

concessions. The proposed title of FINRA Rule 5160 would be "Disclosure of Price and Concessions in Selling Agreements."

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the disclosures required by the proposed rule are important in ensuring the integrity of the public offering process. In addition, the rule being adopted as part of the Consolidated FINRA Rulebook previously has been found to meet the statutory requirements, and FINRA believes this rule has since proven effective in achieving the statutory mandates.

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

FINRA 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.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

## 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 such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## 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-FINRA-2009-086 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-FINRA-2009-086. 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<sup>8</sup>, 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 .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 also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that that may be withheld from the public in accordance with the provisions of 5 U.S.C. you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2009-086 and should be submitted on or before January 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61169; File No. SR-BX-2009-078]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BOX Trading Rules Chapters III and XIV

December 15, 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 December 1, 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 Exchange filed the proposed 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 from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add BOX Trading Rules Chapter III, Section 8(e) and Chapter XIV (Index Rules), Section 7(c) (Exemptions from Position Limits) to allow Options Participants to rely upon exemptions granted by other exchanges; amend Chapter III, Section 9 (Exercise Limits) to clarify that exercise limit exemption [sic] will apply to all Options Participants; and add Chapter III, Section 10 (Reports Related to Position Limits) to clarify how an Options Participant may aggregate its long or short positions for purposes of filing its reports of these limits with the Exchange. 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

<sup>9</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> 15 U.S.C. 78s(b)(3)(A).

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

<sup>8</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXB/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

##### Exercise Limit Exemptions

The Exchange proposes to modify Chapter III, Section 9 (Exercise Limits) to change "Market Maker" to "Options Participant", in order to provide that all Options Participants may utilize applicable exemptions granted under Section 8 regarding an Exercise Limit. Other exchanges, such as the International Securities Exchange ("ISE"), allow all members to utilize approved exempted position limit [sic] in calculating an option's exercise limits.<sup>5</sup>

##### Exemptions Granted by Other Exchanges

As proposed, Chapter III, Section 8 and Chapter XIV, Section 7, will allow Options Participants to rely upon exemptions granted by other exchanges. Specifically, proposed Chapter III, Section 8(e) and proposed Chapter XIV, Section 7(c) would provide that an Options Participant may rely upon any available exemptions from applicable position limits that are granted by another options exchange for any options contract traded on the Exchange, provided that the Options Participant provides the Exchange either with a copy of any written exemption issued by another options exchange or with a written description of any exemption issued by another options exchange that is not in writing, where such description contains sufficient

<sup>5</sup> See Securities Exchange Act Release No. 34-60500 (August 13, 2009), 74 FR 42345 (August 21, 2009) (SR-ISE-2009-62); See also Chicago Board Options Exchange ("CBOE") Rule 4.12, NYSEAmex, LLC ("AMEX") Rule 905(a).

detail for BOXR staff to verify the validity of that exemption with the issuing options exchange. In addition, the Options Participant must fulfill all conditions precedent for such exemption and comply at all times with the requirements of such exemption with respect to the Options Participant's trading on BOX. This proposed change is based on Chapter III, Section 8 and Chapter XIV Section 8 of Options Rules of the NASDAQ Stock Market, LLC ("NOM") and recently filed proposals by NYSE ARCA, Inc. ("ARCA") and NYSEAmex which were effective upon filing.<sup>6</sup>

The Exchange notes that position limits are similar across options exchanges. Because Options Participants frequently have membership and/or trading privileges on other exchanges, it is important that ad hoc position limit exemptions granted by other options exchanges ("exemption grants") are available to Options Participants to the extent that such exemption grants are reduced to writing and verifiable by BOXR staff pursuant to the proposed changes to Chapter III Section 8(e) and Chapter XIV, Section 7(c). The proposed rule change does not give the Exchange the ability to expand the exemption grants but only to recognize the exemption so that the position limit process would be the same across the exchanges.

The Exchange believes that by adding uniformity and predictability to the position limit process, the proposed rule change should be beneficial to the Exchange, its Options Participants, and their customers. Moreover, the proposed rule change should promote competition by allowing trades across options exchanges that are similar with respect to position limits.<sup>7</sup>

#### Reports Related to Position Limits

As proposed, Supplementary Material .01 to Chapter III, Section 10, will specify that when calculating an aggregate long or short position in options, Options Participants need to combine (i) long positions in put options with short positions in call options, and (ii) short positions in put options with long positions in call options.

<sup>6</sup> See Securities Exchange Act Release No. 34-61033 (November 19, 2009), 74 FR 62614 (November 30, 2009) (SR-NYSEArca-2009-100); Securities Exchange Act Release No. 34-61034 (November 19, 2009), 74 FR 62625 (November 30, 2009) (SR-NYSEAmex-2009-80).

<sup>7</sup> The Exchange notes that all reporting requirements pursuant to Chapter III, Section 10 (Reports Related to Position Limits) remain in force.

#### 2. Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>8</sup> in general, and Section 6(b)(5) of the Act,<sup>9</sup> 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, 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. The proposed rule change will promote consistency between the BOX Rules and those of other options exchanges with respect to position limit and exercise limit procedures.

### 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

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. As such, the Exchange requests that the Commission waive the 30-day operative delay period for "non-controversial" proposals and make the proposed rule change effective and operative upon filing.<sup>10</sup> The proposed rule change is based upon the rules of other options exchanges, and as such is not in any way novel or controversial. The Commission believes that waiving the

<sup>8</sup> 15 U.S.C. 78f(b).

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

<sup>10</sup> 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 at least five business days before doing so.

30-day operative delay is consistent with the protection of investors and the public interest because such waiver will bring uniformity and predictability to the position limit process. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.<sup>11</sup>

At any time within 60 days of the filing of the 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-2009-078 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-2009-078. 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,<sup>12</sup> 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-2009-078 and should be submitted on or before January 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61168; File No. SR-FINRA-2009-090]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating To Adopt FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders) in the Consolidated FINRA Rulebook

December 15, 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 December 10, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to adopt NASD Interpretive Material (IM) 2110-2

(Trading Ahead of Customer Limit Order) and NASD Rule 2111 (Trading Ahead of Customer Market Orders) with significant changes in the Consolidated FINRA Rulebook as new FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders).

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, on the Commission's Web site at <http://www.sec.gov>, at the principal office of FINRA, 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, FINRA 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. FINRA 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

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),<sup>3</sup> FINRA is proposing to adopt NASD IM-2110-2 (Trading Ahead of Customer Limit Order) and NASD Rule 2111 (Trading Ahead of Customer Market Orders) with significant changes in the Consolidated FINRA Rulebook as new FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders).

###### Background

IM-2110-2 generally prohibits a member from trading for its own account in an NMS stock, as defined in Rule 600(b)(47) of SEC Regulation NMS, or an OTC equity security (e.g., OTCBB and pink sheets securities) at a price

<sup>3</sup> The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

<sup>11</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/>.

<sup>13</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.