

preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on this section 12(d)(1) relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011-27531 Filed 10-24-11; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission Advisory Committee on Small and Emerging Companies will hold an Open Meeting on Monday, October 31, 2011, in the Multipurpose Room, L-006. The meeting will begin at 9 a.m. and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 8:30 a.m. Visitors will be subject to security checks.

On October 7, 2011, the Commission published notice of the Committee meeting (Release No. 33-9266), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting includes opening remarks, introduction of Committee members, discussion of the Committee's agenda and organization, and discussion of capital formation issues relevant to small and emerging companies.

For further information, please contact the Office of the Secretary at (202) 551-5400.

October 21, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011-27750 Filed 10-21-11; 4:15 pm]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934 Release No. 65592; File No. SR-BX-2011-046]

### In the Matter of NASDAQ OMX BX, Inc.: Order Denying NASDAQ OMX BX, Inc.'s Petition for Review of Division of Trading and Markets Suspension of and Institution of Proceedings by Delegated Authority of SR-BX-2011-046; Lifting the Automatic Stay; and Notice of Designation of a Longer Comment Period for the Proceedings

Before the Securities and Exchange Commission October 19, 2011.

Pursuant to Rule 431(b)(2) of the Rules of Practice,<sup>1</sup> *It is ordered* that the petition<sup>2</sup> of Boston Options Exchange Group LLC, an options trading facility of NASDAQ OMX BX, Inc., ("BOX") for review of the temporary suspension and institution of proceedings by the Division of Trading and Markets (the "Division") by delegated authority of SR-BX-2011-046<sup>3</sup> is hereby denied. *It is further ordered* that the automatic stay of delegated action pursuant to Rule 431(e) of the Rules of Practice<sup>4</sup> is hereby lifted.

The Commission hereby is also extending the length of the period for market participants to submit comments related to SR-BX-2011-046 until November 17, 2011 and the length of the period for submission of rebuttal comments until December 14, 2011.

On July 15, 2011, NASDAQ OMX BX, Inc. filed, pursuant to Section 19(b)(1) of the Exchange Act<sup>5</sup> and Rule 19b-4 thereunder,<sup>6</sup> a proposed rule change that amended the BOX Fee Schedule to increase the credits and fees for certain transactions in the BOX Price Improvement Period ("PIP").<sup>7</sup>

<sup>1</sup> 17 CFR 201.431(b)(2).

<sup>2</sup> Petition for Review of Action by Delegated Authority from BOX, dated September 27, 2011 ("BOX Petition").

<sup>3</sup> See Securities Exchange Act Release No. 65330 (September 13, 2011), 76 FR 58065 (September 19, 2011) ("Suspension Order").

<sup>4</sup> 17 CFR 201.431(e).

<sup>5</sup> 15 U.S.C. 78s(b)(1).

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

<sup>7</sup> The PIP is a mechanism in which members submit an agency order on behalf of a customer for price improvement over the BOX BBO, paired with a contra-order guaranteeing execution of the agency order at or better than the NBBO. The contra-order could be for the account of the member, or an order solicited from someone else. The agency order is exposed for a 1-second auction in which members may submit competing interest at the same price or better. The initiating member is guaranteed 40% of the order (after public customers) at the final price for the PIP order, assuming it is at the best price. See Chapter V, Section 18 of the BOX Rules.

The Division, pursuant to delegated authority,<sup>8</sup> published BOX's proposed rule change for notice and comment on August 3, 2011.<sup>9</sup> The Commission received four comment letters on the proposal, three urging the Commission to suspend the proposal and institute proceedings, and one urging the Commission not to take such action.<sup>10</sup> BOX filed a response to comments.<sup>11</sup> As evidenced by these letters, market participants have differing views on the impact of the proposal and whether it is consistent with the Act. In recognition of the issues raised by commenters and in view of the significant legal and policy issues raised by the proposal, on September 13, 2011, the Division, pursuant to delegated authority,<sup>12</sup> temporarily suspended BOX's proposal and simultaneously instituted proceedings to determine whether to approve or disapprove the proposal.<sup>13</sup>

In the Suspension Order, the Division, pursuant to delegated authority, states its belief that it is appropriate to evaluate the effect of the proposed rule change on competition among different types of market participants and on market quality, and that it intends to assess whether the potential fee disparity between BOX Participants who initiate a PIP auction ("PIP Initiators") and BOX Participants who respond to a PIP auction ("PIP Responders") is consistent with the

statutory requirements applicable to a national securities exchange under the Act,<sup>14</sup> in particular the standards requiring, among other things, that exchange rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>15</sup> The Suspension Order finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act to temporarily suspend the proposed rule change and that it is appropriate in the public interest to institute disapproval proceedings in view of the significant legal and policy issues raised by the proposal.<sup>16</sup>

