

methodology in which the quoted price for a series is adjusted upwards or downwards as necessary.<sup>43</sup> CBOE should monitor for the future use of the benchmark indicator in the options markets, and if CBOE or any other options market begins to use the benchmark indicator pursuant to the Linkage Plan, then CBOE should consider the impact of the potential for investor confusion, and whether to seek approval for use of a different indicator for Variance Trades to avoid investor confusion.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>44</sup> that the proposed rule change (SR-CBOE-2011-007) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>45</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66245; File No. SR-BX-2012-006]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Amend the Definition of Theoretical Price

January 26, 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 January 20, 2012, 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 amend Chapter V, Section 20 (Obvious and Catastrophic Errors) of the Rules of the Boston Options Exchange Group, LLC ("BOX") to amend the definition of theoretical price. 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 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

The Exchange is proposing a change to Chapter V, Section 20 (Obvious and Catastrophic Errors). An obvious error occurs when the execution price of a transaction is above or below the Theoretical Price for the series by a specified amount. The Exchange recently submitted an immediately effective rule change to amend the definition of Theoretical Price.<sup>5</sup> Under the recently effective rule, the "Theoretical Price" of an option series is defined, if the series is traded on at least one other options exchange, as the mid-point of the National Best Bid or Offer ("NBBO"), just prior to the trade in question. If there are no quotes for comparison, the Theoretical Price is determined by the Market Regulation Center ("MRC").<sup>6</sup>

The rule change proposed in BX-2011-086 was immediately effective upon filing, but not operative for 30 days. As such, it is not yet operative. The goal of the rule change in BX-2011-086 was to improve the BOX process for addressing potentially erroneous trades to the benefit of all BOX market participants. While proposing the rule change, BOX discussed BX-2011-086 with several BOX Options Participants, and has continued these discussions following the effective date of the proposal. Based on these discussions with its Participants, BOX, after considering the potential impact of the change on BOX market participants and the liquidity on BOX, believes there is sufficient reason to reverse the rule change proposed in BX-2011-086. In addition, BOX will continue analyzing potential refinements to the BOX process for addressing potentially erroneous trades.

As such, the Exchange is proposing to amend the definition of Theoretical Price so that when the series is traded on at least one other options exchange, the Theoretical Price will be the "National Best Bid with respect to an erroneous sell transaction, and National Best Offer with respect to an erroneous buy transaction, just prior to the trade in question." Alternatively, if there are no quotes for comparison, the Theoretical Price will continue to be determined by the MRC. This proposed rule change would reverse the effective rule change identified in note 1 [sic] and amend this provision of the BOX Rules so that the Theoretical Price continues to be the National Best Bid or Offer.

###### 2. Statutory Basis

This proposed rule change is designed to provide the personnel of the MRC (i.e., BOXR) with a clearly defined measure of the price on which to base a determination as to whether or not a particular transaction was the result of an obvious error and continue utilizing the rule that BOX has had in place prior to the operative date of BX-2011-086. The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be

the conduct of business for options on BOX. MRC personnel are employees of BOXR and are not affiliated with BOX Options Participants.

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

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

<sup>43</sup> See *supra* note 34.

<sup>44</sup> 15 U.S.C. 78s(b)(2).

<sup>45</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>5</sup> See Securities Exchange Act Release No. 66093 (January 4, 2012), 77 FR 1543 (January 10, 2012) (SR-BX-2011-086) Notice of Filing and Immediate Effectiveness of a Proposal To Amend the Definition of Theoretical Price ("BX-2011-086").

<sup>6</sup> MRC is defined in the BOX Rules to mean the Exchange's facilities for surveilling and regulating

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, and 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, by maintaining the obvious error process in existence on BOX.

The Exchange believes that using the NBBO as the Theoretical Price will maintain an objective approach in determining obvious errors that is consistent with other options exchanges. The Exchange believes that continuing to use an objective standard when making adjustment decisions would benefit investors and market participants that are members of multiple exchanges participating in a national market system. The Exchange, after considering the potential impact of the rule change proposed in BX-2011-086 on BOX market participants and the liquidity on BOX, believes continuing to use its current process for evaluating potentially erroneous trades is appropriate for BOX. As such, the Exchange believes that its process for rendering and reviewing trade adjustment determinations is consistent with the Act, and with the maintenance of a fair and orderly market and the protection of investors and the public interest.

#### *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 proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>11</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 has requested that the Commission waive the 30-day operative delay and make the proposed rule change 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, because such waiver would allow the Exchange to immediately revert back to the definition of "Theoretical Price" that was in place prior to the recent proposed rule change, BX-2011-086,<sup>12</sup> before the changes in such rule filing become operative. As such, waiver of the operative delay will ensure that the definition of "Theoretical Price" remains consistent, thereby maintaining operational continuity of the rule on the BOX market. For these reasons, the Commission designates the proposed rule change as operative immediately upon filing with the Commission.<sup>13</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 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:

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required 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 satisfied this requirement.

<sup>11</sup> *Id.*

<sup>12</sup> See *supra* note 5 and accompanying text.

<sup>13</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).

### *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-2012-006 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-2012-006. 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 10:00 a.m. and 3:00 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-2012-006 and should be submitted on or before February 23, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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<sup>14</sup> 17 CFR 200.30-3(a)(12).