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SECURITIES AND EXCHANGE COMMISSION
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May 14, 2012

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Establishment of a New Options Market, NASDAQ OMX BX Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that on May 1, 2012, NASDAQ OMX BX, Inc. (“Exchange” or “BX”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II and III, below, which Items have been prepared by the Exchange. On May 8, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

BX is filing with the Commission a proposal for a new options market. Specifically, BX proposes to adopt new trading rules, as explained further below, to operate a fully automated, price/time priority execution system built on the core functionality of the NASDAQ Options Market (“NOM”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 made several technical and clarifying changes to the proposal, as well as minor changes to the definitions of the terms “primary market” and “Intermarket Sweep Order.” See Amendment No. 1.

The text of the proposed rule change is available at the Exchange's website at <http://nasdaqomxbx.cchwallstreet.com/>, at BX's principal office, 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, 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 purpose of the proposed rule change is to operate a new options market, identical to (but separate from) the NASDAQ Options Market ("NOM").⁴ The new market, called NASDAQ OMX BX Options, or BX Options, will be all-electronic with no physical trading floor and is described more fully below.

BX is a registered national securities exchange and a self-regulatory organization ("SRO"). BX is a wholly-owned subsidiary of The NASDAQ OMX Group, Inc. BX will operate the BX Options market.

⁴ There are several differences between the rules of NOM today and the proposed new options market, which NASDAQ intends to amend by submitting a proposed rule change shortly. Once these changes are in place, the rules of NOM and the rules of the new market will be the same. See Amendment No. 1.

BX's history dates back to the 1830s. For many years, the Boston Stock Exchange (“BSE”) listed the securities of companies in the Boston area, but then, in more recent years, BSE traded securities mainly on an unlisted trading privileges (“UTP”) basis with a trading floor and an automated order delivery and execution system. As such, the BSE was an active competitor among the equities markets, pioneering a system of competing specialists and remote competing specialists. BSE partnered with various investors to form Boston Options Exchange (“BOX”) to trade options, which launched in 2004.⁵ In 2008, BSE merged into a subsidiary of The NASDAQ OMX Group, Inc. creating NASDAQ OMX BX. BX re-launched an equities marketplace utilizing state of the art NASDAQ technology, having closed its floor-based market, and today competes with many other markets in trading NMS stocks.

Consistent with that storied history as a long-time competitor in the U.S. markets, BX now proposes to launch an options market. BX Options will leverage the technology and infrastructure that have helped spawn the success of both NOM and NASDAQ OMX PHLX LLC (“PHLX”). Accordingly, BX believes that it can compete effectively as an options market, recognizing that there are nine options exchanges today competing vigorously. Initially, BX Options will have the same market structure and rules as NOM, focusing on a price/time priority market. Over time, as the BX Options market secures more participants, it will introduce additional, innovative technology.

⁵ The NASDAQ OMX Group, Inc. does not own BOX, which has operated as a facility of BX and is currently pursuing its own status as a national securities exchange and SRO. Going forward, once BOX becomes an exchange, BX will no longer provide regulatory services to BOX. See Securities Exchange Act Release No. 66242 (January 26, 2012), 77 FR 4841 (January 31, 2012) (BOX Options Exchange LLC; Notice of Filing of Application, as amended, for Registration as a National Securities Exchange under Section 6 of the Act).

In connection with its BX Options market, BX is proposing to adopt a series of rules based on the existing rules of NOM. BX will operate an electronic trading system developed to trade options (“System” or “Trading System”) that will provide for the electronic display and execution of orders in price/time priority without regard to the status of the entities that are entering orders.

Trading System

BX’s options trading system will leverage current state of the art technology, including customer connectivity, messaging protocols, quotation and execution engine, order router, data feeds, and network infrastructure of the various markets owned by The NASDAQ OMX Group, Inc. This approach minimizes the technical effort required for existing BX members to begin trading options on the BX Options market. As a result, the BX Options market will closely resemble NOM, including, most prominently, by offering true price/time priority across all orders and participants rather than differentiating between participant/trading interest.

Like on NOM, all trading interest entered into the System will be automatically executable. Orders entered into the System will be displayed anonymously and, as such, will trade anonymously.⁶ The BX Options market will be a participant exchange of OCC. The System will be linked to OCC for BX to transmit locked-in trades for clearance and settlement. The System will operate between the hours of 8:00 a.m. ET and market close, with all orders being available for execution from 9:30 a.m. to market close.

Minimum Quotation and Trading Increments. BX is proposing to apply the following quotation increments: (1) if the options series is trading at less than \$3.00, five cents; (2) if the

⁶ However, options trades are not completely anonymous through settlement. See proposed BX Options Rules Chapter VI, Section 12. Options trades are submitted to The Options Clearing Corporation (“OCC”) with contra-side OCC member information.

options series is trading at \$3.00 or higher, ten cents; and (3) if the options series is trading pursuant to the Penny Pilot Program,⁷ one cent if the options series is trading at less than \$3.00, and five cents if the options series is trading at \$3.00 or higher, except for QQQQ, SPY and IWM, where the minimum quoting increment will be one cent for all series.⁸ In addition, BX is proposing that the minimum trading increment for options contracts traded on BX will be one cent for all series.

BX notes that allowing market participants to quote in smaller increments has been shown to reduce spreads, thereby lowering costs to investors. In addition, permitting options to be quoted in smaller increments pursuant to the Penny Pilot Program provides the opportunity for reduced spreads for a significant amount of trading volume. Although the Penny Pilot Program has contributed to the increase in quote message traffic, BX believes that its proposal is sufficiently limited such that it is unlikely to increase quotation message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of information.

Opening and Halt Crosses. The BX Options System will support a single price opening or re-opening via an electronic cross.⁹ The auctions at the opening and at the resumption of trading following a halt are identical to those that exist on NOM. Since NOM commenced trading in March of 2008, several enhancements have been made to the opening and re-opening cross process. The incremental changes that have been made to NOM's opening and re-opening cross have culminated in an efficient and stable process that BX plans to replicate for BX Options.

⁷ BX will participate in the Penny Pilot Program.

⁸ See proposed BX Options Rules, Chapter VI, Section 5.

⁹ See proposed BX Options Rules, Chapter VI, Section 8.

