

technical, or operational issue, should provide a reasonably efficient means for the Exchange to handle such orders, and appears reasonably designed to permit EDGX to maintain fair and orderly markets.<sup>25</sup>

The Commission also believes that allowing DE Route to maintain an error account to resolve error positions acquired in connection with its role as an Outbound Router pursuant to the procedures set forth in the rule, and as described above, is consistent with the Act. The Commission notes that the rule establishes criteria for determining which positions are error positions that may be acquired into the error account, and which will be assigned to Members.<sup>26</sup> DE Route, in connection with a particular systems, technical, or operational issue, will be required to either (i) assign the entire amount of a resulting error position to Members or (ii) liquidate such position.<sup>27</sup> Also, DE Route will assign an error position that results from a particular systems, technical, or operational issue to Members only if the entire amount of such error position can be assigned to all of the affected Members.<sup>28</sup> If DE Route cannot fairly and practically assign the entire amount of an error position to all affected Members, DE Route will liquidate such error position.<sup>29</sup> In this regard, the Commission believes that the new rule appears reasonably designed to further just and equitable principles of trade and the protection of investors and the public interest, and to help prevent unfair discrimination, in that it should help assure the handling of error positions will be based on clear and objective criteria, and that the resolution of those positions will occur promptly through a transparent process.

Additionally, the Commission notes that it has previously expressed concern about the potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest

when the exchange is affiliated with one of its members.<sup>30</sup> The Commission is also concerned about the potential for misuse of confidential and proprietary information. The Commission believes that the requirement that DE Route provide complete time and price discretion for the liquidation of an error position to a third-party broker-dealer, including that DE Route not attempt to exercise any influence or control over the timing or methods of such trading, combined with the requirement that DE Route establish and implement policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information to the third-party routing broker liquidating such positions, should help mitigate the Commission's concerns. In particular, the Commission believes that these requirements should help assure that none of EDGX, DE Route, or the third-party broker-dealer is able to misuse confidential or proprietary information obtained in connection with the liquidation of error positions for its own benefit. The Commission also notes that DE Route would be required to make and keep records documenting the rationale for assignment of error positions to Members, documenting the factors considered in determining to acquire error positions into the error account, and associated with the liquidation of error positions through the third-party broker-dealer.<sup>31</sup>

Finally, the Commission notes that the proposed procedures for canceling orders and handling of error positions are consistent with procedures the Commission has approved for another exchange.<sup>32</sup>

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>33</sup> that the proposed rule change (SR-EDGX-2012-08) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

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

[FR Doc. 2012-12442 Filed 5-22-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67009; File No. SR-BX-2012-036]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Grandfathered Rules, BOX Trading Rules, BX By-Laws, BX Rules and Remove the BOXR Operating Agreement and By-Laws

May 17, 2012.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 14, 2012, NASDAQ OMX BX ("BX" or the "Exchange") 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 Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend proposal [sic] to amend the Grandfathered Rules, the Boston Options Exchange Group LLC ("BOX") Trading Rules, remove the Boston Options Exchange Regulation LLC ("BOXR") By-Laws and the Amended and Restated Limited Liability Company Agreement ("BOXR Operating Agreement"), and amend the BX By-Laws and the BX Rules. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

<sup>25</sup> The Commission notes that EDGX states that the proposed amendments to EDGX Rule 2.11 are designed to maintain fair and orderly markets, ensure full trade certainty for market participants, and avoid disrupting the clearance and settlement process. See Notice, 77 FR at 20857. The Commission also notes that EDGX states that a decision to cancel orders due to a systems, technical, or operational issue may not cause the Exchange to declare self-help against a Trading Center pursuant to Rule 611 of Regulation NMS, in which case the Exchange would continue to be subject to the order protection requirements of Rule 611 with respect to that Trading Center. See 17 CFR 242.611(b). See also Notice, 77 FR at 20856, n.12.

<sup>26</sup> See EDGX Rule 2.11(a)(7).

<sup>27</sup> See *id.*

<sup>28</sup> See *id.*

<sup>29</sup> See *id.*

<sup>30</sup> See, e.g., Securities Exchange Act Release No. 65455 (September 30, 2011), 76 FR 62119 (October 6, 2011) at 62120, n.16 and accompanying text.

<sup>31</sup> See EDGX Rule 2.11(a)(7).

