

## Conclusion

*It is hereby ordered*, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and facts presented in the Letter, is exempt from the requirements of Rule 101 with respect to the Funds, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Funds to bid for or purchase such Shares during their participation in such distribution.

*It is further ordered*, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the Funds, thus permitting the Funds to redeem Shares of the Funds during the continuous offering of such Shares.

*It is further ordered*, pursuant to Rule 10b-17(b)(2), that the Trust, based on the representations and the facts presented in the Letter, subject to the conditions that the Funds will provide at least three business days' notice in advance of the related record date for Special Distributions and any Exempted Accompanying Distribution and that the Funds will otherwise comply with Rule 10b-17 with regard to any distributions except Special Distributions and Exempted Accompanying Distributions as described above and in the Letter, is exempt from the requirements of Rule 10b-17 with respect to Special Distributions and any Exempted Accompanying Distribution.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. This exemption is based on the facts presented and the representations made in the Letter. Any different facts or representations may require a different response. In the event that any material change occurs in the facts or representations in the Letter, transactions in Shares of the Funds must be discontinued, pending presentation of the facts for our consideration. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the

adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74334; File No. SR-BX-2015-012]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the BX Options Rules To Extend the Pilot Program Under Chapter V, Section 3(d)(iv)

February 20, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 19, 2015, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the BX Options Rules to extend the pilot program under Chapter V, Section 3(d)(iv), which provides for how the Exchange treats obvious and catastrophic options errors in response to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the "Limit Up-Limit Down Plan" or the "Plan").<sup>3</sup> The Exchange proposes to extend the pilot period until October 23, 2015.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxbx.cchwallstreet.com/>, at the

<sup>6</sup> 17 CFR 200.30-3(a)(6) and (9).

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

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

<sup>3</sup> Securities Exchange Act Release Nos. 69140 (March 15, 2013), 78 FR 17255 (March 20, 2013); and 69343 (April 8, 2013), 78 FR 21982 (April 2, 2013) (SR-BX-2013-026).

principal office of the Exchange, and at the Commission's Public Reference Room.] [sic]

#### 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

In April 2013,<sup>4</sup> the Commission approved a proposal, on a one year pilot basis, to adopt Chapter V, Section 3(d)(iv) to provide for how the Exchange will treat obvious and catastrophic options errors in response to the Plan, which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47).<sup>5</sup> The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands.<sup>6</sup> The requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

The Exchange extended the operation of Chapter V, Section 3(d)(iv), which provides that trades are not subject to an obvious error or catastrophic error review pursuant to Chapter V, Sections 6(b) or 6(f) during a Limit State or Straddle State in 2014.<sup>7</sup> The Exchange now proposes to extend the pilot program for an additional pilot period ending October 23, 2015. The Exchange believes conducting an obvious error or catastrophic error review is impracticable given the lack of a reliable National Best Bid/Offer ("NBBO") in the

<sup>4</sup> Securities Exchange Act Release No. 69343 (April 8, 2013), 78 FR 21982 (April 12, 2013) (SR-BX-2013-026).

<sup>5</sup> The Plan was extended until February 20, 2015. The Plan was initially approved for a one-year pilot period, which began on April 8, 2013. Securities Exchange Act Release No. 71649 (March 5, 2014), 79 FR 13696 (March 11, 2014).

<sup>6</sup> Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

<sup>7</sup> Securities Exchange Act Release No. 71900 (April 8, 2014), 79 FR 20951 (April 14, 2014) (SR-BX-2014-017).

options market during Limit States and Straddle States, and that the resulting actions (*i.e.*, nullified trades or adjusted prices) may not be appropriate given market conditions. Under the pilot, limit orders that are filled during a Limit State or Straddle State have certainty of execution in a manner that promotes just and equitable principles of trade, and removes impediments to, and perfects the mechanism of a free and open market and a national market system. Moreover, given that options prices during brief Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes giving market participants time to re-evaluate a transaction would create an unreasonable adverse selection opportunity that would discourage participants from providing liquidity during Limit States or Straddle States. On balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying those provisions during such unusual market conditions.

The Exchange believes the benefits to market participants from the pilot program should continue on a pilot basis to coincide with the operation of the Limit Up-Limit Down Plan. The Exchange believes that continuing the pilot will protect against any unanticipated consequences and permit the industry to gain further experience operating the Plan.

The Exchange will conduct an analysis concerning the elimination of obvious and catastrophic error provisions during Limit States and Straddle States and agrees to provide the Commission with relevant data to assess the impact of this proposed rule change. As part of its analysis, the Exchange will: (1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally,

the Exchange agrees to provide to the Commission data requested to evaluate the impact of the elimination of the obvious and catastrophic error provisions, including data relevant to assessing the various analyses noted above. By May 29, 2015, the Exchange shall provide to the Commission and the public assessments relating to the impact of the operation of the obvious

error rules during Limit and Straddle States as follows:<sup>8</sup>

1. Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets.