BX Options will operate a pre-opening phase that will begin prior to the opening of the market at a time to be determined by the Exchange. Orders may be submitted, modified, and cancelled throughout the pre-opening phase. Prior to opening the market (or resuming trading in the case of a halt), BX will calculate and disseminate certain indicative information: opening price, order imbalance, and the size and direction of any imbalance.¹⁰ Thereafter, BX will determine via algorithm a single price at which a particular options series will open and will match via algorithm the maximum number of available orders. After the cross concludes, orders will be cancelled, routed, or posted depending on the instructions on the orders and open trading will commence.

Order Types. The System will make available to Participants various order types, including Limit Orders, Minimum Quantity Orders, Market Orders, Price Improving Orders, Intermarket Sweep Orders, One-cancels-the-other Orders, All-or-none Orders and Post-Only Orders, with characteristics and functionality similar to what is currently approved for use on NOM.¹¹

“Limit Orders” are orders to buy or sell options at a specified price or better. A limit order is marketable when, for a limit order to buy, at the time it is entered into the System, the order is priced at the current inside offer or higher, or for a limit order to sell, at the time it is entered into the System, the order is priced at the inside bid or lower.

“Minimum Quantity Orders” are orders that require that a specified minimum quantity of contracts be obtained, or the order is cancelled. Minimum Quantity Orders are treated as having a time-in-force designation of Immediate or Cancel (“IOC”).

¹⁰ See proposed BX Options Rules, Chapter VI, Section 8.

¹¹ See proposed BX Options Rules, Chapter VI, Section 1(d) [sic].

“Market Orders” are orders to buy or sell at the best price available at the time of execution.

“Price Improving Orders” are orders to buy or sell an option at a specified price at an increment smaller than the minimum price variation in the security. Price Improving Orders may be entered in increments as small as one cent. Price Improving Orders that are available for display will be displayed at the appropriate minimum price variation in that security (rounding down to the proper increment for buys, up to the proper increment for sells). The non-displayed price of a Price Improving Order is therefore not included in the National Best Bid and Offer (“NBBO”) and not subject to trade-through protection, although it is available to trade against eligible incoming orders.

“Intermarket Sweep Orders” or “ISOs” are limit orders that are designated as ISOs in the manner prescribed by BX and are executed within the System at multiple price levels without respect to Protected Quotations of other Eligible Exchanges as defined in Chapter XII, Section 1. ISOs are not eligible for routing as set out in Chapter VI, Section 11.¹² Simultaneously with the routing of an ISO to the System, one or more additional limit orders, as necessary, are routed by the entering Participant to execute against the full displayed size of any protected bid or offer (as defined in Chapter XII, Section 1) in the case of a limit order to sell or buy with a price that is superior to the limit price of the limit order identified as an ISO (as defined in Chapter XII, Section 1). These additional routed orders must be identified as ISOs.

¹² Intermarket Sweep Orders or ISOs can have any time-in-force designation except WAIT; GTC ISOs are treated as having a time-in-force designation of Day. ISOs that are marked as Day or GTC lose the ISO designation once posted on the BX Options book. If an entering firm cancel/replaces that resting Day or GTC ISO order, the replacement order cannot be marked as ISO; if the replacement is marked as ISO, it will be rejected. See Amendment No. 1.

“One-cancels-the-other” shall mean an order entered by a Market Maker that consists of a buy order and a sell order treated as a unit; the full execution of one of the orders causes the other to be canceled.

“All-or-none” shall mean a market or limit order which is to be executed in its entirety or not at all. All-or-none Orders are treated as having a time-in-force designation of Immediate or Cancel. All-or-none Orders received prior to the opening cross or after market close will be rejected.

“Post-Only Orders” are orders that will not remove liquidity from the System. Post-Only Orders are to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another market. Post-Only Orders are evaluated at the time of entry with respect to locking or crossing other orders as follows: (i) if a Post-Only Order would lock or cross an order on the System, the order will be re-priced to \$.01 below the current low offer (for bids) or above the current best bid (for offers) and displayed by the System at one minimum price increment below the current low offer (for bids) or above the current best bid (for offers); and (ii) if a Post-Only Order would not lock or cross an order on the System but would lock or cross the NBBO as reflected in the protected quotation of another market center, the order will be handled pursuant to Chapter VI, Section 7(b)(3)(C). Post-Only Orders received prior to the opening cross or after market close will be rejected. Post-Only Orders may not have a time-in-force designation of Good Til Cancelled or Immediate or Cancel.

Time-in-Force Designations. Participants entering orders into the System may designate such orders to remain in force and available for display and/or potential execution for

varying periods of time.¹³ Unless cancelled earlier, once these time periods expire, the order (or the unexecuted portion thereof) is returned to the entering Participant.

“Immediate Or Cancel” or “IOC” orders are orders that if after entry into the System a marketable order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) will be canceled and returned to the entering Participant. IOC Orders will be available for entry from 8:00 a.m. until market close and for potential execution from 9:30 a.m. until market close. IOC Orders entered between 8:00 a.m. and 9:30 a.m. ET will be held within the System until 9:30 a.m. at which time the System shall determine whether such orders are marketable. IOC orders can be routed if designated as routable.

“DAY” orders are orders that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) will remain available for potential display and/or execution until market close, unless canceled by the entering party, after which it shall be returned to the entering party. DAY Orders will be available for entry from 8:00 a.m. until market close and for potential execution from 9:30 a.m. until market close.

“Good Til Cancelled” or “GTC” orders are orders that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) will remain available for potential display and/or execution unless cancelled by the entering Participant, or until the option expires, whichever comes first. GTC Orders will be available for entry from 8:00 a.m. until market close and for potential execution from 9:30 a.m. until market close.

“WAIT” shall mean for orders so designated, that upon entry into the System, the order is held for one second without processing for potential display and/or execution. After one second,

¹³ See proposed BX Options Rules, Chapter VI, Section 1(g).

the order is processed for potential display and/or execution in accordance with all order entry instructions as determined by the entering Participant.

Order Display/Matching System The System will be based upon the order display and execution functionality currently approved for use on NOM. Specifically, the System will allow Participants to enter priced limit orders to buy and sell BX Options-listed options. Orders entered by a Participant will be displayed (price and size) on an anonymous basis in the order display service of the System. Options Participants will be permitted to enter multiple orders at single or multiple price levels.

