information, trading volume, closing prices and the NAV for the Shares from the previous day. The Web site for the Trust, which may be accessed through a link provided by the Exchange on its Web site, will disseminate the last-sale price information for Shares, NAV, and information related to the NAV, including the Bid-Ask Price, the Creation Basket Deposit, calculation information and data related to the premium or discount of the Bid-Ask Price against the NAV. The Web site for the Trust will also disseminate the IIV per Share, updated at least every 15 seconds, during the Exchange's Core Trading Session. Information on gold prices and markets is available on public Web sites and through professional and subscription services, and investors may obtain on a 24-hour basis gold pricing information based on the spot price of an ounce of gold from various financial information service providers. Complete real-time data for gold futures contracts and options prices traded on the COMEX is available by subscription from information services such as Reuters or Bloomberg, and information on gold is available from published or other public sources. NYMEX also provides delayed futures and options information free of charge.

Additionally, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. As noted above, the Trust Web site will make available the NAV of the Trust as calculated each business day by the Trustee. In addition, NYSE Arca Equities Rule 8.201(i) provides that, in connection with trading in an underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivative, including Commodity-Based Trust Shares, an ETP Holder acting as a Market Maker (as defined in NYSE Arca Equities Rule 1.1(u)) in the Shares is restricted from using any material non-public information received from any person associated with such ETP Holder regarding trading by such person in the underlying physical commodity, related commodity futures or options on commodity futures, or other related commodity derivatives.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. NYSE Arca Equities Rule 8.201(e)(2) provides that, when the Exchange is the listing market, if the value of the underlying commodity or ITV (also known as the IIV) is no longer calculated or available on at least a 15-second delayed basis, the Exchange would consider suspending trading in the Shares. The Exchange has further represented that trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule. NYSE Arca Equities Rule 8.201(e)(2) also provides that the Exchange may seek to delist the Shares in the event the value of the underlying gold or the ITV is no longer calculated or available as required.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that any securities listed pursuant to this proposal will be deemed equity securities, and subject to existing Exchange rules governing the trading of equity securities.

In support of this proposal, the Exchange has made representations, including:

(1) The Exchange's surveillance procedures are adequate to deter and detect violations of Exchange rules and applicable federal securities laws.

(2) The Exchange will distribute an Information Bulletin, the contents of which are more fully described above, to ETP Holders in connection with the trading of the Shares.

This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[26] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Exchange's proposal to list and trade the Shares does not present any novel or significant regulatory issues. Previously, the Commission approved two proposals by the Exchange to list and trade shares of trusts that hold gold bullion pursuant to NYSE Arca Equities Rule 8.201.[27]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–NYSEArca–2009–40) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–11397 Filed 5–14–09; 8:45 am]

BILLING CODE 8010–01–P

[26] 15 U.S.C. 78s(b)(2).

[27] *See* Securities Exchange Act Release Nos. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43) (approving listing and trading of shares of the iShares COMEX Gold Trust) and 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR–NYSEArca–2007–76) (approving listing and trading of shares of the streetTRACKS Gold Trust).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59894; File No. SR–BX–2009–023]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Temporarily Implement a Cap on Certain Fees for Members

May 8, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 2009, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

BX proposes to adopt a temporary cap on fees charged for OUCH ports to the Equities Market. The text of the proposed rule change is below. Proposed new language is in italics.[3]

* * * * *

7015. Access Services.

The following charges are assessed by the Exchange for ports to establish connectivity to the NASDAQ OMX BX Equities Market, as well as ports to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaqomxbx.cchwallstreet.com.*

receive data from the NASDAQ OMX BX Equities Market:

- $400 per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is $1000 per month. *Additional OUCH port pairs beyond 15 are at no cost for the months of May and June 2009.*
- Internet Ports: An additional $200 per month for each Internet port that requires additional bandwidth.

* * * * *

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

In its filing with the Commission, BX 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. BX 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

BX is proposing to modify its pricing for OUCH ports, which provide connectivity to the NASDAQ OMX BX Equities Market. Specifically, BX will eliminate fees for a member firm's OUCH ports in excess of 15 for the months of May and June 2009. Member firms have complained that, because BX does not have an anti-internalization capability, they must purchase additional OUCH ports that they would otherwise not need to purchase solely to avoid unwanted execution against their customer orders. Internalization occurs when a member firm's customer order is posted on the market and executed all or in part by the same member firm. Member firms must avoid internalization of certain customer orders to avoid violating rules and regulations of the Employee Retirement Income Security Act that preclude and/or limit managing broker-dealers of such customer accounts from trading as principal with orders generated for those accounts. Currently, some member firms are only able to avoid internalization by purchasing additional OUCH ports through which they place all order flow that must not be internalized. Such additional ports have discrete MPID numbers, which allow these member firms to identify the orders and avoid internalization.