<sup>32</sup> See Securities Exchange Act Release No. 66963 (May 10, 2012), 77 FR 28919 (May 16, 2012) (SR-NYSEArca-2012-22).

<sup>33</sup> 15 U.S.C. 78s(b)(2).

<sup>34</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> 17 CFR 240.19b-4(f)(6).

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

Boston Options Exchange LLC ("BOX") is ceasing to operate as an options trading facility of the Exchange.<sup>4</sup> BX and BOX have entered into a Regulatory Services Agreement which specifies, among other matters, that BX will terminate its responsibility for fulfilling certain obligations and cease performing certain regulatory functions as of the effective date of June 1, 2012, or sooner if BOX satisfies all of the conditions required for BOX to operate as a national securities exchange ("the facility termination effective date").<sup>5</sup> As proposed, the BOX Trading Rules will no longer be operative to permit options trading on BX as of the facility termination effective date. If BOX meets the requirements and operates as an exchange, it will be a self-regulatory organization responsible for the activities occurring on BOX after the facility termination effective date. BX is not the Designated Options Examining Authority ("DOEA") for any BOX Options Participant.

BX will continue to have certain responsibility for the trading activities and the actions of the BOX Options Participants for the time period during which BOX was operating as a facility of the Exchange ("BOX legacy

matters").<sup>6</sup> BX has always retained the ultimate authority and responsibility for the rules and regulations and the activities of the BOX facility. However, BX had delegated to BOXR the authority to act on behalf of the Exchange regarding regulatory matters relating to the BOX facility. The sole purpose of BOXR has been to regulate the BOX facility. As such, after BOX ceases to be a facility of the Exchange, the delegation of regulatory authority to BOXR will be terminated and BX will retain all such responsibilities for BOX legacy matters. Currently, for matters pertaining to BOX Options Participants, BOXR utilizes procedural rules regarding discipline and arbitration found in the "Grandfathered Rules," which will be defined below. As proposed, rather than have two sets of procedural rules for discipline and arbitration, BX will utilize the procedural rules governing disciplinary matters and arbitrations which currently exist in the BX Rules<sup>7</sup> and are used for the Equity market. Currently, there are no formal disciplinary proceedings or arbitrations pending against BOX Options Participants.<sup>8</sup> As such, there is no need for temporary rules to be implemented.<sup>9</sup> All formal proceedings, if any are commenced, will utilize the new procedural rules.

These proposed changes are not intended to change any underlying rules, rather these proposed changes and the reliance on existing BX Rules are intended to permit the use of BX's current discipline and arbitration procedures for BOX legacy matters. These procedures are substantially similar to those in the Grandfathered Rules. These BX disciplinary procedures provide fair procedures for the discipline of the former BOX

Options Participants and persons who were associated persons of former BOX Options Participants and for arbitration proceedings stemming from activities which occurred while BOX was a facility of the Exchange.

There are also some amendments updating outdated references. Finally, references to BOX and BOX related matters (i.e. BOX, BOXR) which are no longer needed in the BX By-Laws and Rules, once BOX is no longer a facility of the Exchange, are being removed. For these reasons, as will be explained more fully below, BX proposes to amend the Grandfathered Rules and the BOX Trading Rules, and to remove the BOXR By-Laws and BOXR Operating Agreement, in their entirety, and the BX By-Laws, the BX Rules, with an effective date of the facility termination effective date.

Grandfathered Rules

First, BX is proposing to amend the "Grandfathered Rules." The Grandfathered Rules are the Rules of Board of Governors of the Boston Stock Exchange as in effect on the date of the closing of the acquisition of the Exchange by The NASDAQ OMX Group, Inc. Currently, as set forth in BX Rules 0210(r), the Grandfathered Rules are operative to the extent that such rules are applicable to BOX and to Options Participants and to activities of members, members organizations, persons associated with members, and other persons subject to the jurisdiction of the Exchange that occurred prior to the adoption of the Equity Rules. As proposed, the Grandfathered Rules will be amended, as explained below, to apply to the activities of BOX and the BOX Options Participants and associated persons subject to the jurisdiction of the Exchange. These rules, however, will not be operative to permit trading.