Routing. BX Options will provide routing services to its Participants. The BX Options market will support orders that are designated to be routed to the NBBO as well as orders that will execute only within the System. Orders that are designated as routable will be routed to other options markets to be executed when BX Options is not at the NBBO, consistent with the Options Order Protection and Locked/Crossed Market Plan. The System will ensure that orders designated to only execute within the System will not create a trade through or locked or crossed market violation.¹⁴

Orders sent by the System to other markets generally do not retain time priority with respect to other orders in the System and the System shall continue to execute other orders while routed orders are away at another market center. Once routed by the System, an order becomes subject to the rules and procedures of the destination market including, but not limited to, order cancellation. A routed order can be for less than the original incoming order's size. If a routed order is subsequently returned, in whole or in part, that routed order, or its remainder, shall receive a new time stamp reflecting the time of its return to the System, unless any portion of the

¹⁴ See proposed BX Options Rules, Chapter VI, Section 11.

original order remains on the System, in which case the routed order shall retain its original timestamp and its priority.

The order routing process shall be available to Participants from 9:30 a.m. ET until market close and shall route orders as described below. Participants can designate orders as either available for routing or not available for routing. All routing of orders shall comply with Chapter XII, Options Order Protection and Locked and Crossed Market Rules. The System provides a number of routing options pursuant to which orders are sent to other available market centers for potential execution, per the entering firm's instructions. Routing options may be combined with all available order types and time-in-force designations, with the exception of order types and time-in-force designations whose terms are inconsistent with the terms of a particular routing option. The term "System routing table" refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. The System routing options are SEEK¹⁵ and SRCH.¹⁶ BX is not proposing, at this time, to route

¹⁵ SEEK is a routing option pursuant to which an order will first check the System for available contracts for execution. After checking the System for available contracts, orders are sent to other available market centers for potential execution, per the entering firm's instructions. When checking the book, the System will seek to execute at the price at which it would send the order to a destination market center. If contracts remain un-executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center.

¹⁶ SRCH is a routing option pursuant to which an order will first check the System for available contracts for execution. After checking the System for available contracts, orders are sent to other available market centers for potential execution, per the entering firm's instructions. When checking the book, the System will seek to execute at the price at which it would send the order to a destination market center. If contracts remain un-

Non-System Securities, which are securities not listed on the BX Options market; the routing functionality will be limited to options listed on BX.

BX Options intends to route orders in options using NASDAQ Options Services LLC (“NOS”), a broker-dealer that is a member of BX. NOS is also a member of PHLX and NASDAQ, and NOS provides routing functions for PHLX and NOM as well. BX, PHLX, NASDAQ, NOM and NOS are affiliates.¹⁷ Accordingly, the affiliate relationship between BX and NOS, its member, raises the issue of an exchange’s affiliation with a member of such exchange. Specifically, in connection with prior filings, the Commission has expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair competitive advantage and potential conflicts of interest between an exchange’s self-regulatory obligations and its commercial interests.¹⁸

Because BX proposes to use NOS as its outbound routing facility, providing outbound options routing from BX to other market centers, including affiliates PHLX and NOM, BX proposes to do so under the following conditions, which are the same as those found in NOM rules:

(1) NOS shall route orders to other market centers as directed by BX. NOS will be programmed to follow the algorithm and order type instructions established in the BX Options

executed after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, it will re-route.

¹⁷ In order for BX to provide outbound options routing services, its affiliates, PHLX and NASDAQ/NOM, must each file a proposed rule change to receive inbound orders from their affiliate exchange, BX.

¹⁸ See, e.g., Securities Exchange Act Release No. 58135 (July 10, 2008), 73 FR 40898 (July 16, 2008)(SR-NASDAQ-2008-061)(Permitting NOS to be affiliated with PHLX).

Rules and will not have discretion to change the terms of an order or the order routing instructions.

(2) NOS will not engage in any business other than: (a) as an outbound router for BX and (b) any other activities it may engage in as approved by the Commission;¹⁹ provided, however, that immediately prior to the commencement of operations of NOS as an outbound router for the Exchange, the Exchange may use NOS to conduct a test of its routing functionality. In order to ensure that the routing functionality is operating properly prior to making it available to Participants, the Exchange proposes to use NOS to perform test trades in an actual security, prior to launch, so as to track the performance of the systems to be used by the Exchange from order entry to clearance and settlement. The test will be performed by entering buy or sell orders and then, upon execution of each, entering an offsetting sell order in the same security for the same quantity, in order to close out the test position and minimize financial impact on the Exchange. The Exchange will deliver the test orders to NOS, as the routing broker, which will route to the designated away market and receive an execution back. BX believes that this will allow it to perform adequate testing of its systems for routing member orders before such systems become operational. To the extent that the offsetting trades require the Exchange to pay out funds, the funds will be provided out of the cash accounts of the Exchange; to the extent that the trades result in a profit, the funds will be deposited in the cash accounts of the Exchange.

(3) NOS shall operate as a facility, as defined in Section 3(a)(2) of the Act, of BX.

¹⁹ NOS has been approved to provide routing services for NOM and PHLX. See Securities Exchange Act Release Nos. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009)(SR-Phlx-2009-32); and 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (order approving File Nos. SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080).

(4) For purposes of SEC Rule 17d-1, the designated examining authority of NOS shall be a self-regulatory organization unaffiliated with BX or any of its affiliates.

(5) BX shall be responsible for filing with the Commission proposed rule changes related to the operation of, and fees for services provided by, NOS and NOS shall be subject to exchange nondiscrimination requirements.

(6) The books, records, premises, officers, agents, directors and employees of NOS as a facility of BX shall be deemed to be the books, records, premises, officers, agents, directors and employees of BX for purposes of, and subject to oversight pursuant to, the Act. The books and records of NOS as a facility of BX shall be subject at all times to inspection and copying by the Commission.

(7) Use of NOS to route orders to other market centers will be optional. Parties who do not desire to use NOS must enter orders into the System as ineligible for routing.

(8) NOS shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between BX and its facilities (including NOS as its routing facility) and any other entity.

These conditions are intended to address the Commission's concerns regarding potential conflicts of interest in instances where a member firm is affiliated with an exchange.

Furthermore, BX Rule 2140(a)(1) currently provides that BX or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in, or engage in a business venture with, an Exchange member or an affiliate of an Exchange member in the absence of an effective filing under Section 19(b) of the Act. Because NOS is an Exchange member and BX now proposes to engage in the business venture of outbound routing using NOS

as its routing broker, as well as receiving inbound orders from its affiliates, NOM and PHLX through NOS, the Exchange has filed this proposed rule change under Section 19(b) of the Act .

