

be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.000 (4) percent for the April–June quarter of FY 2010.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

**Grady B. Hedgespeth,**

*Director, Office of Financial Assistance.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61805; File No. SR-BX-2010-022]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Price Improvement Period

March 31, 2010.

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 25, 2010, 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 Exchange. 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 amend Chapter V, Section 18 (The Price Improvement Period (“PIP”)) of the Rules of the Boston Options Exchange Group, LLC (“BOX”). 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/>.

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

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

#### 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 Exchange 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 Exchange 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 PIP currently allows Initiating Participants <sup>3</sup> to enter two-sided orders for execution with the possibility of receiving a price that improves upon the National Best Bid or Offer (“NBBO”) (“price improvement”). The customer side of these orders (“PIP Order”) is exposed <sup>4</sup> to Options Participants to give them an opportunity to compete for allocations in the PIP by entering orders (“Improvement Orders”) at the proposed cross price or better. This provides an opportunity for the PIP Order to receive price improvement. PIP Orders are submitted to BOX with a matching guaranteed contra order (“Primary Improvement Order”), equal to the full size of the PIP Order. The Primary Improvement Order currently must represent a single price (“Single-Priced Primary Improvement Order”) <sup>5</sup> that is equal to or better than that of the NBBO at the time of the commencement of the PIP.

The purpose of this proposed rule change is to add an auto-match functionality within the PIP for the Initiating Participant to submit a Primary Improvement Order that will automatically match both the price and size of all competing quotes and orders at any price level achieved during the PIP auction or only up to a designated limit price (“Max Improvement Primary

<sup>3</sup> Options Participants, both OFPs and Market Makers, who submit PIP Orders for price improvement.

<sup>4</sup> BOX commences a PIP by broadcasting a message to all Options Participants that (1) states that a Primary Improvement Order has been processed; (2) contains information concerning series, size, PIP Start Price and side of the market, and; (3) states when the PIP will conclude (“PIP Broadcast”).

<sup>5</sup> Presently, a Single-Priced Submission is the only manner in which an Options Participant may start a PIP.

Improvement Order”). Either the Single-Priced Primary Improvement Order or the Max Improvement Primary Improvement Order will designate the PIP auction start price (“PIP Start Price”), which shall be equal to or better than the NBBO at the time of commencement of the PIP. With a Max Improvement Primary Improvement Order the Initiating Participant does not respond at all, but instead must honor the prices set forth by the competing orders, including booked unrelated orders, received from other Options Participants. After the commencement of a PIP, the Initiating Participant would not be able to cancel or modify the Max Improvement Primary Improvement Order. In this case, the Initiating Participant would not have control over the prices at which it receives an allocation at the conclusion of the PIP auction.

Under the proposal, at the conclusion of the PIP, the Max Improvement Primary Improvement Order shall be allocated its full size at each price level where there are competing quotes or orders, except where restricted by any designated max improvement limit price, until a price level is reached where the balance of the PIP Order can be fully executed. Only at such price level will the Initiating Participant retain priority for the greater of one contract or 40% of the remaining size of the PIP Order.

The following example illustrates how the proposed PIP auto-match functionality will operate for the Max Improvement Primary Improvement Order:

At the commencement of the PIP the NBBO is 2.00 (bid)—2.10 (offer). The Initiating Participant submits to the PIP a customer order to sell 155 contracts at \$2.01 (“the PIP Order”) while simultaneously submitting a guaranteed contra Max Improvement Primary Improvement Order with a PIP Start Price of \$2.01 (bid) and a designated max improvement limit price of \$2.04 (bid). During the PIP auction the following competing orders were received from Options Participants: PIP Participant A: \$2.05 (bid) for 5 contracts (a booked unrelated order); PIP Participant B: \$2.03 (bid) for 15 contracts; PIP Participant C: \$2.02 (bid) for 10 contracts; and PIP Participant D: \$2.01 (bid) for 155 contracts.

The following allocations shall occur at the conclusion of the PIP auction:

- Participant A is allocated 5 contracts at \$2.05.
  - Remaining size of PIP Order is 150.
  - Note that Initiating Participant is not allocated any quantity at this price level because it exceeds the Max Improvement Primary Improvement Order designated limit price of \$2.04.
- Initiating Participant and Participant B are each allocated 15 contracts at \$2.03.

- Remaining size of PIP Order is 120.
- Initiating Participant *and* Participant C are each allocated 10 contracts at \$2.02.
- Remaining size of PIP Order is 100.
- Initiating Participant is allocated 40 contracts at \$2.01 (40% of the remaining quantity of 100 contracts) and Participant D is allocated 60 contracts (balance of the remaining quantity of the PIP Order after the Initiating Participant's allocation at this price level).

BOX's PIP allows for broad participation in its competitive auction by all types of market participants (*e.g.* Public Customers, Broker Dealers and Market Makers).<sup>6</sup> All Options Participants are able to receive the PIP Broadcasts and may respond by submitting competing Improvement Orders. All PIP Orders entered into the PIP will continue to be broadly exposed in the auction before the Initiating Participant can execute against the PIP Order via the Max Improvement Primary Improvement Order.

BOX notes that when the Initiating Participant selects the Max Improvement Primary Improvement Order prior to the start of the auction, the available liquidity at improved prices would be automatically doubled and competitive final pricing would be out of the Initiating Participant's control. The Exchange believes that the proposal, if approved, will increase competition in the PIP auction, will provide more options contracts with price improvement and incent Options Participants to initiate more such Max Improvement PIP auctions. Increases in the number of PIP auctions initiated by BOX Options Participants will directly correlate with an increase in the number of customer orders that are provided with the opportunity to receive price improvement over the NBBO.

