

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4<sup>11</sup> thereunder, because, as provided in (f)(2), it changes “a due, fee or other charge applicable only to a member” (known on the Exchange as an ETP Holder). 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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSX-2012-04 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-NSX-2012-04. This file number should be included on the subject line if email 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, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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 No. SR-NSX-2012-04 and should be submitted on or before March 30, 2012.

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

Kevin M. O’Neill,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66512; File No. SR-BX-2012-011]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter V, Section 26 of the BOX Rules

March 5, 2012.

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 22, 2012, NASDAQ OMX BX, Inc. (“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 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 26 (Limitation of Liability) 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/>.

#### 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

Chapter V, Section 26 of the BOX Trading Rules provides, in general, that neither the Exchange, BOXR, BOX, nor any of their respective affiliates with regard to BOX will be liable to BOX Options Participants for any losses arising from the use of BOX or the BOX Trading Host. The Exchange is proposing to codify provisions within the BOX Trading Rules that permit BOX, for customer service reasons, to compensate an Options Participant, within specified limits as proposed, for certain identified losses. Additionally, the Exchange is proposing to clarify certain provisions within Section 26 regarding to whom it is applicable.

Accordingly, the Exchange proposes to amend Chapter V, Section 26 of the BOX Trading Rules to (1) clarify certain provisions within Section 26 regarding to whom the liability limitation applies; (2) codify provisions within the BOX Rules to permit BOX to compensate Participants for losses under certain circumstances; and (3) establish the maximum amount of such compensation that BOX may provide during a calendar month pursuant to Section 26.

The Exchange proposes to clarify Section 26(a) by adding the respective directors, officers, committee members, employees, contractors, agents, and other persons acting on the behalf of the Exchange, BOXR, BOX and any of their respective affiliates to the paragraph that identifies the persons to which the limitation of liability is applicable. The Exchange proposes that “Exchange Related Persons and/or Entities” be defined to include the Exchange, BOXR,

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

<sup>11</sup> 17 CFR 240.19b-4.

<sup>12</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.

BOX, and any of their respective affiliates, and their respective directors, officers, committee members, employees, contractors, and agents or other persons acting on their behalf.<sup>3</sup> The Exchange proposes corresponding changes in Sections 26(a)(ii), 26(a)(iii), and in Sections 26(b), 26(c) and 26(d) to add references to the defined term Exchange Related Persons and/or Entities. Additionally, the Exchange proposes to add terrorism to the list of items beyond the control of Exchange Related Persons and/or Entities for which liability is limited.

The Exchange proposes adding new Section 26(e) to establish, subject to the express limits set forth in Section 26(e)(1) through 26(e)(3), that BOX may compensate Options Participants for losses resulting directly from the malfunction of the physical equipment, devices, or programming of Exchange Related Persons and/or Entities, or from the negligent acts or omissions of employees of the Exchange, BOXR or BOX.

Under the proposal, BOX's payments for the aggregate of all claims made by all Options Participants during a single calendar month would not exceed the larger of \$500,000, or the amount of any recovery obtained by BOX under any applicable insurance maintained by BOX. Additionally, in the event that all of the claims made during a single calendar month cannot be fully satisfied because they exceed the applicable maximum limitation, then the maximum permitted amount will be proportionally allocated among all such claims. Finally, the Exchange proposes that all claims for compensation under the new proposed provisions must be submitted in writing no later than 12 p.m. ET on the next business day following the day on which the use of BOX gave rise to such claims. Once in receipt of a claim, BOX will verify that: (i) a valid order was accepted into BOX; and (ii) any loss claimed resulted directly from the malfunction of the physical equipment, devices, or programming of Exchange Related Persons and/or Entities, or from the negligent acts or omissions of employees of the Exchange, BOXR or BOX during the execution or handling of that order. BOX will only compensate Participants for valid claims, and will compensate such Participants at the end of the month.

BOX represents that the determination to compensate a BOX Options Participant will be made on an equitable and non-discriminatory basis

without regard to whether the Participant is a Market Maker or Order Flow Provider on BOX, and that such determinations will be made pursuant to procedures of BOX Market Operations Center ("MOC") with regulatory oversight established by BOXR. Additionally, BOX represents that BOX will maintain a record of Participant claims including documentation detailing its findings and details for approving or denying claims in accordance with its obligations under Section 17 of the Act.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>4</sup> in general, and Section 6(b)(5) of the Act,<sup>5</sup> in particular, in that it is designed 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. In particular, the proposal will amend Chapter V, Section 26 of the BOX Trading Rules to codify provisions within the BOX Rules to permit BOX to compensate Participants for losses resulting directly from the malfunction of the physical equipment, devices, and/or programming of Exchange Related Persons and/or Entities, or from the negligent acts or omissions of employees of the Exchange, BOXR or BOX, and to establish the maximum amount of such compensation that BOX may provide during a calendar month.