2. Assess whether the lack of obvious error rules in effect during the Straddle and Limit States are problematic.

Each month the Exchange shall provide to the Commission and the public a dataset containing the data for each Straddle and Limit State in optionable stocks that had at least one trade on the Exchange during a Straddle or Limit State. For each of those options affected, each data record should contain the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State,
- For activity on the Exchange:
- Executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer,
- high execution price, low execution price,

- number of trades for which a request for review for error was received during Straddle and Limit States,

- an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle State.<sup>9</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>10</sup> in general, and with Section 6(b)(5) of the Act,<sup>11</sup> in particular, which requires that the rules of an exchange be designed to promote just and equitable principles of

trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because it should continue to provide certainty about how errors involving options orders and trades will be handled during periods of extraordinary volatility in the underlying security. The Exchange believes that it continues to be necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a Limit State or Straddle State from certain aspects of Chapter V, Section 6.

Although the Limit Up-Limit Down Plan is operational, the Exchange believes that maintaining the pilot will help the industry gain further experience operating the Plan as well as the pilot provisions.

Based on the foregoing, the Exchange believes the benefits to market participants should continue on a pilot basis to coincide with the operation of the Limit Up-Limit Down Plan.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the proposal does not impose an intra-market burden on competition, because it will apply to all members. Nor will the proposal impose a burden on competition among the options exchanges, because, in addition to the vigorous competition for order flow among the options exchanges, the proposal addresses a regulatory situation common to all options exchanges. To the extent that market participants disagree with the particular approach taken by the Exchange herein, market participants can easily and readily direct order flow to competing venues. The Exchange believes this proposal will not impose a burden on competition and will help provide certainty during periods of extraordinary volatility in an NMS stock.

### *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.

<sup>8</sup> The Exchange submitted a pilot report on September 30, 2014.

<sup>9</sup> The Exchange agreed to provide similar data in the original proposal. See Securities Exchange Act Release No. 69343 (April 8, 2013), 78 FR 21982 (April 12, 2013) (SR-BX-2013-026) at notes 4 and 11. However, that data included two additional filters pertaining to the top 10 options and an in-the-money amount, which no longer apply. The Exchange provided historical data in the new form pursuant to this proposed rule change, going back to the beginning of the original pilot period.

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>13</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2015-012 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2015-012. 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 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 available publicly. All submissions should refer to File Number SR-BX-2015-012, and should be submitted on or before March 19, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>15</sup> 17 CFR 200.30-3(a)(12).

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74339; File No. SR-FINRA-2014-047]

#### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Adopt FINRA Rule 2241 (Research Analysts and Research Reports) in the Consolidated FINRA Rulebook

February 20, 2015.

#### I. Introduction

On November 14, 2014, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule to adopt NASD Rule 2711 (Research Analysts and Research Reports) as a FINRA rule, with several modifications, amend NASD Rule 1050 (Registration of Research Analysts) and Incorporated NYSE Rule 344 to create an exception from the research analyst qualification requirement, and renumber NASD Rule 2711 as FINRA Rule 2241 in the consolidated FINRA rulebook. The proposal was published for comment in the **Federal Register** on November 24, 2014.<sup>3</sup> The Commission received four comments on the proposal.<sup>4</sup> This order institutes proceedings under Section 19(b)(2)(B) of the Act<sup>5</sup> to determine whether to approve or disapprove the proposed rule change.

#### II. Description of the Proposed Rule Change

As described more fully in the Notice, FINRA proposed to adopt in the

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

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

<sup>3</sup> Exchange Act Release No. 73622 (Nov. 18, 2014); 79 FR 69939 (Nov. 24, 2014) ("Notice"). On January 6, 2015, FINRA consented to extending the time period for the Commission to either approve or disapprove the proposed rule change, or to institute proceedings to determine whether to approve or disapprove the proposed rule change, to February 20, 2015.

<sup>4</sup> See Letter from Kevin Zambrowicz, Associate General Counsel & Managing Director and Sean Davy, Managing Director, SIFMA, dated Dec. 15, 2014 ("SIFMA"). Letter from Hugh D. Berkson, President-Elect, Public Investors Arbitration Bar Association, dated Dec. 15, 2014 ("PIABA Equity"), Letter from Stephanie R. Nicholas, WilmerHale, dated Dec. 16, 2014 ("WilmerHale Equity"), and Letter from William Beatty, President and Washington (State) Securities Administrator, North American Securities Administrators Association, Inc., dated Dec. 19, 2014 ("NASAA Equity").

<sup>5</sup> 15 U.S.C. 78s(b)(2)(B).