In addition, pursuant to Rule 15c3-5 under the Act, NOS will implement certain tests designed to mitigate risks associated with providing the Exchange's members with access to such away trading centers. Pursuant to the policies and procedures developed by NOS to comply with Rule 15c3-5, if an order or series of orders are deemed to be violative of applicable pre-trade requirements under Rule 15c3-5, the order will be rejected prior to routing and/or NOS will seek to cancel the order if it has been routed.²⁰

BX also proposes to accept inbound orders routed by NOS from PHLX and from NOM. As stated above respecting outbound routing to affiliates, the affiliate relationship between BX and NOS, its member, raises the issue of an exchange's affiliation with a member of such exchange, and the Commission has expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair competitive advantage and potential conflicts of interest between an exchange's self-regulatory obligations and its commercial interests.²¹ Accordingly, BX now proposes to permit BX to accept inbound orders that NOS routes in its capacity as a facility of PHLX and NOM, subject to certain limitations and conditions:

First, BX and the Financial Industry Regulatory Authority ("FINRA") will maintain a regulatory contract, as well as an agreement pursuant to Rule 17d-2 under the Act ("17d-2

²⁰ See proposed BX Options Rules, Chapter VI, Section 10(5).

²¹ See Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (Permitting NOS to be an affiliate). See also Securities Exchange Act Release Nos. 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008)(SR-NASDAQ-2008-098); and 62736 (August 17, 2010), 75 FR 51861 (August 23, 2010) (SR-NASDAQ-2010-100).

Agreement’’).²² Pursuant to the regulatory contract and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NOS’s compliance with certain BX rules.²³

Pursuant to the regulatory contract, however, BX retains ultimate responsibility for enforcing its rules with respect to NOS. Second, FINRA will monitor NOS for compliance with the Exchange’s trading rules, and will collect and maintain certain related information.²⁴ Third, FINRA will provide a report to BX’s chief regulatory officer (“CRO”), on a quarterly basis, that: (i) quantifies all alerts (of which FINRA is aware) that identify NOS as a participant that has potentially violated Commission or BX rules, and (ii) lists all investigations that identify NOS as a participant that has potentially violated Commission or BX rules. Fourth, the Exchange has in place BX Rule 2140(c), which requires NASDAQ OMX, as the holding company owning both the BX and NOS, to establish and maintain procedures and internal controls reasonably designed to ensure that NOS does not develop or implement changes to its system, based on nonpublic information obtained regarding planned changes to BX’s systems as a result of its affiliation with BX, until such information is available generally to similarly situated BX members, in connection with the provision of inbound order routing to the BX. Fifth, BX proposes that the routing of orders from NOS to BX, in NOS’s capacity as a facility of PHLX and NOM, be authorized for a pilot period of one year. BX believes that the above-listed

²² 17 CFR 240.17d–2.

²³ NOS is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

²⁴ Pursuant to the regulatory contract, both FINRA and BX will collect and maintain all alerts, complaints, investigations and enforcement actions in which NOS (in its capacity as a facility of PHLX and NOM routing orders to BX) is identified as a participant that has potentially violated applicable Commission or BX rules. BX and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission’s Office of Compliance Inspections and Examinations.

conditions protect the independence of the Exchange's regulatory responsibility with respect to NOS, and that these mitigate the aforementioned concerns about potential conflicts of interest and unfair competitive advantage.

Book Processing. All trading interest on the System will be automatically executable. The System, like NOM, will have a single execution algorithm based on price/time priority. The System and rules provide for the ranking, display, and execution of all orders in price/time priority without regard to the status of the entity entering an order. For each order, among equally-priced or better-priced trading interest, the System executes against available contra-side displayed contract amounts in full, in price/time priority.²⁵ Any price improvement resulting from an execution in the System will accrue to the party taking liquidity.²⁶

Acceptable Trade Range. The System will employ an Acceptable Trade Range ("ATR") feature to limit the range of prices at which an order will be allowed to execute. The ATR is calculated by taking the reference price, plus or minus a value to be determined by the Exchange. (i.e., the reference price - (x) for sell orders and the reference price + (x) for buy orders). Upon receipt of a new order, the reference price is National Best Bid ("NBB") for sell orders and the National Best Offer ("NBO") for buy orders or the last price at which the order is posted whichever is higher for a buy order or lower for a sell order. If an order reaches the outer limit of the ATR (the "Threshold Price") without being fully executed, it will be posted at the Threshold Price for a brief period, not to exceed one second ("Posting Period"), to allow more liquidity to be collected. Upon posting, either the current Threshold Price of the order or an updated NBB for buy orders or the NBO for sell orders (whichever is higher for a buy

²⁵ See proposed BX Options Rules, Chapter VI, Section 10.

²⁶ See proposed BX Options Rules, Chapter VI, Section 10.

order/lower for a sell order) then becomes the reference price for calculating a new ATR. If the order remains unexecuted, a New ATR will be calculated and the order will execute, route, or post up to the new ATR Threshold Price. This process will repeat until the order is executed, cancelled, or posted at its limit price.²⁷

Data Feed. Like NOM, BX Options will offer two proprietary data feeds. BX Depth of Market (“BX Depth”) will be a data feed that provides quotation information for individual orders on the BX Options book, last sale information for trades executed on BX Options, and order imbalance information as set forth in BX Options Rules Chapter VI, Section 8. In addition, BX Top of Market (“BX Top”) will be a data feed that provides the BX Options best bid and offer and last sale information for trades executed on BX Options.²⁸

BX Options Participants

Like NOM, BX will have only one category of members, known as “Options Participants” or “Participants.” All BX members will be eligible to participate in BX Options provided that BX specifically authorizes them to trade in the System and they become Participants; in other words, existing BX members will be required to comply with the incremental requirements of the proposed options rules. New BX members will be required to fulfill the requirements of the BX Rule 1000 Series to become a BX member as well as the incremental requirements set forth in the proposed options rules to become a BX Participant. The proposed rules avoid, to the greatest extent possible, proposing requirements that overlap with the rules already set forth in the Rule 1000 Series of the BX Rule Manual.

²⁷ See proposed BX Options Rules, Chapter VI, Section 10(7).

²⁸ BX offers other data feeds with respect to its equities market data. See BX Rule 7023.