On September 20, 2011, BOX filed a notice of intention to petition for review from BOX stating that, pursuant to the Commission Rule of Practice 430(b),<sup>17</sup> BOX appeals to the Commission the Division's action to institute proceedings by delegated authority. Pursuant to Rule of Practice 431(e), a notice of intention to petition for review results in an automatic stay of the action by delegated authority.<sup>18</sup> On September 27, 2011, BOX filed a petition to review the Division's action by delegated authority instituting proceedings to determine whether to approve or disapprove the filing.<sup>19</sup>

In considering whether to accept or reject the BOX Petition, Rule 411(b)(2) of the Rules of Practice<sup>20</sup> requires that the Commission determine whether:

(i) A prejudicial error was committed by the Division in the conduct of the proceeding; or

(ii) The Division's decision embodies:

(A) A finding or conclusion of material fact that is clearly erroneous; or

(B) A conclusion of law that is erroneous; or

(C) An exercise of discretion or decision of law or policy that is important and that the Commission should review.

For the reasons discussed below, the Commission finds that BOX has not made a reasonable showing that the Division committed a prejudicial error or that the Division's delegated action involved an error of fact or law that would provide an appropriate basis for Commission review.

First, the BOX Petition does not allege that the Division committed any prejudicial error in the conduct of the proceedings, including the decision to temporarily suspend and institute proceedings to determine whether to approve or disapprove the proposal. The Commission recognizes the issues raised as to the impact of the fee change and the differing views of market participants outlined in the comments received. The Division's action through the Suspension Order provides an opportunity for the Commission to receive more focused comment and data on the issues raised, as well as an opportunity for the Commission to more fully assess the issues raised and whether the filing is consistent with the Act. Based on the proposed rule change as filed, the comments received, and BOX's response to comments, the Commission finds that the Division acted appropriately in finding that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act to temporarily suspend the filing.<sup>21</sup> Accordingly, the Commission finds that the Division did not commit any prejudicial error in temporarily suspending and instituting proceedings with respect to BOX's proposed rule change.

Second, the Division's action to suspend the filing and institute proceedings is an interim step in the Commission's consideration of substantive issues raised by the filing, and one that did not embody a finding of material fact. The Suspension Order therefore is incapable of embodying a finding or conclusion of material fact that is erroneous. Although BOX notes that it provided the Division with data relating to six weeks of trading in the BOX PIP that BOX believes supports a finding that its fees are consistent with

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>9</sup> See Securities Exchange Act Release No. 64981 (July 28, 2011), 76 FR 46858 (August 3, 2011).

<sup>10</sup> See letters to Elizabeth Murphy, Secretary, Commission, from John C. Nagel, Managing Director and General Counsel, Citadel Securities LLC ("Citadel"), dated August 12, 2011 ("Citadel Letter"); Andrew Stevens, Legal Counsel, IMC Financial Markets ("IMC"), dated August 15, 2011 ("IMC Letter"); Michael J. Simon, Secretary, International Securities Exchange ("ISE"), dated August 22, 2011 ("ISE Letter"), and Christopher Nagy, Managing Director Order Strategy, TD Ameritrade, Inc. ("TD Ameritrade"), dated September 12, 2011 ("TD Ameritrade Letter").

<sup>11</sup> See letter to Elizabeth Murphy, Secretary, Commission, from Anthony D. McCormick, Chief Executive Officer, BOX, dated September 9, 2011 ("BOX Letter"). BOX filed its response to comments on Friday, September 9, 2011, two business days prior to the end of the 60 day period during which the Commission could act to suspend the filing and institute proceedings, and 16 days after the close of the original comment period for the filing.

<sup>12</sup> 17 CFR 200.30-3(a)(57) and (58).

<sup>13</sup> See Suspension Order, *supra* note 3. Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C), provides the statutory standard by which the Commission may temporarily suspend an immediately effective proposed rule change. Specifically, Section 19(b)(3)(C) provides that the Commission may take such action "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]." 15 U.S.C. 78s(b)(3)(C). If the Commission temporarily suspends a rule change, it must institute proceedings under Section 19(b)(2)(B) of the Act. See 15 U.S.C. 78s(b)(3)(C).

<sup>14</sup> See Suspension Order, *supra* note 3, at 58067. Under the proposed rule change, the Exchange would charge both the PIP Initiator and the PIP Responder the same fee for executing an order in the PIP. However, if the PIP Initiator also submits the agency order into the PIP, the PIP Initiator receives the rebate paid to the agency order that is auctioned in the PIP. As a result, if the fee the PIP Initiator pays is aggregated with the rebate the PIP Initiator receives for the agency order (*i.e.*, a "net" fee), the PIP Initiator would pay a lower net fee compared to PIP Responders. The disparity between the net fees charged to a PIP Initiator and those charged to a PIP Responder could be as high at \$0.90 per contract. See *id.* at 58066-58067.

<sup>15</sup> See *id.* at 58067.

<sup>16</sup> See *id.*

<sup>17</sup> 17 CFR 201.430(b).

<sup>18</sup> 17 CFR 201.431(e).

<sup>19</sup> See BOX Petition, *supra* note 2.

<sup>20</sup> 17 CFR 201.411(b)(2).