Additionally, the Exchange believes that the codification of these policies should add transparency to the BOX Rules and that its proposal to amend Chapter V, Section 26 will promote fairness in the national market system. The proposed change will allow BOX to address Participant claims under various circumstances, and allow BOX to act in a similar fashion as many of its competitors. Several exchanges have substantially similar rules and the Exchange believes that the proposed rule change would place BOX in a similar position to address Participant claims.<sup>6</sup>

<sup>4</sup> 15 U.S.C. 78f(b).

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

<sup>6</sup> See EDGA Exchange, Inc. ("EDGA") Rule 11.12, NASDAQ Stock Market LLC ("NASDAQ") Rule 4626, Chicago Board Options Exchange, Incorporated ("CBOE"), Rule 6.7, NYSE Arca, Inc. ("NYSE Arca"). Options Rule 14.2, International Securities Exchange, LLC ("ISE"), Rule 705, and BATS Exchange, Inc. ("BATS") Rule 11.16.

## 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

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

The Exchange requested that the Commission waive the 30-day operative delay so that the proposed rule change would become effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>9</sup> The Commission notes that the waiver will allow the Exchange to immediately implement the proposed rule change, which should promote fairness in the market by allowing BOX to compensate Options Participants for losses resulting directly from the malfunctions of the physical equipment, devices, or programming of Exchange Related Persons and/or Entities, or from the negligent acts or omissions of employees of the Exchange, BOXR, or BOX. The Commission also notes that the proposal is substantially similar to rules of other registered national

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and 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. The Exchange has fulfilled this requirement.

<sup>9</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>3</sup> See proposed Section 26(a) of Chapter V of the BOX Rules.

securities exchanges and does not raise any new regulatory issues.<sup>10</sup> For these reasons, the Commission designates the proposed rule change as operative upon filing.

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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2012-011 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-2012-011. This file number should be included on the subject line if email 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/vsro.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, 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 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-2012-011 and should be submitted on or before March 30, 2012.

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

Kevin M. O'Neill,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66513; File No. SR-FINRA-2012-016]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow FINRA To Exempt Certain Alternative Trading Systems From the Trade Reporting Obligation Under the Trade Reporting and Compliance Engine ("TRACE") Reporting Rules

March 5, 2012.

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 28, 2012, the Financial Industry Regulatory Authority, Inc. ("FINRA") 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 FINRA. FINRA has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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 new Rule 6731 to provide FINRA with authority to exempt a member alternative trading system ("ATS") that

meets the specified criteria from the trade reporting obligation under the Rule 6700 Series. In addition, FINRA is proposing a conforming change to Rule 9610 to specify that FINRA has exemptive authority under proposed Rule 6731.

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

A member that is a "Party to a Transaction" as defined in FINRA Rule 6710(e) in a transaction in a TRACE-Eligible Security must report the trade to TRACE under Rule 6730(a).<sup>4</sup> "Party to a Transaction" is defined as "an introducing broker-dealer, if any, an executing broker-dealer, or a customer."<sup>5</sup> An ATS, which term includes electronic communications networks, is a Party to a Transaction and has a trade reporting obligation when a transaction in a TRACE-Eligible Security is executed through the ATS.<sup>6</sup>

FINRA is proposing to adopt new Rule 6731 to provide FINRA with authority to exempt, upon application and subject to specified terms and conditions, a member ATS from the

<sup>4</sup> See Rule 6730(a). In transactions between members, each member must report the trade, and for transactions between a member and a customer, the member must report the trade.

<sup>5</sup> Under Rule 6710(e), "customer" includes a broker-dealer that is not a FINRA member.

<sup>6</sup> See [www.finra.org/Industry/Compliance/MarketTransparency/TRACE/FAQ/P125244#reporting](http://www.finra.org/Industry/Compliance/MarketTransparency/TRACE/FAQ/P125244#reporting) (FAQ: Who reports trades executed through electronic trading systems that are themselves broker-dealers? All FINRA members that are "parties to a transaction" have a trade reporting obligation under TRACE Rules. Where two FINRA members effect/execute a transaction through an electronic trading system that is registered as a broker-dealer, both members, as well as the electronic trading system would have a trade reporting obligation).

<sup>10</sup> See *supra* note 6.

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