Only Options Participants will be permitted to transact business on BX Options via the System.²⁹ BX will authorize any Options Participant who meets certain enumerated qualification requirements to obtain access to BX Options. Among other things, Options Participants must be registered as broker-dealers pursuant to the Act and have as the principal purpose of being an Options Participant the conduct of a securities business. Every Options Participant shall at all times maintain membership in another registered options exchange that is not registered solely under Section 6(g) of the Act or FINRA.³⁰ There will be two types of Options Participants, Options Order Entry Firms and Options Market Makers. Options Order Entry Firms (“OEFs”) will be those Options Participants representing customer orders as agent on BX Options and non-Market Maker Participants conducting proprietary trading as principal.

Options Market Makers are Options Participants registered with the Exchange as Options Market Makers and registered with BX in one or more options listed on BX.³¹ BX may suspend or terminate any registration of an Options Market Maker when, in BX's judgment, the interests of a fair and orderly market are best served by such action.

To become an Options Market Maker, an Options Participant is required to register by filing a written application. BX will not place any limit on the number of entities that may become Options Market Makers. BX Options Market Makers will be required to electronically engage in a course of dealing to enhance liquidity available on BX and to assist in the

²⁹ See proposed BX Options Rules, Chapter II.

³⁰ Pursuant to BX Rule 1002(e), members that transact business with customers shall at all times be members of FINRA.

³¹ See proposed BX Options Rules, Chapter VII.

maintenance of fair and orderly markets.³² Among other things, Options Market Makers would have to participate in the opening and maintain minimum net capital in accordance with SEC and BX Options Rules. Furthermore, Options Market Makers must maintain a two-sided market for at least one contract in at least 60% of the series in options in which the Options Market Maker is registered. To satisfy this requirement with respect to quoting a series, a Market Maker must quote such series 90% of the trading day (as a percentage of the total number of minutes in such trading day) or such higher percentage as BX may announce in advance. BX Regulation may consider exceptions to the requirement to quote 90% (or higher) of the trading day based on demonstrated legal or regulatory requirements or other mitigating circumstances. Market Makers shall not be required to make two-sided markets pursuant to Section 5(a)(i) of Chapter VII in any Quarterly Option Series, any adjusted option series, and any option series until the time to expiration for such series is less than nine months. Accordingly, the continuous quotation obligations set forth in this rule shall not apply to Market Makers respecting Quarterly Option Series, adjusted option series,³³ and series with an expiration of nine months or greater. If a technical failure or limitation of a system of BX prevents a Market Maker from maintaining, or prevents a Market Maker from communicating to BX Options timely and accurate quotes, the

³² Options Market Makers receive certain benefits for carrying out their duties. For example, a lender may extend credit to a broker-dealer without regard to the restrictions in Regulation T of the Board of Governors of the Federal Reserve System if the credit is to be used to finance the broker-dealer's activities as market maker on a national securities exchange. Thus, an Options Market Maker has a corresponding obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis to justify this favorable treatment.

³³ An adjusted option series is an option series wherein one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares.

duration of such failure or limitation shall not be included in any of these calculations with respect to the affected quotes.³⁴

Options Market Makers must also comply with certain bid/ask differentials (quote spread parameters).³⁵ Options on equities (including Exchange-Traded Fund Shares), and on index options must be quoted with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid, including before and during the opening. However, respecting in-the-money series where the market for the underlying security is wider than \$5, the bid/ask differential may be as wide as the quotation for the underlying security on the primary market.

BX is also proposing an order exposure requirement comparable to that which currently applies on other registered options exchanges. Specifically, as set forth in Chapter VII, Section 12, with respect to orders routed to BX, Options Participants may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one second or (ii) the Options Participant has been bidding or offering on the Exchange for at least one second prior to receiving an agency order that is executable against such bid or offer.

Quotes and orders entered by Options Market Makers using the same market participant identifier will not be executed against quotes and orders entered on the opposite side of the market by the same market maker using the same identifier. In such a case, the System will cancel the oldest of the quotes or orders back to the entering party prior to execution.³⁶

³⁴ Substantial or continued failure by an Options Market Maker to meet any of its obligations and duties, will subject the Options Market Maker to disciplinary action, suspension, or revocation of the Options Market Maker's registration in one or more options series.

³⁵ See proposed BX Options Rules, Chapter VI, Section 6(d)(ii) [sic].

³⁶ See proposed BX Options Rules, Chapter VI, Section 10(6).

Regulation

The BX Options market will leverage many of the structures that BX has in place to operate a national securities exchange in compliance with Section 6 of the Act. As described in more detail below, like for NOM, there will be three elements of that regulation: (1) BX will join the existing options industry agreements pursuant to Section 17(d) of the Act; (2) BX's Regulatory Services Agreement with FINRA will govern many aspects of the regulation and discipline members that participate in options trading; and (3) BX will perform options listing regulation as well as real-time and post-trade regulation of options trading. The principle here, again, is that BX will regulate its options market much the way NOM is regulated today.

Section 17(d) of the Act and the related rules thereunder permit SROs to allocate certain regulatory responsibilities to avoid duplicative oversight and regulation. Under Rule 17d-1 thereunder, the SEC designates one SRO to be the Designated Examining Authority, or DEA, for each broker-dealer that is a member of more than one SRO. The DEA is responsible for the financial aspects of that broker-dealer's regulatory oversight. Because BX members also must be members of at least one other SRO, BX would generally not be designated as the DEA for any of its members.

Rule 17d-2 under the Act permits SROs to file with the Commission plans under which the SROs allocate among each other the responsibility to receive regulatory reports from, and examine and enforce compliance with specified provisions of the Act and rules thereunder and SRO rules by firms that are members of more than one SRO ("common members"). If such a plan is declared effective by the Commission, an SRO that is a party to the plan is relieved of regulatory responsibility as to any common member for whom responsibility is allocated under the plan to another SRO.

All of the options exchanges, FINRA, and the New York Stock Exchange (“NYSE”) have entered into the Options Sales Practices Agreement, a Rule 17d-2 agreement. Under this Agreement, the examining SROs will examine firms that are common members of BX and the particular examining SRO for compliance with certain provisions of the Act, certain of the rules and regulations adopted thereunder, certain examining SRO rules, and certain BX Rules. FINRA will be the examining SRO for BX Options.

For those regulatory responsibilities that fall outside the scope of any Rule 17d-2 agreements, BX will retain full regulatory responsibility under the Act. However, BX has entered into a Regulatory Services Agreement with FINRA, pursuant to which FINRA personnel operate as agents for BX in performing certain of these functions. In addition to performing certain membership functions for the Exchange, FINRA performs certain disciplinary and enforcement functions for the Exchange. Generally, FINRA investigates members, issue complaints, and conducts hearings pursuant to the Exchange's rules.

