

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62869; File No. SR-BX-2010-062]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Maker Obligations

September 8, 2010.

Pursuant to Section 19(b)(1) of 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 September 7, 2010, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule 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 Chapter VI, Section 6 (Market Maker Quotations) of the Rules of the Boston Options Exchange Group, LLC ("BOX"). The text of the proposed rule change is available from the principal office of the Exchange, on the Commission's Web site at <http://www.sec.gov>, 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, 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 this proposed rule change is to amend certain existing quoting obligations of Market Makers.

Presently, a Market Maker must participate in the pre-opening phase and thereafter make markets consistent with the applicable quoting requirements specified in the BOX Rules, such that on a daily basis a Market Maker must post valid quotes at least sixty percent (60%) of the time that the class(es) are open for trading.<sup>5</sup> Under the existing rules, any time a Market Maker's quote size falls below the ten (10) contract minimum size requirement, even after an execution which decrements the remaining size of the quote, the quote is deemed invalid for meeting the Market Maker's quoting obligations. The Exchange believes that its policy of the meaning of a "valid" quote should be updated to include an exception for quotes that have been depleted by executions below the ten (10) contract minimum size requirement. Modifying the quotations requirements in this manner will encourage more options trading firms to register as Market Makers on BOX and to provide more liquidity to BOX Options Participants.

Under proposed Section 6, in order to be deemed "valid" a Market Maker's initial quoted size must be for at least ten (10) contracts. This initial minimum size shall apply regardless of whether a Market Maker receives an RFQ message, is called upon by an Options Official to post a quote, or otherwise. The initial size of the Market Maker's valid quote may subsequently be depleted in size below the minimum size due to executions with the quote and the quote shall remain valid as long as the Market Maker has not changed or updated the quote as to price or size. This depleted quote size shall remain valid until (1) the Market Maker's quoted size is completely exhausted, whereupon the Market Maker must once again post a valid quote with a valid initial size of ten (10) contracts, or (2) the Market Maker updates or changes the posted quote, whereupon such quote must meet the minimum initial size of ten (10) contracts in order to be deemed valid.<sup>6</sup>

<sup>5</sup> See Chapter VI, Section 6(d) of the BOX Rules.

<sup>6</sup> For example, Market Maker A posts a valid bid with a size of 15 contracts in a particular series. An order for 8 contracts executes against that bid and depletes the bid size to 7 contracts. Under the

The Exchange notes that its minimum initial size of ten (10) contracts is ten times the market maker minimum quote size requirement (one contract) at some other options exchanges<sup>7</sup> and that no changes are being proposed regarding Market Makers' obligations, including obligations to participate in the pre-opening phase. Furthermore, a Market Maker may continue to be called upon by an Options Official<sup>8</sup> to submit a single valid two-sided quote in one or more of the series of an options class to which the Market Maker is appointed whenever, in the judgment of such official, it is necessary to do so in the interest of fair and orderly markets.<sup>9</sup> Because the Market Makers' obligations, including those mentioned above, will continue, the Exchange believes this justifies any benefits they receive due to their appointment as Market Maker on BOX.

##### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>10</sup> in general, and Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed 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 and open market and a national market system and, in general, to protect investors and the public interest. Modifying the quotations requirements in this manner will encourage more options trading firms to register as Market Makers on BOX and to provide more liquidity to BOX Options Participants. An overall

proposal the bid remains valid. Subsequently the Market Makers appointed to that class receive an RFQ message or are called upon by an Options Official to post a quote in that series. Market Maker A's bid of 7 contracts would be considered valid, and he does not need to respond. Market Maker B, who was not already posting a valid quote in that series, responds by posting an initial valid bid with a size of 10 contracts within 3 seconds of receiving the request. Then within the next 30 seconds an order for 10 contracts executes against all of Market Maker A's bid for 7 contracts. The remaining 3 contracts of the order execute against the bid of Market Maker B, depleting his bid size to 7 contracts. Since Market Maker A no longer has a bid and does not have a valid quote, he updates his quote for an initial bid of 10 contracts. Market Maker B's bid of 7 contracts remains valid.

<sup>7</sup> See Rule 6.37B (Market Maker Quotations-OX) of the Rules of NYSE Arca, Inc ("NYSE Arca").

<sup>8</sup> The term "Options Official" means an officer of BOX Regulation vested by the BOX Regulation Board with certain authority to supervise option trading on BOX. See BOX Rules Chapter I, Section 1(a)(44).

<sup>9</sup> See BOX Rules Chapter VI, Section 6(b)(iv).

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

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

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

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

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

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

increase in liquidity will benefit investors and serve the public interest.

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

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

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

The Exchange has neither solicited nor received comments on the proposed rule change.

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

This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, 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.<sup>12</sup>

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

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *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](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2010-062 on the subject line.

<sup>12</sup> Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to 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. The Exchange has satisfied the five-day pre-filing requirement.

#### *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-2010-062. 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 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 a.m. and 3 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-2010-062 and should be submitted on or before October 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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<sup>13</sup> 17 CFR 200.30-3(a)(12).

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62875; File No. SR-NYSEArca-2010-71]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change To List and Trade Shares of the ETFs White Metals Basket Trust**

September 9, 2010.

#### **I. Introduction**

On July 22, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("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 change to list and trade shares ("Shares") of the ETFs White Metals Basket Trust ("Trust") pursuant to NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on August 6, 2010.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### **II. Description of the Proposal**

The Exchange proposes to list and trade Shares pursuant to NYSE Arca Equities Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares. ETFs Services USA LLC is the sponsor of the Trust ("Sponsor"), The Bank of New York Mellon is the trustee of the Trust ("Trustee"), and JPMorgan Chase Bank, N.A. is the custodian of the Trust ("Custodian").

The Shares represent units of fractional undivided beneficial interest in and ownership of the Trust. The investment objective of the Trust is for the Shares to reflect the performance of the price of physical silver, platinum, and palladium in the proportions held by the Trust, less the expenses of the Trust's operations.<sup>4</sup>

The Exchange deems the Shares to be equity securities, which subjects trading in the Shares to the Exchange's existing rules governing the trading of equity securities, and has represented that trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has also represented that it has appropriate rules to facilitate

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

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

<sup>3</sup> See Securities Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655 ("Notice").

<sup>4</sup> See the registration statement for the Trust on Form S-1, filed with the Commission on May 27, 2010 (No. 333-167166) ("Registration Statement").