

otherwise qualify for an exception from any item under Rule 862. The Commission believes this provision will make clear that any past practice or interpretation that may have permitted a broker vote on an executive compensation matter, under existing rules, will no longer be applicable and is superseded by the newly adopted provisions.

Finally, the Commission notes that the change to reflect that Phlx rules prohibit not only the giving of a proxy, but also the authorization of the proxy, should help to clarify the intent of Phlx proxy rules and is consistent with the requirements of Section 6 of the Act.

Based on the above, the Commission believes that the Phlx's proposal will further the purposes of Sections 6(b)(5) and 6(b)(10) of the Act by ensuring that brokers, holding shares on behalf of beneficial owners, are not voting uninstructed shares on matters relating to executive compensation, which should enhance corporate accountability to shareholders. The rule filing should also serve to fulfill the Congressional intent in adopting Section 6(b)(10) of the Act.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. As noted above, Section 6(b)(10) of the Act, enacted under Section 957 of the Dodd-Frank Act, does not provide for a transition phase, and requires rules of national securities exchanges to prohibit, among other things, broker voting on executive compensation. The Commission believes that good cause exists to grant accelerated approval to the Exchange's proposal, because it will conform Phlx Rule 862 to the requirements of Section 6(b)(10) of the Act. Moreover, the Commission notes that the proposed changes are based on NYSE Rule 452.<sup>18</sup>

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-Phlx-2011-03) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64120; File No. SR-BX-2011-015]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter XI of the BOX Trading Rules To Harmonize Them With Rules of the Financial Industry Regulatory Authority, Inc. and Other Options Exchanges

March 24, 2011.

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 11, 2011, NASDAQ OMX BX, Inc. ("Self-Regulatory Organization" or "SRO") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the SRO. The SRO has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of the filing. 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 SRO proposes to amend Chapter XI of the Boston Options Exchange Group, LLC ("BOX") Trading Rules to harmonize them with Rules of the Financial Industry Regulatory Authority, Inc. ("FINRA") and other options exchanges. The text of the proposed rule change is available from the principal office of the SRO, at the Commission's Public Reference Room and also on the SRO'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 SRO 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 SRO 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

Pursuant to Rule 17d-2 under the Act, the Exchange, BATS Exchange, Inc., Chicago Board Options Exchange, Inc. ("CBOE"), C2 Options Exchange, Incorporated, the International Securities Exchange, LLC, FINRA, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., The NASDAQ Stock Market LLC, and NASDAQ OMX PHLX, Inc. (collectively the "Options Self Regulatory Council"), entered into an agreement, dated February 9, 2010, (the "17d-2 Agreement") to allocate regulatory responsibility for common rules. By this proposal, the SRO seeks to standardize certain rules with FINRA's rules pursuant to the terms of the 17d-2 Agreement.

First, the SRO proposes to amend its confirmation rule, BOX Rule Chapter XI, Section 13, to add a requirement that confirmations disclose whether the transaction was an opening or closing transaction to harmonize the rule with FINRA Rule 2360(b)(12) and the rule of other options exchanges.<sup>4</sup>

Second, in order to maintain substantial similarity with FINRA rules, the SRO proposes to amend BOX Rule Chapter XI, Section 20 to clarify that the prohibition against guarantees also applies to persons associated with a Participant and to delete the language of BOX Rule Chapter XI, Section 21 related to profit sharing of a customer account, and replace it with the language of FINRA Rule 2150(c),<sup>5</sup> Sharing in Accounts; Extent Permissible. FINRA Rule 2150(c) contains the same prohibition against sharing in accounts as BOX Rule Chapter XI, Section 21, but with additional limited exceptions. The general prohibition contained in BOX Rule Chapter XI, Section 21 against sharing in the profits or losses of a customer account is currently covered by the 17d-2 Agreement. However, the limited exceptions of FINRA Rule 2150(c) are not covered by the 17d-2 Agreement. The Exchange proposes to add those limited exceptions to BOX Rule Chapter XI, Section 21 to harmonize its rule with the FINRA rule and add those limited exceptions

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> See *supra* note 7.

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</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).

<sup>4</sup> As noted other options exchanges have similar rules, see e.g. CBOE Rule 9.11.

<sup>5</sup> *Id.* at Rule 9.18.

pursuant to the 17d-2 Agreement. The portion of the rule prohibiting the guarantee of a customer against loss is being amended to clarify that it applies not only to Order Flow Providers but also to persons associated with Participants.

Third, the SRO proposes to amend its options communication rule, BOX Rule Chapter XI, Section 24, by deleting the term "market letters" in the definition of "sales literature" and adding the term "market letters" to the definition of "correspondence" to harmonize the rule with FINRA Rule 2220 and NASD Rule 2210(a)(2).<sup>6</sup>

## 2. Statutory Basis

The SRO believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>7</sup> in general, and Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to prevent fraudulent and manipulative acts, 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. Specifically, the proposed rule changes, by harmonizing BOX Trading Rules with FINRA Rules and the rules of other options exchanges, would provide Participants with a clearer regulatory scheme. The SRO further notes that the proposed rule changes are neither novel nor controversial and are modeled on existing rules.

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

The SRO 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 SRO has neither solicited nor received comments on the proposed rule change.

## III. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

This proposed rule change is filed pursuant to paragraph (A) of section

19(b)(3) of the Exchange Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> 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. Because the rule change is based upon rules in place at FINRA and other options exchanges, and does not present any novel issues, and is intended to maintain consistency among the exchanges, the SRO 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>11</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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-BX-2011-015 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.

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</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, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

All submissions should refer to File Number SR-BX-2011-015. 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 Web site viewing and printing in the Commission's Public Reference Room, on official 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 SRO. 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-2011-015 and should be submitted on or before April 20, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## DEPARTMENT OF STATE

[Public Notice: 7387]

### 30-Day Notice of Proposed Information Collection: Form DS-1998E, Foreign Service Officer Test Registration Form, OMB Control Number 1405-0008

**ACTION:** Notice of request for public comment and submission to OMB of proposed collection of information.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for

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

<sup>6</sup> *Id.* at Rule 9.21.

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).