As is the case with NOM and BX equities, BX will supervise FINRA and continue to bear ultimate regulatory responsibility.

Finally, as it does with equities (and the same that is done for NOM by NASDAQ Regulation), BX Regulation will perform real-time surveillance of the BX Options market for the purpose of maintaining a fair and orderly market at all times. As it does with BX’s equities trading and the same that is done for NOM by NASDAQ Regulation, BX Regulation will monitor BX Options trading market on a real-time basis to identify unusual trading patterns and determine whether particular trading activity requires further regulatory investigation by FINRA. BX Regulation will also conduct post-trade surveillance to determine whether the trading activity requires further investigation by FINRA.

In addition, BX Regulation will oversee the process for determining and implementing trade halts, identifying and responding to unusual market conditions, and administering BX's process for identifying and remediating "obvious errors" by and among its Options Participants.³⁷ Appeals of disciplinary hearings will be handled by the Exchange Review Council.

BX's disciplinary rules are set forth in the 9000 series of BX Rules; such disciplinary rules will apply to Options Participants and their associated persons. BX's Minor Rule Violation Plan ("MRVP") is set forth in Rule 9216 and related IM-9216. At this time, BX proposes to amend its MRVP to cover certain BX Options rules listed in proposed Chapter X, Section 7.

BX's MRVP specifies those uncontested minor rule violations with sanctions not exceeding \$2,500 that would not be subject to the provisions of Rule 19d-1(c)(1) under the Act³⁸ requiring that an SRO promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization. Rule 19d-1(c) allows SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions.

Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission will not be considered "final" for purposes of Section

³⁷ BX's proposed obvious and catastrophic error rule mirrors NOM's, stating that the Exchange shall either nullify a transaction or adjust the execution price of a transaction that meets the standards of the rule, which takes into account whether the execution price of a transaction is higher or lower than the Theoretical Price for the series by a certain amount. Like on NOM, obvious error decisions can be appealed to a panel of the Market Operations Review Committee, which will be comprised minimally of representatives of one member engaged in Market Making and two industry representatives not engaged in Market Making. See proposed BX Options Rules, Chapter V, Section 6 and BX By-Laws Article IV, Section 4.14(d).

³⁸ 17 CFR 240.19d-1(c)(1).

19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.³⁹

As stated above, currently, BX has in place a MRVP,⁴⁰ and is now proposing to amend that plan to cover options. In this regard, BX proposes to amend IM-9216, Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2), in the BX Equity Rules. Specifically, BX proposes to add a reference to BX Options Rules, Chapter X, Section 7 - Penalty for Minor Rule Violations for Options Trading, in order to make clear that these provisions are included in BX's MRVP. The rules included in proposed Chapter X, Section 7 are similar to those of other options exchanges, and include position limit violations of Chapter III, Section 7, order entry-related violations of Chapter VII, Sections 6(a)-(c), continuous quoting required by Chapter VII, Section 6(d), various reporting obligations in Chapter III, Sections 7-10, expiring exercise declaration rules in Chapter VIII, Sections 1-3, audit trail submission and recordkeeping requirements of Chapter V, Section 7 and Chapter IX, Sections 1-3, representation of orders, Chapter VII, Section 12, trade reporting, Chapter VI, Sections 14 and 15, locked and crossed Market Violations, Chapter XII, Section 3, trade-through violations, and Chapter XII, Section 2(a), failure to timely file amendments to Form U4, Form U5 and Form BD.⁴¹ Upon approval of the MRVP, BX will provide the Commission a quarterly report of actions taken on

³⁹ In approving BX Rule 9216, the Commission noted that the Exchange proposed that any amendments to such rule made pursuant to a rule filing submitted under Rule 19b-4 of the Act would automatically be deemed a request for Commission approval of a modification to its MRVP. Securities Exchange Act Release No. 26737 (April 17, 1989), 54 FR 16438 (April 24, 1989)(SR-BSE-88-2).

⁴⁰ See BX Rule 9216(b).

⁴¹ See e.g. ISE Rule 1614.

minor rule violations under the MRVP. The quarterly report will include BX's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition. BX believes that adding these options rules to its MRVP should help it carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

Accordingly, BX represents that it has the ability to discharge all regulatory functions related to its proposed options market. In connection with its regulatory functions, the Exchange represents that its regulatory oversight committee and its CRO will assume responsibility for regulating quoting and trading on BX Options and conduct by BX Options Participants. The Exchange's CRO has general supervision of the regulatory operations of the Exchange, including overseeing surveillance, examination, and enforcement functions, and administers the Regulatory Services Agreement between the Exchange and FINRA. BX's By-Laws and rules provide that it has disciplinary jurisdiction over its members so that it can enforce its members' compliance with its rules and the federal securities laws.⁴² The Exchange's rules also permit it to sanction members for violations of its rules and violations of the federal securities laws by, among other things, expelling or suspending members, limiting members' activities, functions, or operations, fining or censuring members, or suspending or barring a person from being associated with a

⁴² See e.g. Exchange By-Laws, Article XII, Section 12.2.

member.⁴³ BX's Rules also provide for the imposition of fines for minor rule violations in lieu of commencing disciplinary proceedings. This framework will apply to BX Options.⁴⁴

National Market System Plans

As discussed herein, BX is a participant in the various national market system plans for options trading established under Section 11A of the Act, because BX has been the SRO for the BOX market, which currently operates as its facility. Because BOX is becoming its own, separate national securities exchange, it is pursuing its own membership in these various plans. BX plans to retain these plan memberships in order to operate BX Options. Specifically, BX is a member of the Options Order Protection and Locked/Crossed Market Plan, the Options Listings Procedures Plan (discussed below), and the Plan for the Reporting of Options Last Sale Reports and Quotation Information,⁴⁵ through the Options Price Reporting Authority ("OPRA"). In addition, BX is a participant in the Options Regulatory Surveillance Authority ("ORSA") and the Plan for the Selection and Reservation of Securities Symbols. BX is transferring its status as a participant exchange in OCC to BOX and securing a membership therein.

Options Order Protection and Locked/Crossed Market Plan Rules

BX will participate in the Options Order Protection and Locked/Crossed Market Plan ("Plan"), and therefore will be required to comply with the obligations of Participants under the Plan. BX proposes to adopt rules relating to the Plan that are substantially similar to the rules in

⁴³ See e.g. BX Rule 8310.