The Grandfathered Rules currently consist of two sections: The Provisions of the Former Constitution of the Boston Stock Exchange, Inc. That Have Been Incorporated Into the Grandfathered Rules; and the Rules of the Board of Governors. A heading will be added to refer to these as the Grandfathered BSE Rules. As will be described more fully below, BX also proposes to incorporate the BOX Trading Rules, as amended in the manner described below, ("The Grandfathered BOX Rules") into the Grandfathered Rules. For this new third section, a heading will be added to refer to these as the Grandfathered Trading Rules of the Boston Options Exchange Group, LLC. The Grandfathered Rules will remain posted on the BX Web site.

<sup>4</sup> Currently, BOX is a facility of the Exchange under Section 3(a)(2) of the Act. See Securities Exchange Act Release Nos. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (SR-BSE-2003-17); 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (SR-BSE-2003-04) ("BOXR Order"); and 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2002-15). See also Release No. 34-58324; 73 FR 46936 (August 7, 2008) (File Nos. SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01) ("Order approving the Acquisition of the Boston Stock Exchange, Incorporated by The NASDAQ OMX Group, Inc.").

<sup>5</sup> BOX has filed an application with the Commission for registration as a national securities exchange under Section 6 of Act. See Securities Exchange Act Release No. 66242 (January 26, 2012), 77 FR 4841 (January 31, 2012). The application has been granted and is conditioned on the satisfaction of certain requirements. See Securities Exchange Act Release No. 66871 (April 27, 2012), 77 FR 86 (May 3, 2012).

<sup>6</sup> For example, potential BOX legacy matters may include disciplinary matters and arbitrations.

<sup>7</sup> These Rules are also known as the Equity Rules. The definition of Equity Rules is found at BX Rule 0120(p).

<sup>8</sup> Currently, formal proceedings are commenced by a notice of specific charges set forth in a charge memorandum. See current Grandfathered Rules, Chapter XXX, Section 2(a). See also BX Rule 9211. A disciplinary proceeding shall begin when the complaint is served and filed. Although there are currently no formal proceedings that have been commenced, there is one Options Participant reviewing a Letter of Acceptance, Waiver and Consent. See Chapter XXX, Section 10 and Chapter XXXIV.

<sup>9</sup> Compare to American Stock Exchange ("AMEX"), which implemented temporary rules to avoid potential confusion to respondents where formal proceedings had commenced by AMEX and were still pending at the Transaction date, on which date new procedural disciplinary rules were to be effective. See Securities Exchange Act Release Nos. 58286 (August 1, 2008), 73 FR 46097 (August 7, 2008); and 35678 (September 29, 2008), 73 FR 57705 (October 3, 2008) (SR-Amex-2008-64) ("Amex Proposal").

The opening explanatory paragraph to the Grandfathered Rules is being amended to reflect that the rules apply to activities of former BOX Options Participants and associated persons subject to the jurisdiction of the Exchange; in addition, the rules continue to apply to activities of members, members organizations, persons associated with members, and other persons subject to the jurisdiction of the Exchange that occurred prior to the adoption of the post-acquisition Equity Rules. In Chapter I, Section I, BX is also clarifying that references to the Board of Governors, where appropriate for the affected rules, mean the Board of Directors of the Exchange and that references to the Constitution shall mean the BX By-Laws where applicable. There are also references to the Constitution that will be renamed as "Incorporated Constitution Provision" to refer to the provisions of the Former Constitution which were incorporated into the Grandfathered Rules.<sup>10</sup> As proposed, in other sections where there is an applicable rule with a reference to a specific provision of the former Constitution, sections will be amended to replace the term Constitution with the term BX By-Laws. For example, Chapter II, Sections 14 and 25 have references to penalties provided for in Article XIV, Section 4 of the Constitution. Article XIV, Section 4 was not incorporated into the rules, as the By-Laws replaced this section of the former Constitution; this section will now reflect that penalties are provided for in the BX By-Laws. These amendments do not substantially alter the rules in their current format, but rather provide the correct reference.

Chapter IA is being removed, because, as noted above and discussed in more detail in the paragraph below, the procedural rules for disciplinary proceedings will be the current BX Rule 9000 Series. Similarly, Section 4 (Imposition of Fines for Minor Violation(s) of Rule and Floor Decorum Policies) of Chapter XVIII (Conduct) is being amended to reflect that Chapter XXX is being removed, as described below, as proceedings involving discipline will be governed by the BX Rule 9000 Series. In particular, in subsection (a), it will be referenced that BX Rule 9216 governs when BX imposes a fine for a minor rule violation. Sections 4(b) through (d) and 4(f) are being removed as they relate to disciplinary proceedings, which, as proposed, will be governed by the BX Rule 9000 Series. In addition, a cross

reference to the Grandfathered BOX Rules Chapter X, Section 2 is being added to note that it will provide for rule violations that may be considered minor in nature. Section 4(e) is being removed as unnecessary, because it is almost identical to Chapter X, Section 2(e) of the current BOX Trading Rules and proposed Grandfathered BOX Rules. Grandfathered Chapter XVIII, Section 6 is being removed as it is no longer applicable.