The Exchange also notes that a similar auto-match function is currently in place on at least one other options exchange.<sup>7</sup>

The Exchange represents that BOX shall provide the Commission with the following data: The percentage of all BOX trades effected through the PIP in which the Initiating Participant has submitted a Max Improvement Primary Improvement Order with a limit price

<sup>6</sup> The Exchange notes that no changes to the priority of Public Customer Orders within the PIP auction are being proposed.

<sup>7</sup> See CBOE Rule 6.74A Automated Improvement Mechanism ("AIM"). See also Securities Exchange Act Release No. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) (SR-CBOE-2005-60) (Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to an Automated Improvement Mechanism).

and the percentage without a limit price, and the average amount of price improvement provided to the PIP Order when the Initiating Participant has submitted a Max Improvement Primary Improvement Order with a limit price and the average without a limit price, versus the average amount of price improvement provided to the PIP Order when the Initiating Participant has chosen a Single-Priced Primary Improvement Order.

After effectiveness of the proposal, and at least one week prior to implementation of the rule change, BOXR will issue a regulatory circular to Options Participants. The regulatory circular will inform Options Participants of the implementation date of the Max Improvement function. This will give Options Participants an opportunity to make any necessary modifications to coincide with the implementation date.

## 2. Statutory 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 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 for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposal, if approved, will result in double the liquidity available at improved prices with competitive final pricing out of the Initiating Participant's control, thus increasing competition in the PIP auction and providing more options contracts with price improvement. As a result of the increased opportunity for price improvement, the Exchange believes that Options Participants will be incented to initiate more such Max Improvement PIP auctions. Increases in the number of PIP auctions initiated by BOX Options Participants will directly correlate with an increase in the number of customer orders that are provided with the opportunity to receive price improvement over the NBBO.

## 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>12</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay because the changes to the PIP auction will allow immediate increases in the liquidity available at improved prices. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.<sup>14</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.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. The Exchange has satisfied this requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> For 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>8</sup> 15 U.S.C. 78f(b).

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

#### 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-2010-022 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-2010-022. 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>15</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 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. Copies of the 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-2010-022 and should be submitted on or before April 27, 2010.

<sup>15</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/rules/sro.shtml>.

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. 34-61808; File No. SR-FINRA-2010-005]**

#### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Repeal Incorporated NYSE Rule 405(4) (Common Sales Accounts)**

March 31, 2010.

On January 21, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change. The proposed rule change was published for comment in the **Federal Register** on February 25, 2010.<sup>3</sup> The Commission received no comments on the proposed rule change.

#### **I. Description of the Proposal**

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),<sup>4</sup> FINRA proposed to repeal NYSE Rule 405(4) (Common Sales Accounts).<sup>5</sup>

NYSE Rule 405(4) (Common Sales Accounts) required proper supervision of registered representatives handling common sales accounts. The rule provided that a member might facilitate the isolated liquidation of securities valued at \$1,000 or less registered in the name of an individual who does not

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

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

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

<sup>3</sup> See Exchange Act Release No. 61543 (February 18, 2010); 75 FR 8770 (February 25, 2010).

<sup>4</sup> The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from the New York Stock Exchange ("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>5</sup> For convenience, the Incorporated NYSE Rules are referred to as the "NYSE Rules."

have an account, and which are not part of any distribution, through a common sales account set up for the specific purpose of handling such sales. The rule further provided that such sales might be effected on behalf of the customer without requiring the member to send a periodic customer account statement to the individual as otherwise generally required, provided the following conditions were satisfied: (1) The customer was identified as the individual in whose name the securities are registered; (2) the securities were received by the member, at or prior to the time of the entry of the order, in the exact amount to be sold in good delivery form; (3) a confirmation was sent to the customer; (4) all proceeds of such sales were paid out on or immediately following settlement date; and (5) a record was made in the common sales account that includes certain customer-specific information.

FINRA believed that the rule as written might raise potential investor protection concerns. The term "isolated" was not defined.<sup>6</sup> Further, NYSE Rule 405(4) permitted a member to effect sales of securities for customers without expressly requiring prior customer consent and without the need to send periodic account statements to the customer. For these reasons, FINRA proposed to eliminate NYSE Rule 405(4) and not adopt its content into the Consolidated FINRA Rulebook.<sup>7</sup>

<sup>6</sup> NYSE Rule 405(4) was adopted by the NYSE in the late 1960s. In 1977, the NYSE proposed amendments to Rule 405(4) to define the term "isolated" to mean "not exceeding five \$2,000 transactions during any twelve-month period unless otherwise approved by the NYSE," and to allow unsolicited purchases as well as sales of securities. In late 1977, the SEC instituted proceedings to determine whether to disapprove the proposed rule change and identified the potential grounds for disapproval. See Securities Exchange Act Release No. 14143 (November 7, 1977) (Order Instituting Proceedings to Determine Whether Proposed Changes to Rule 405 Should be Disapproved; File No. SR-NYSE-76-34). The SEC expressed concern that "execution of such transactions, and in particular of purchases [as proposed], in the common purchase and sale account may permit opportunities for fraudulent and manipulative acts or practices[.]" In February 1978, the NYSE withdrew the filing. See Securities Exchange Act Release No. 14630 (April 3, 1978) (Order Approving Withdrawal of NYSE's Proposed Changes to Rule 405; File No. SR-NYSE-76-34).

<sup>7</sup> FINRA notes that in the event a member may seek permission not to send customer account statements under certain limited circumstances, proposed FINRA Rule 2231, which relates to customer account statements, would authorize FINRA to exempt members from the provisions of such rule, including the requirement to deliver periodic account statements, pursuant to the Rule 9600 Series. See Securities Exchange Act Release No. 59921 (May 14, 2009); 74 FR 23912 (May 21, 2009) (Notice of Filing; File No. SR-FINRA-2009-028).