⁴⁴ BX Rules apply to Options Participants and the trading of options contracts on BX Options. See BX Options Rules, Chapter I, Section 2. Options Participants must, among other things, be an existing member or become a member of the Exchange, pursuant to the BX 1000 Rule Series, as well as maintain a membership on at least one other options exchange. See BX Options Rules, Chapter II, Sections 1 (b)(iii) and 2(f).

⁴⁵ See www.opradata.com.

place on or proposed by all of the options exchanges that are Participants in the Plan. The Plan essentially applies the Regulation NMS price-protection provisions to the options markets. Similar to Regulation NMS, the Plan requires the Plan Participants to adopt rules “reasonably designed to prevent Trade-Throughs,” while exempting Intermarket Sweep Orders from that prohibition. The Plan’s definition of an Intermarket Sweep Order is essentially the same as under Regulation NMS. The remaining exceptions to the trade-through prohibition, discussed more specifically below, either track those under Regulation NMS or correspond to unique aspects of the options market, or both. The proposed rules in Chapter XII conform to the requirements of the Plan. Section 1 sets forth the defined terms for use under the Plan. Section 2 prohibits trade-throughs and exempts Intermarket Sweep Orders from that prohibition. Section 2 also contains additional exceptions to the trade-through prohibition that track the exceptions under Regulation NMS or correspond to exceptions on other options exchanges, or both.⁴⁶ Section 3 sets forth the general prohibition against locking/crossing other eligible exchanges as well as several exceptions that permit locked markets in limited circumstances; such exceptions have been approved by the Commission for inclusion in the rules of other options exchanges.⁴⁷ Specifically, the exceptions to the general prohibition on locking and crossing occur when (1) the locking or crossing quotation was displayed at a time when the Exchange was experiencing a failure, material delay, or malfunction of its systems or equipment; (2) the locking or crossing quotation was displayed at a time when there is a Crossed Market; or (3) the Member simultaneously routed an Intermarket Sweep Order to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer.

⁴⁶ See e.g., NOM Rules, Chapter XII, Section 2.

⁴⁷ See e.g., NOM Rules, Chapter XII, Section 3.

Securities Traded on BX Options

BX proposes to adopt listing standards for options traded on BX (Chapter IV of proposed rules) as well as for index options (Chapter XIV) that are identical to the approved rules of other options exchanges, including NOM.⁴⁸ These include the specific criteria for underlying securities in proposed Section 3 of Chapter IV, as well as the withdrawal of such approval. In addition, Section 6 will cover the series of options contracts open for trading, which spells out the appropriate exercise dates and strike prices. In addition, BX intends to participate in the \$2.50 Strike Price Program,⁴⁹ the \$1.00 Strike Price Program,⁵⁰ the \$5 Strike Price Program⁵¹ and the \$.50 Strike Program⁵² (“Programs”) on the same terms and conditions as the other options exchanges. BX believes that the programs will provide investors with flexibility in tailoring their options positions to meet their investment objectives while avoiding the unnecessary proliferation of illiquid options series. Sections 7 and 8 cover adjustments and long-term options, respectively. With regard to the impact on system capacity, BX has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of option series that may be listed and traded pursuant to the Programs.

BX is a member of the Options Listings Procedures Plan and will list and trade options already listed on other options exchanges. BX will gradually phase-in its listing and trading of options, beginning with a selection of actively traded options. BX will provide the specific list in

⁴⁸ See NOM Rules, Chapters IV and XIV.

⁴⁹ See proposed Chapter IV, Section 6, Supplementary Material .03.

⁵⁰ See proposed Chapter IV, Section 6, Supplementary Material .02.

⁵¹ See proposed Chapter IV, Section 6(d)(v).

⁵² See proposed Chapter IV, Section 6, Supplementary Material .05.

an Options Trader Alert to its membership. At least initially, BX does not plan to develop new options products or listing standards. BX is aware that, in the event BX determines to trade an options class not listed on another options exchange or within BX's existing listing standards, BX will be required to submit a proposed rule change to establish listing standards.

Exemptions

BX proposes to incorporate by reference as BX Options Rules certain rules of Chicago Board Options Exchange, Incorporated ("CBOE"), NYSE and FINRA. Specifically, BX proposes to incorporate by reference: (1) CBOE position and exercise limits governing position and exercise limits for equity and index options, which are cross-referenced in Chapter III, Sections 7 and 9 of the BX Options Rules and Chapter XIV, Sections 5 and 7 of the BX Options Rules, respectively; (2) the margin rules of the CBOE or the NYSE, which are referenced in Chapter XIII, Section 3 of the BX Options Rules; and (3) FINRA's rules governing communications with the public, which are referenced in Chapter XI, Section 22 of the BX Options Rules. BX will notify Participants whenever the CBOE proposes to change a position limit rule that has been incorporated by reference into the BX Options Rules.

BX proposes to incorporate by reference as BX Options Rules certain rules of the CBOE, NYSE, and FINRA such that BX members will comply with a BX rule by complying with the CBOE, NYSE, or FINRA rule referenced. In connection with its proposal to incorporate CBOE, NYSE, and FINRA rules by reference, BX requests, pursuant to Rule 240.0-12,⁵³ an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act for changes to those BX Options Rules that are effected solely by virtue of a change to a cross-referenced CBOE, NYSE, or FINRA rule. BX proposes to incorporate by reference categories

⁵³ 17 CFR 240.0-12.

of rules (rather than individual rules within a category) that are not trading rules. BX agrees to provide written notice to Participants prior to the launch of BX Options of the specific CBOE, NYSE, and FINRA rules that it will incorporate by reference.⁵⁴ BX will notify Participants whenever the CBOE, NYSE or FINRA propose to change a rule that has been incorporated by reference into the BX Options Rules.

Using its authority under Section 36 of the Act, the Commission previously exempted certain SROs from the requirement to file proposed rule changes under Section 19(b) of the Act.⁵⁵ Each such exempt SRO agreed to be governed by the incorporated rules, as amended from time to time, but is not required to file a separate proposed rule change with the Commission each time the SRO whose rules are incorporated by reference seeks to modify its rules. In addition, each SRO incorporated by reference only regulatory rules (e.g., margin, suitability, arbitration), not trading rules, and incorporated by reference whole categories of rules (i.e., did not “cherry-pick” certain individual rules within a category). Each exempt SRO had reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO in order to provide its members with notice of a proposed rule change that affects their interests, so that they would have an opportunity to comment on it. BX believes that this exemption is appropriate in the public interest and consistent with the

⁵⁴ BX will provide such notice through a posting on the same web site location where BX posts its own rule filings pursuant to Rule 19b-4(1) under Act, within the time frame required by that Rule. The web site posting will include a link to the location on the CBOE, NYSE, or FINRA web site where those SROs' proposed rule changes are posted.