BX is proposing to remove Chapter XXX, Disciplining Members, Denial of Membership. The Principal Considerations in Determining Sanctions found in Chapter XXX have been incorporated in the BOXR Sanctioning Guidelines.<sup>11</sup> BX will continue to follow the Guidelines. The remainder of Chapter XXX sets forth the procedural rules to be followed for disciplining members. As proposed, in its place, BX will utilize the 9000 Series of the BX Rules,<sup>12</sup> which is the Code of Procedure that sets forth the rules regarding disciplining a member or person associated with a member and will now govern the disciplinary process for any legacy disciplinary matter. Under Chapter XXX, an explanatory sentence is being added stating the 9000 Series of BX Rules will now govern the disciplinary process. BX is removing Chapter XXXII regarding Arbitration Rules from the Grandfathered Rules because it has proposed utilizing the BX 10000 Series, which is the Code of Arbitration Procedure. As proposed, in its place will be a sentence that reflects that arbitrations will be governed by the BX 10000 Series.

Chapter XXXIV (Minor Rule Violations) is being amended to add a reference to Chapter X of the proposed, Grandfathered BOX Trading Rules. This section provides for rule violations deemed minor in nature. In addition, for the reasons noted above, references to the 9000 Series governing discipline and BX Rule 9216 regarding Acceptance, Waiver and Consent are being amended, as appropriate.

BX is terminating its delegation of authority to BOXR, and as such is proposing to remove the Delegation of Authority language from the Grandfathered Rules. Chapter XXXVI of the Grandfathered Rules sets forth the

Rules under which BX has granted BOXR authority to carry out certain regulatory responsibilities over the BOX facility. BX has always retained the ultimate regulatory responsibility for the oversight of the BOX facility with oversight conducted by BX's Regulatory Oversight Committee. For any BOX legacy matter, all regulatory responsibilities will be carried out in the manner set forth in the BX By-Laws and the BX Rules, and with continued oversight by the BX Regulatory Oversight Committee. Finally, Chapter XXXIX, Affiliation with NASDAQ OMX Group, Inc., Section 2(c) is being removed, as BOX will no longer be a facility of the Exchange.

#### BOX Trading Rules

BX also proposes to incorporate the Trading Rules of the Boston Options Exchange Group LLC, with the amendments described below, ("BOX Trading Rules") into the Grandfathered Rules and locate them at end of current Grandfathered Rules by creating a new section of the Grandfathered Rules called Grandfathered BOX Trading Rules. As stated above, these rules apply to activities of the BOX Options Participants and associated persons subject to the jurisdiction of the Exchange, during the time period that BOX was a facility of the Exchange. As proposed, a new paragraph will be added to the Grandfathered BOX Trading Rules section, before the General Provisions, to set forth that BOX is no longer a facility of the Exchange. These Grandfathered BOX Trading Rules and the applicable Grandfathered BSE Rules continue to apply to the activities of BOX and Options Participants and associated persons subject to the jurisdiction of the Exchange that occurred during the time that BOX was a facility of the Exchange. Terms below must be read in context regarding activities which occurred when BOX was a facility of the Exchange and also regarding activities relating to continued Exchange jurisdiction, such as disciplinary matters.

As proposed, certain definitions found in Section 1 of the Grandfathered BOX Trading Rules will be amended to reflect that BOX is no longer a facility of the Exchange: (6) The term "BOX" will mean the Boston Options Exchange or Boston Stock Exchange Options Exchange, *formerly* an options trading facility of the Exchange under Section 3(a)(2) of the Act; (7) the term "BOX Rules" or "Rules of BOX" will mean the Rules of the former Boston Options Exchange Facility. Where applicable, it may mean Grandfathered BOX Rules, in

<sup>10</sup> See e.g., Chapter XXXIII, Section 7 regarding BEACON Liability.

