

trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. Eastern Time each trading day.

## 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>15</sup> that an exchange have rules that are 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, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

### *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 that is 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 solicited or received with respect to 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 self-regulatory organization consents, the Commission will:

(A) By order approve the 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 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-NYSEArca-2009-22 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-NYSEArca-2009-22. 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 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at <http://www.nyse.com>. 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-NYSEArca-2009-22 and should be submitted on or before April 27, 2009.

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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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59654; File No. SR-BX-2009-008]

### **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**

March 30, 2009.

#### **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

<sup>16</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>15</sup> 15 U.S.C. 78f(b)(5).

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 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>

## 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 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.

## 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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59663; File No. SR-NASDAQ-2009-018]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions and Restructuring of the NASDAQ Listing Rules

March 31, 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 March 12, 2009, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described

<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).

<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).

<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.

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

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

<sup>16</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.