⁵⁵ See Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004) (Order Granting Application for Exemptions Pursuant to Section 36(a) of the Exchange Act by the American Stock Exchange LLC, the International Securities Exchange, Inc., the Municipal Securities Rulemaking Board, the Pacific Exchange, Inc., the Philadelphia Stock Exchange, Inc., and the Boston Stock Exchange, Inc.).

protection of investors because it will promote more efficient use of Commission and SRO resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.

No Relationship to BOX

The new BX Options market will not be related to the BOX market. Although BX is currently the SRO for the BOX market, once the BOX market is approved as a national securities exchange, it will operate as a separate SRO from BX; it will not be regulated by BX or owned by The NASDAQ OMX Group, Inc. Accordingly, The NASDAQ OMX Group, Inc. will continue to own and operate BX, including the new BX Options market.

Fees

The Exchange has proposed that Chapter XV will be titled Options Pricing, and provide that BX Options Participants may be subject to the Charges for Membership, Services and Equipment in the Rule 7000 Series as well as the fees in Chapter XV. Furthermore, Section 1, Collection of Exchange Fees and Other Claims, requires that each BX Options Participant, and all applicants for registration, shall be required to provide a clearing account number for an account at the National Securities Clearing Corporation (“NSCC”) for purposes of permitting the Exchange to debit any undisputed or final fees, fines, charges and/or other monetary sanctions or other monies due and owing to the Exchange or other charges related to Rule 1002(c)(1). Sections 2 - 6 are reserved for the eventual transaction, routing and access fees that BX will impose and separately file as a proposed rule change. Section 7 provides that all fee disputes concerning fees which are billed by the Exchange must be submitted to the Exchange in writing and must be accompanied by supporting documentation; all fee disputes must be submitted no later than 60 days after receipt of a billing invoice. Section 8 covers the sales fee applicable

when a sale in options occurs with respect to which BX is obligated to pay a fee to the SEC under Section 31 of the Act (“Sales Fee”). The Sales Fee is collected indirectly from members through their clearing firms by a designated clearing agency, as defined by the Act, on behalf of BX. The amount of the Sales Fee is equal to the Section 31 fee rate multiplied by the member's aggregate dollar amount of covered sales resulting from transactions through BX transaction execution systems during any computational period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁵⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁵⁷ in particular, in that it is 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 mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers. Further, BX believes that the proposal is consistent with Sections 6(b)(1) of the Act,⁵⁸ which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the exchange. The BX Options market could confer important benefits on the

⁵⁶ 15 U.S.C. 78f(b).

⁵⁷ 15 U.S.C. 78f(b)(5).

⁵⁸ 15 U.S.C. 78f(b)(1).

public and market participants. In particular, BX's entry into the marketplace will provide market participants with an additional venue for executing orders in standardized options, enhance innovation, and increase competition between and among the options exchanges, resulting in better prices and executions for investors.

BX believes that because BX Options is part of BX and all BX Options Participants are BX members, the composition and selection of the BX Board of Directors will continue to satisfy the requirement in Section 6(b)(3) of the Act that the rules of the Exchange provide for the fair representation of members in the selection of directors and administration of the Exchange.⁵⁹

In addition, BX's MRVP, as proposed to be amended, is consistent with Sections 6(b)(1), 6(b)(5) and 6(b)(6) of the Act, which require, in part, that an exchange have the capacity to enforce compliance with, and provide appropriate discipline for, violations of the rules of the Commission and of the exchange.⁶⁰ In addition, because IM-9216 offers procedural rights to a person sanctioned for a violation listed in proposed Chapter X, Section 7, BX will provide a fair procedure for the disciplining of members and associated persons, consistent with Section 6(b)(7) of the Act.⁶¹ This proposal to include the rules listed in Chapter X, Section 7 in BX's MRVP is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,⁶² because it should strengthen BX's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of

⁵⁹ 15 U.S.C. 78f(b)(3).

⁶⁰ 15 U.S.C. 78f(b)(1), 78f(b)(5) and 78f(b)(6).

⁶¹ 15 U.S.C. 78f(b)(7).

⁶² 17 CFR 240.19d-1(c)(2).

the particular violation. In requesting the proposed change to the MRVP, BX in no way minimizes the importance of compliance with BX Rules and all other rules subject to the imposition of fines under the MRVP. However, the MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. BX will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRVP or whether a violation requires a formal disciplinary action.

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. BX operates in an intensely competitive global marketplace for listings, financial products, transaction services, and market data. Relying on its array of services and benefits, BX competes for the privilege of providing market and listing services to broker-dealers and issuers. BX's ability to compete in this environment is based in large part on the quality of its trading systems, the overall quality of its market and its attractiveness to the largest number of investors, as measured by speed, likelihood and cost of executions, as well as spreads, fairness, and transparency. With these aspects of competition as a guide, BX designed its current proposal to create, like NOM, the fastest, fairest, most transparent and most efficient trading venue available for the trading of options. The resulting system should further reduce overall trading costs and increase price competition, both pro-competitive developments. BX believes that the resulting system will have the pro-competitive effect of spurring further initiative and innovation among market centers and market participants. Market participants that disagree and do not view these developments as pro-competitive, will have the flexibility to use only those functions that

improve their trading or to not use the system at all; participation in the system in whole or in part is completely voluntary. BX Options will benefit individual investors, options trading firms, and the options market generally. The entry of an innovative, low cost competitor such as BX will promote competition, further spurring existing markets to improve their own execution systems and reduce trading costs. BX Options will differentiate its market by offering innovative features in the future. BX Options will operate in a highly competitive market comprised of nine other U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges based on many factors, including technology, functionality, reliability, fees and customer service.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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. Please include File Number SR-BX-2012-030 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-2012-030. 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 website (<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 website 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 such 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 publicly available. All submissions should refer

to File Number SR-BX-2012-030 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶³

Kevin M. O'Neill
Deputy Secretary

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⁶³ 17 CFR 200.30-3(a)(12).