<sup>11</sup> The BOXR Sanctioning Guidelines are not set forth in the rules, but are part of the policies and procedures that are followed once a determination has been made that sanctions are to be imposed.

<sup>12</sup> Not every section of these procedures may apply to former BOX Participants. For example, because there will be no on-going activities, there may be no reason for a former BOX Participant to avail itself of the 9600 Series regarding exemptions.

context, but it may also mean the rules in place while BOX was a facility of the Exchange; (9) the term “BOXR” or “BOX Regulation” will mean Boston Options Exchange Regulation LLC, which was a wholly-owned subsidiary of the Exchange; where applicable for the Grandfathered BOX Rules, it may mean the Exchange; (10) the term “BSE Rules” will mean the Grandfathered Rules; (24) the term “Exchange” will mean the Boston Stock Exchange, now known as NASDAQ OMX BX, Inc.; (42) the term “Options Participant” or “Participant” or “Former BOX Options Participant” is being amended to reflect that the Participants *were* registered with the Exchange pursuant to the BOX Trading Rules; (61) the term “Rules of the Exchange” will mean the BX By-Laws, where applicable, the BX Rules and the Grandfathered Rules, including these Grandfathered BOX Rules.

Prior to being granted BOX Options Participant status, by executing the Options Market Participation Agreement, every Participant acknowledged that the Participant and its associated persons are subject to the oversight and jurisdiction of the Exchange. Rather than solely relying upon an open ended contractual jurisdiction provision, as proposed Chapter II, Section I (h) is being added to codify that acknowledgment in the Rules and add a two year provision for filing a complaint that is similar to that set forth in the BX Rules, providing as follows: “A Participant or an person associated with a Participant that has had its Participant status terminated or revoked shall continue to be subject to the filing of a complaint under these Rules based upon conduct that commenced prior to the effective date of the Participant’s termination of its Participation. Any such complaint, however, shall be filed within two years after the effective date of resignation, cancellation, or revocation.” This provision is similar to that found in BX Rules 1012 and 1031.

Outdated references to the specific sections of the Constitution that are unnecessary are being removed. To avoid confusion, now that certain sections of the BX Rules are being relied upon, certain references to the “Rules of the Exchange” will be referred to as the BSE Rules. For the reasons described above, references to Grandfathered BSE Chapter XXX will be removed and instead the BX Rule 9000 Series will apply.<sup>13</sup> References to Grandfathered BSE Rules, Chapter XXX in proposed

Grandfathered BOX Trading Rules, Chapter X, Section 1, regarding the procedures to be followed for imposing a Minor Rule Violation Plan fine will be replaced by BX Rule 9216, and, where appropriate, BX Rule 9000 Series, which will govern this process going forward. The Minor Rule Violation penalties and the references to underlying Grandfathered BOX Trading Rules governed by the Minor Rule Violation Plan will remain in the proposed Grandfathered BOX Trading Rules, Chapter X, Section 2 and will not be added into the BX Rules. Similarly, procedures to be followed for letters of Acceptance, Waiver and Consent will be set forth in BX Rule 9216; therefore, the section regarding Acceptance, Waiver and Consent procedures found in Grandfathered BOX Trading Rules, Chapter X, Section 3 is being removed. In addition, the Appendix is being amended to reflect that BOX will no longer be facility of the Exchange, to remove outdated references to the former Constitution, to refer to the the former Incorporated Constitution Provisions where appropriate, and to reflect that the disciplinary and arbitration procedures will be found in the 9000 and 1000 Series of the BX Rules.

#### BOXR Operating Agreement and BOXR By-Laws

BX is proposing to eliminate the BOXR By-Laws and Operating Agreement in their entirety. As stated above, once BOX ceases to be a facility of the Exchange, BOXR will no longer have a purpose, as BOXR’s sole purpose was to regulate the BOX facility. BOXR LLC will be merged into its parent, BX.

#### NASDAQ OMX BX Rules and By-Laws

In addition, BX proposes to amend the Rules of BX. Specifically, Rule 0015 (b) provides that the Options Rules (including the Grandfathered Rules) shall apply to all Options Participants, and will be amended to: (i) Remove the reference to Options Rules as there will no longer be a set of rules called Options Rules; (ii) reflect that the 9000 Series and the 10000 Series of these Rules (meaning the BX Rules) and the Grandfathered Rules shall apply to former BOX Options Participants and associated persons for activities that occurred during the time that BOX was a facility of the Exchange; and (iii) remove the provision that “[t]he Equity Rules shall apply to Options Participants only if they are also members of the Exchange,” because, as will be explained below, as proposed, the term Options Participant is being removed from the rules.