BX is developing an anti-internalization function for its market designed to prevent member firms from executing a trade as a counterparty to their customer orders, which it anticipates will be operational by the end of June. The temporary cap on OUCH port fees proposed herein is designed to provide relief to member firms affected by BX's lack of an anti-internalization function until it can be implemented, at which time such firms can reduce the number of ports currently subscribed to solely due to the lack of such a function. BX will seek to remove the cap language from the rule upon its expiration or alternatively will seek to extend the cap until such time the anti-internalization function can be implemented.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls. The proposed fee change applies uniformly to all BX members. BX has determined that temporarily instituting a cap on fees for OUCH ports in excess of 15 will provide relief to member firms required to purchase additional ports solely due to BX's lack of an anti-internalization function.

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.

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

Written comments were neither solicited nor 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)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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*. Please include File Number SR–BX–2009–023 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–2009–023. 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 inspection and copying in the Commission's Public Reference Room, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE., Washington, DC 20549. 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

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(a)(ii).

[7] 17 CFR 240.19b–4(f)(2).

Number SR–BX–2009–023 and should be submitted on or before June 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–11359 Filed 5–14–09; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before June 15, 2009.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://fdms.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 8, 2009.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

NEW SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14838–N		Autoliv ASP, Inc., Ogden, UT.	49 CFR 172.320, 173.56 and 173.62.	To authorize the transportation in commerce of Class 1 explosives in a specially designed packaging as Division 1.3C or 1.4C for materials and devices respectively without being first examined as required by § 173.56 for transportation by motor vehicle. (mode 1).
14839–N		Matheson Tri-Gas Inc., Basking Ridge, NJ.	49 CFR, 180.209	To authorize the transportation in commerce of certain DOT Specification 3A and 3AA cylinders containing Division 2.2 gases that have tested every 15 years instead of every 10 years. (modes 1, 2, 3, 4, 5).
14841–N		Innophos, Inc., Nashville, TN.	49 CFR, 177.834(i)(3).	To authorize the use of video cameras and monitors to observe the loading and unloading operations meeting the definition of ''loading incidental to movement'' or ''unloading incidental to movement'' as those terms are defined in § 171.8 of the Hazardous Materials Regulations from a remote control station in place of personnel remaining within 25 feet of the cargo tank motor vehicles. (mode 1).
14842–N		American Spraytech, North Branch, NJ.	49 CFR, 173.306(a)(3)(v).	To authorize the transportation in commerce of certain aerosols containing a Division 2.2 compressed gas in certain non-refillable aerosol containers which are not subject to the hot water bath test. (mode 1).
14843–N		Mercotac, Inc., Carlsbad, CA.	49 CFR, 173.162(c) and 172.200.	To authorize the transportation of gallium containing in a manufactured article in alternative packaging, and without shipping papers unless transported by air. (modes 1, 2, 4, 5).
14844–N		Northern Air Cargo, Anchorage, AK.	49 CFR, 173.302(f)	To authorize the transportation in commerce of cylinders of compressed oxygen and oxidizing gases without rigid outer packaging when no other means of transportation exist. (modes 4, 5).
14847–N		PPG Industries, Inc., Monroeville, PA.	49 CFR, 179.15(e)	To authorize the transportation in commerce of certain DOT 105J500W tank cars containing chlorine with a higher start-to-discharge pressure setting than is currently authorized. (mode 2).
14848–N		Corning Incorporated, Corning, NY.	49 CFR, 177.834(h)	To authorize the discharge of a Division 2.1 material from an authorized DOT specification cylinder without removing the cylinder from the vehicle on which it is transported. (mode 1).
14849–N		Rechargeable Battery Recycling Corporation, Atlanta, GA.	49 CFR, 172.200, 172.300, 172.400.	To authorize the transportation in commerce of certain lithium batteries without shipping papers, marking or labeling, when transported for disposal. (mode 1).

[8] 17 CFR 200.30–3(a)(12).