at a price that improves upon the NBBO.<sup>4</sup> The customer side of the order (“PIP Order”) is submitted to the PIP with a matching guaranteed contra order (the “Primary Improvement Order”), equal to the full size of the PIP Order. Under the current rules of the Boston Options Exchange Group, LLC (“BOX”), the Primary Improvement Order must represent a higher bid (lower offer) than that of the NBBO at the time of the commencement of

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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. 59407 (February 13, 2009), 74 FR 8132.

<sup>4</sup> See BOX Rules Chapter V, Section 18(e).

the PIP. The PIP Order is then exposed to all Options Participants to give them an opportunity to participate in the trade at the proposed cross price or better.

The Exchange proposes to modify its rules to permit an Options Participant to enter a Primary Improvement Order into the PIP at a price that is equal to the NBBO at the time of the commencement of the PIP. In addition, the Exchange proposes that, at the commencement of the PIP, all quotes and orders on the BOX Book prior to the PIP Broadcast that are equal to or better than<sup>5</sup> the Primary Improvement Order price (i.e., the PIP start price), except any proprietary quote or order from the Options Participant who submitted the Primary Improvement Order,<sup>6</sup> will be immediately executed against the PIP Order in price/time priority.<sup>7</sup> At the conclusion of the PIP, the PIP Order will be matched against the best prevailing quote(s) or order(s) on BOX in accordance with the current PIP rule, except the Exchange proposes that any pre-PIP Broadcast proprietary quote or order from the Options Participant who submitted the Primary Improvement Order will not be executed against the PIP Order.<sup>8</sup>

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<sup>5</sup> BOX has clarified that there are two types of quotes/orders that could have a price better than the PIP start price: (1) an Auto Auction Order (“AAO”); and (2) an order that is in the process of being filtered by the BOX Trading Host pursuant to BOX Rules Chapter V, Section 16. Electronic mail from Wayne Pestone, Chief Legal Officer, Boston Options Exchange, dated March 30, 2009.

<sup>6</sup> These proprietary quotes or orders will continue to be available for execution with all other types of quotes and orders as currently permissible under BOX Rules.

<sup>7</sup> See proposed BOX Rules Chapter V, Section 18(e)(i). Orders on the BOX Book will include AAO Limit Orders on the BOX Book. The AAO will immediately execute against the PIP Order at the AAO Limit Order Price (i.e. the displayed price at the minimum trading increment).

<sup>8</sup> See proposed BOX Rules Chapter V, Section 18(e)(iii).

### III. Discussion

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 and, in particular, with Section 6(b)(5) of the Act,<sup>9</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 of, a free and open market and a national market system and, in general, to protect investors and the public interest.<sup>10</sup>

The Commission believes that the proposed rule change will continue to provide customers with an opportunity for price improvement over the NBBO.<sup>11</sup> The Commission notes that once a Primary Improvement Order is submitted into the PIP auction, the Primary Improvement Order may not be cancelled.<sup>12</sup> Therefore, the PIP Order submitted to the PIP auction will be guaranteed an execution price of at least the NBBO and, moreover, will be given an opportunity for execution at a price better than the NBBO. Further, BOX's current rules provide for broad participation in a PIP auction,<sup>13</sup> which should provide the opportunity for a

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<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</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>11</sup> The Commission notes that it also recently approved an ISE proposed rule change that permits ISE members to enter an order into the PIM at a price that is equal to the NBBO when the ISE's best bid or offer is inferior to the NBBO. See Securities Exchange Act Release No. 57847 (May 21, 2008), 73 FR 30987 (May 29, 2008) (SR-ISE-2008-29).

<sup>12</sup> See BOX Rules Chapter V, Section 18(e)(ii).

<sup>13</sup> See BOX Rules, Chapter V, Section 18(e)(i). Specifically, BOX's PIP permits market makers to submit competing orders for their own account and all non-market-maker members (referred to as "Order Flow Providers") to submit competing orders for their own account or for the account of public customers or non-market-maker broker-dealers.

meaningful, competitive auction. Moreover, the Commission believes that the proposal may encourage increased participation in the PIP by BOX members willing to trade with the PIP Order at the NBBO but not better than the NBBO. Increased participation would decrease the proportion of a PIP Order that would be internalized by the submitting Options Participant.

The Commission also notes that the proposal will maintain the priority of pre-existing orders on the BOX Book by providing that all quotes and orders on the BOX Book prior to the PIP Broadcast that are equal to or better than the Primary Improvement Order price will be immediately executed against the PIP Order in price/time priority (except any proprietary quote or order from the Options Participant that submitted the Primary Improvement Order). Further, the Commission notes that by precluding these proprietary orders and quotes from immediately executing against the PIP Order, the proposal is consistent with BOX rules that provide that an Options Participant may not execute as principal an order it represents as agent unless the agency order is given an opportunity to first interact with other trading interest.<sup>14</sup>

Accordingly, the Commission finds that the proposed rule change is consistent with the Act.

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<sup>14</sup> See BOX Rules, Chapter V, Section 17.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-BX-2009-008) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 17 CFR 200.30-3(a)(12).