

FINRA-2008-052) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59497; File No. SR-BX-2009-015]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change Relating to Order Handling and Exposure Periods on the Boston Options Exchange Facility

March 4, 2009.

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 February 27, 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 self-regulatory organization. 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

The Exchange proposes to amend certain Rules of the Boston Options Exchange (“BOX”) to reduce the order handling and exposure periods contained within the BOX Rules from three seconds to one second. 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 Web site 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 self-regulatory organization 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 the proposed rule change is to reduce the order handling and exposure periods from three seconds to one second in the Supplementary Material to Section 17 (Customer Orders and Order Flow Providers) and in Section 18 (The Price Improvement Period (“PIP”)) of Chapter V (Doing Business on BOX) of the BOX Rules. These sections require that orders entered into the BOX limit order book (“BOX Book”), or the PIP, respectively, are currently exposed to all market participants for three seconds before the orders are automatically executed, giving Options Participants (“Participants”) an opportunity to enter additional trading interests.

Chapter V of the BOX Rules outlines certain requirements related to order handling by BOX Options Participants and Market Makers. A Participant may not execute an order it represents as agent with a facilitation or a solicited order unless it complies with the order exposure requirements contained in Chapter V, Section 17, Supplementary Materials .02 and .03. Specifically, Supplementary Material .02 to Section 17 provides that an Options Participant may not cause the execution of an order it represents as agent on BOX through the use of orders it solicited unless the agency order is first exposed to the BOX Book for at least three seconds. Furthermore, Supplementary Material .03 to Section 17 provides that an order flow provider (“OFP”) may not execute as principal an order it represents as agent unless the OFP (i) exposes the order to the BOX Book for three seconds; (ii) has been bidding or offering on BOX for at least three seconds prior to receiving an agency order that is executable against such bid or offer; or (iii) sends the agency order to the PIP or Universal Price Improvement Period (“UPIP”). Under the proposal, these time periods would be reduced to one second.

The Exchange is also proposing to reduce the PIP in Section 18 of Chapter V from three seconds to one second. Currently the PIP allows Participants to designate certain customer orders for

price improvement and submit such orders to the PIP with a matching contra order (“Primary Improvement Order”). Once an order is submitted to the PIP, BOX broadcasts a message to Options Participants that commences the PIP and (1) states that a Primary Improvement Order has been processed; (2) contains information concerning series, size, price and side of the market of the order; and (3) states when the PIP will conclude. This proposal would reduce the PIP to one second.

When approving the existing three second order handling and exposure periods, the Commission concluded that, in the electronic environment of BOX, reducing these time periods to three seconds was fully consistent with the electronic nature of the BOX market.<sup>3</sup> BOX recognized that three seconds would not be long enough to allow human interaction with orders. Rather, Participants have been operating with sufficiently automated electronic systems so that they can react and respond to orders in a meaningful way within three seconds and BOX fully anticipates that this will continue within the proposed one second time frame. BOX believes that further reducing its order handling and exposure periods from three seconds to one second will benefit all market participants. BOX believes it is in all participants’ best interests to minimize the time of the exposure period while continuing to allow Participants adequate time to electronically respond, as both the order being exposed and Participants responding are subject to market risk during the exposure period. Indeed, most participants wait until the end of the last second of the current three second period before responding to exposed orders so as to minimize market risk. BOX believes that one second will continue to provide market participants with sufficient time to respond, compete, and provide price improvement for orders and will provide investors and other market participants with more timely executions, thereby reducing their market risk.

Recently, BOX distributed a survey to Participants that regularly participate in the PIP or would otherwise be affected by this proposal. To substantiate that its Participants could receive, process, and communicate a response back to BOX within one second, the survey asked Participants to identify (i) approximately how many milliseconds it takes for an order broadcast from BOX

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 53854; (May 24, 2006), 71 FR 30975 (May 31, 2006) (SR-BSE-2006-23).

to reach their systems; (ii) approximately how many milliseconds it takes their systems to generate a response to an order broadcast; (iii) approximately how many milliseconds it takes their response to an order broadcast to reach BOX; and (iv) whether or not a reduction of the PIP and facilitation and solicitation order exposure time periods to one second would impair their ability to participate in BOX PIPs or facilitation or solicitation orders. The survey results indicate that the time it takes a message to travel between BOX and its Participants typically is not more than fifty milliseconds each way.<sup>4</sup> The survey also indicated that it typically takes not more than ten milliseconds for Participant systems to process the information and generate a response. Thus, the survey indicated that it typically takes at most 110 milliseconds for Participants to receive, process, and respond to broadcast messages related to the PIP or facilitation or solicitation related broadcasts and for such responses to reach BOX. Additionally, Participants indicated that reducing the exposure period to one second would not impair their ability to participate in orders executed through the PIP or facilitation or solicitation orders.<sup>5</sup> The Exchange believes that this information provides additional support for its assertion that reducing the exposure periods from three seconds to one second will continue to provide Participants with sufficient time to ensure effective interaction with orders.

BOX Participants are able to respond to PIP orders in less than one second and this rule change could provide additional customer orders an opportunity for price improvement because it will reduce the market risk for Participants that are required to guarantee an execution at the National Best Bid/Offer ("NBBO") or better. Accordingly, BOX does not believe it is necessary or beneficial to the orders being exposed to continue to subject them to market risk for a full three seconds.