As proposed, the following definitions found in Rule 0120 will be amended. Specifically, Definition (q) “Options Rules” will be reserved. Definition (r) “Grandfathered Rules” will be amended to mean the Rules of the Board of Governors of the Boston Stock Exchange, as in effect on the date of the closing of the acquisition of the Exchange by The NASDAQ OMX Group, Inc. and as such rules may be subsequently amended, to the extent that such rules are applicable to BOX and to Options Participants that occurred while BOX was a facility of the Exchange. The Grandfathered Rules shall also apply to activities of members, members organizations, persons associated with members, and other persons subject to the jurisdiction of the Exchange that occurred prior to the adoption of the Equity Rules. Definitions (s) Options Participant, (t) BOXR, (u) BOX LLC, (v) BOX and (w) BOX Rules will be reserved, because BOX will no longer be a facility of the Exchange. Similarly, as proposed, Article I of the BX By-Laws will be amended to reflect that BOX will no longer be a facility of the Exchange. Specifically, Sections (d) through (h) will now be reserved, as these definitions are no longer needed once BOX ceases to be a facility of BX. Section 4.3(a) regarding qualifications for the Board of Directors will be amended to remove the requirement that one Industry Director shall represent BOX Participants as that is no longer needed. Subsection (b) will be removed as it references actions which occurred after the adoption of the By-Laws after the NASDAQ OMX Group, Inc. acquired the Boston Stock Exchange. Finally, Section 4.14, Committees Not Composed Solely of Directors, will be amended to remove the manner in which an Industry Director who is a representative of BOX Participants is nominated to the Board as it is no longer needed.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>14</sup> in general, and Section 6(b)(5) of the Act,<sup>15</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free

<sup>13</sup> See Proposed Grandfathered BOX Trading Rules, Chapter III, Sections 8(c) and 13, Chapter VI, Section 4, and Chapter VIII, Section 5.

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

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

and open market and a national market system and, in general, to protect investors and the public interest. Further, BX believes that the proposal is consistent with Sections 6(b)(1) of the Act, 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. Specifically, the proposal is intended to address the relationship between BX and the former BOX Participants that will exist for BOX legacy matters once BOX is no longer a facility of BX. The disciplinary procedures provide for fair procedures for the discipline of the former BOX Participants and persons who were associated persons of former BOX Participants for activities which occurred while BOX was a facility of the Exchange, consistent with Section 6(b)(7) of the Act.<sup>16</sup> BX believes that with the removal of the BOX-related provisions the composition and selection of the BX Board of Directors will continue to satisfy the requirement in Section 6(b)(3) of the Act<sup>17</sup> that the rules of the Exchange provide for the fair representation of members in the selection of directors and administration of the Exchange.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>18</sup> of the Act and Rule 19b-4(f)(6)<sup>19</sup> thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on

competition; and (C) by its terms, 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; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.<sup>20</sup>

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon the facility termination effective date. The Exchange believes that it will avoid potential confusion for BOX Options Participants that may result from a new set of rules pertaining to the new BOX Exchange, to have to the changes described above in effect on the facility termination effective date.

Because the new BOX Exchange is now operating as a national securities exchange and BOX is now a facility of the new BOX Exchange and not of BX,<sup>21</sup> the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and allow the Exchange to reflect this change in its rules on the facility termination effective date.<sup>22</sup>

At any time within 60 days of the filing of such 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>20</sup> 17 CFR 240.19b-4(f)(6)(iii). BX provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change, or such shorter time as designated by the Commission.

<sup>21</sup> See *supra* note 5. The new BOX Exchange became operational on May 14, 2012.

<sup>22</sup> For the purposes only of waiving the operative date of this proposal, 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-2012-036 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-2012-036. 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-2012-036 and should be submitted on or before June 13, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

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

[FR Doc. 2012-12441 Filed 5-22-12; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>23</sup> 17 CFR 200.30-3(a)(12).

<sup>16</sup> 15 U.S.C. 78f(b)(7).

<sup>17</sup> 15 U.S.C. 78f(b)(7).

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).