<sup>21</sup> Pursuant to the provisions of Section 19(b)(3)(C) of the Act, the Commission must institute proceedings to determine whether to approve or disapprove an immediately effective rule change if it suspends such rule change. See 15 U.S.C. 78s(b)(3)(C).

the Act,<sup>22</sup> the Division also received data from a commenter purporting to show a decline in average price improvement and average percentage of contracts price improved in the PIP.<sup>23</sup> The Suspension Order states that the Commission has not reached any conclusions with respect to the issues involved.<sup>24</sup> To the contrary, the Suspension Order seeks additional comment and data with respect to the issues raised by the filing,<sup>25</sup> and the institution of proceedings will provide the Commission the opportunity to more fully assess the issues raised, including a further assessment of the facts underlying the issues.

Third, the Division's action pursuant to delegated authority to suspend the filing and institute proceedings is an interim step that does not involve a conclusion of law that is clearly erroneous. The Suspension Order states that the Commission has not reached any conclusions with respect to the issues involved,<sup>26</sup> and no finding as to whether the proposed rule change is consistent with the Act was made in the Suspension Order. To the contrary, the Suspension Order seeks additional comment and data with respect to the issues raised by the filing, which will help the Commission further assess the proposed rule change and inform its ultimate decision as to whether the proposed rule change is consistent with the Act. Based on the proposed rule change as filed, the comments received, and BOX's response to comments, the Commission finds that the Division acted appropriately in finding that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act to temporarily suspend the filing.<sup>27</sup>

Fourth, the BOX Petition does not specifically allege that the Division's action pursuant to delegated authority was an exercise of discretion or decision of law or policy that is important and that the Commission should review pursuant to the standard of Rule 431(b)(2). For purposes of determining whether to grant de novo review of the Division's exercise of delegated authority with respect to the Suspension

Order, the Commission does not believe that the act of suspending and instituting proceedings in this filing embodies an exercise of discretion or a decision of law or policy that is important and that the Commission should review. The Commission believes that the Division acted appropriately, based on the record, in determining that the underlying BOX proposed rule change does merit additional opportunity for comment and Commission consideration. The Division's Suspension Order is the proper statutory mechanism to commence that process and conduct such review.

Finally, in its petition, BOX requests, if the Commission does determine to institute proceedings to determine whether to approve or disapprove the proposal, that the Commission not stay the effectiveness of the PIP fee during the course of the proceedings.<sup>28</sup> BOX notes its belief that the proposed fees allow it to compete with larger options exchanges that charge payment for order flow fees that, in BOX's view, are substantially similar to the proposed fees and that suspension of the fees would cause unfair harm to BOX.<sup>29</sup> However, under Section 19(b)(3)(C) of the Act,<sup>30</sup> the Commission cannot institute proceedings to determine whether to approve or disapprove an immediately effective rule change unless it first suspends the rule change. The Commission does not find a sufficient basis in the BOX Petition to diverge from the process contemplated in the statute in this case by lifting the suspension of the BOX PIP fee while it conducts the proceedings to determine whether to approve or disapprove BOX's proposed rule change. Importantly, commenters have raised material concerns (including one who presented supporting data) that call into question whether BOX's proposal unduly burdens competition and whether it is consistent with the Act. Among other things, the Commission will consider these issues, as well as BOX's assertion that its proposed fees are comparable to fees in effect at other options exchanges, during the conduct of the proceedings on BOX's proposal.

By the Commission.

**Elizabeth M. Murphy,**

Secretary.

[FR Doc. 2011-27517 Filed 10-24-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65590; File No. SR-NYSEAmex-2011-80]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Retire a Pilot Program and Harmonize the Exchange's rules Regarding Listing Expirations with the Existing Rules of Other Exchanges

October 19, 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 October 13, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "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 NYSE Amex Options Rule 903 (Series of Options Open for Trading) and Commentary .11 thereto to retire a pilot program and harmonize the Exchange's rules regarding listing expirations with the existing rules of other exchanges. The text of the proposed rule change is available at the Exchange, at <http://www.nyse.com>, at the Commission's Public Reference Room, and at the Commission's Web site at <http://www.sec.gov>.

#### 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 those 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 parts of such statements.

<sup>22</sup> The Division noted this data in the Suspension Order. See Suspension Order, *supra* note 3, at 58067.

<sup>23</sup> See Citadel Letter, *supra* note 10, at 3.

<sup>24</sup> See Suspension Order, *supra* note 3, at 58067.

<sup>25</sup> See *id.* at 58067-68.

<sup>26</sup> See *id.* at 58067.

<sup>27</sup> Pursuant to the provisions of Section 19(b)(3)(C) of the Act, the Commission must institute proceedings to determine whether to approve or disapprove an immediately effective rule change if it suspends such rule change. See 15 U.S.C. 78s(b)(3)(C).

<sup>28</sup> See BOX Petition, *supra* note 2, at 10.

<sup>29</sup> See *id.* at 9-10.

<sup>30</sup> See 15 U.S.C. 78s(b)(3)(C).

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

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