After Commission approval of the proposal, and at least one week prior to implementation of the rule change, BOXR will issue a regulatory circular to Participants. The regulatory circular

<sup>4</sup> Seventeen firms responded to the survey. Thirteen of the seventeen responded to the specific timing questions.

<sup>5</sup> All of the thirteen Participants that responded to the specific timing questions, and two of the four Participants that did not answer the specific timing questions, indicated that reducing the exposure time periods to one second would not impair their ability to participate in BOX PIPs or facilitation or crossing orders.

will inform Participants of the implementation date of the reduction of the order handling and exposure periods from three seconds to one second. This will give Participants an opportunity to make any necessary modifications to coincide with the implementation date.

## 2. Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(5) of the Act,<sup>7</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 of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change will provide investors with more timely execution of their options orders, while ensuring that there is an adequate exposure of all crossing orders on BOX.

### 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

- (A) By order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed

rule change prior to the 30th day after the date of publication of the notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

## 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-2009-015 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-2009-015. 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, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE., Washington, DC 20549. 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-2009-015 and should

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

be submitted on or before March 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59510; File No. SR-NYSE-2009-21]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Temporarily Suspend Its Price Continued Listing Standard and Extend the Period of the Temporary Lowering of Its Average Global Market Capitalization Continued Listing Standard

March 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 26, 2009, New York Stock Exchange, LLC (the "NYSE" or 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 this proposal eligible for immediate effectiveness pursuant to Rule 19b-4(f)(6)<sup>3</sup> under the Exchange Act. 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 (i) suspend until June 30, 2009, the application of its price criteria for capital and common stock set forth in Section 802.01C of the Exchange's Listed Company Manual (the "Manual"), and (ii) extend until the same date the temporary lowering of the average market capitalization requirement of Section 802.01B of the Manual. The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary and

at the Commission's Public Reference room.

#### 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 NYSE 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

In recent months, the U.S. and global equities markets have experienced extreme volatility and a precipitous decline in trading prices of many securities. As a consequence of these market conditions, the Exchange has experienced an unusually high number (as compared to historical levels) of listed companies having stock prices that have either fallen below the Exchange's \$1.00 price requirement for capital and common stock set forth in Section 802.01C of the Manual (*i.e.*, the average closing price of their stock has fallen below \$1.00 over a consecutive 30 trading day period)<sup>4</sup> or having an average closing stock price that is below \$2.00. In response, the Exchange

<sup>4</sup> Section 802.01C provides that a company will be considered to be below compliance standards if the average closing price of a security as reported on the consolidated tape is less than \$1.00 over a consecutive 30 trading day period. Once notified, the company must bring its share price and average share price back above \$1.00 by six months following receipt of the notification. A company is not eligible to follow the cure procedures outlined in Sections 802.02 and 802.03 with respect to this criteria. The company must, however, notify the Exchange, within 10 business days of receipt of the notification, of its intent to cure this deficiency or be subject to suspension and delisting procedures. In the event that at the expiration of the six-month cure period, both a \$1.00 share price and a \$1.00 average share price over the preceding 30 trading days are not attained, the Exchange will commence suspension and delisting procedures. Notwithstanding the foregoing, if a company determines that, if necessary, it will cure the price condition by taking an action that will require approval of its shareholders, it must so inform the Exchange in the above referenced notification, must obtain the shareholder approval by no later than its next annual meeting, and must implement the action promptly thereafter. The price condition will be deemed cured if the price promptly exceeds \$1.00 per share, and the price remains above the level for at least the following 30 trading days.

proposes to suspend the application of the stock price requirement of Section 802.01C until June 30, 2009. This proposed suspension will provide temporary relief to companies in response to the extreme volatility and a precipitous decline in trading prices of many securities experienced in the U.S. and global equities markets, which the Commission had acknowledged constituted a threat to the fair and orderly functioning of the securities markets and could lead to a crisis of confidence among investors regarding the viability of companies whose stock prices have declined significantly.<sup>5</sup>

Under the proposed suspension of the Exchange's stock price continued listing standard, companies will not be notified of new events of noncompliance with the price requirement during the suspension period. Companies that are in a compliance period at the time of commencement of the suspension<sup>6</sup> will still be deemed to have regained compliance during the rule suspension period if, at the expiration of their respective six-month cure periods established prior to the commencement of the rule suspension, they have a \$1.00 closing share price on the last trading day of the period and a \$1.00 average share price based on the preceding 30 trading days. In addition, any company that is in a compliance period at the time of commencement of the rule suspension can return to compliance during the suspension if at the end of any calendar month during the suspension such company has a \$1.00 closing share price on the last

<sup>5</sup> See, e.g., Securities Exchange Act Release No. 58588 (September 18, 2008), 73 FR 55174 (September 24, 2008) ("The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Given the importance of confidence in our financial markets as a whole, we have also become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.").

<sup>6</sup> The Exchange notes that there are not currently any companies in the Exchange's delisting appeal process that have been sent a delisting notification for noncompliance with the dollar price continued listing requirement. The Exchange also notes that it would continue to identify companies in a compliance period as below compliance for price, including by continuing to append an indicator to the company's stock ticker to identify it as being below compliance for price and including the company on a list of companies that are below compliance for price posted to the Exchange's Web site, unless the company regains compliance during the suspension. A company would continue to be subject to delisting for failure to comply with other listing requirements.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).