

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

The ISE proposes to adopt a fee for ISE market maker orders sent to the Exchange by Electronic Access Members ("EAMs"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

##### **1. Purpose**

The purpose of this proposed rule change is to adopt a fee for ISE market maker orders sent to the Exchange by EAMs. Specifically, the Exchange proposes to adopt a fee of \$0.20 per contract for such orders. Market maker orders sent to the Exchange by EAMs are currently charged per the Exchange's market maker sliding scale. Market maker orders sent by EAMs, however, are essentially broker-dealer orders and thus should be billed at the rate the Exchange currently charges for broker-dealer orders. The Exchange treats broker-dealer orders as Firm Proprietary orders for the purpose of the Exchange's fee schedule and charges a fee of \$0.20 per contract. ISE proposes to implement this fee change on October 1, 2009.

##### **2. Statutory Basis**

The basis under the Securities Exchange Act of 1934 (the "Exchange Act") for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the proposed fee change will align fees charged by the Exchange for market maker orders sent by EAMs with

the fees charged by the Exchange for broker-dealer orders.

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

The proposed rule change does not impose any burden on competition that is 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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### **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) of the Act<sup>3</sup> and Rule 19b-4(f)(2)<sup>4</sup> thereunder. At any time within 60 days of the filing of such 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2009-76 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-ISE-2009-76. 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 official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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 No. SR-ISE-2009-76 and should be submitted on or before November 12, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60823; File No. SR-NYSEAmex-2009-59]

### **Self-Regulatory Organizations; NYSE Amex LLC; Order Granting Approval of Proposed Rule Change Amending NYSE Amex Options Rule 915**

October 14, 2009.

On August 19, 2009, NYSE Amex, Inc. ("NYSE Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder to amend the definition of Futures Reference Asset in Commentary .11(5) to NYSE Amex Rule 915 to permit options on Futures-Linked Securities to be based on products

<sup>5</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> 15 U.S.C. 78s(b)(3)(A) [sic].

<sup>4</sup> 17 CFR 19b-4(f)(2).

linked to CBOE Volatility Index Futures (“VIX Futures”). The proposed rule change was published for comment in the **Federal Register** on September 11, 2009 for a 21-day comment period.<sup>3</sup> The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

Commentary .11 to NYSE Amex Rule 915 designates the listing and trading of options on Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities, collectively known as Index-Linked Securities (as defined in NYSE Amex Company Guide Section 107(H)) that are principally traded on a national securities exchange and an “NMS Stock” (as defined in Rule 600 of Regulation NMS under the Act). Futures-Linked Securities pay at maturity an amount of cash based on the performance of a “Futures Reference Asset,” currently defined as an index of futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or interest rate futures, or options or derivatives on any of the foregoing. The Exchange proposes to include VIX Futures in this definition.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>4</sup> and, in particular, the requirements of Section 6 of the Act.<sup>5</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Currently, the Exchange will consider listing and trading options on Index-

Linked Securities, including options on Futures-Linked Securities, provided the Index-Linked Securities meet the criteria for underlying securities set forth in Commentary .01 to NYSE Amex Rule 915. Underlying Index-Linked Securities must meet the criteria and guidelines for underlying securities set forth in Commentary .01 to NYSE Amex Rule 915; or the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the issuer at a price related to the applicable underlying Reference Asset.<sup>7</sup> After the addition of VIX Futures to the definition of a Futures Reference Asset in Commentary .11(5) to NYSE Amex Rule 915, options on Index-Linked Securities, including options on Futures Linked Securities, would continue to be subject to all Exchange rules governing the trading of equity options<sup>8</sup> and the current continuing or maintenance listing standards applicable to the trading of options on Index-Linked Securities on NYSE Amex. The Commission also notes that it has previously approved an amendment to Section 107H of the Amex Company Guide to add the VIX Futures to the definition of “Futures Reference Asset” for the listing and trading of Futures-Linked Securities.<sup>9</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR–NYSEAmex–2009–59) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>7</sup> For purposes of Commentary .11 to NYSE Amex Rule 915, Reference Assets collectively refers to Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, Futures Reference Assets, and Multifactor Reference Assets.

<sup>8</sup> Despite the fact that Index-Linked Securities are linked to an underlying index, each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options apply to options on Index-Linked Securities.

<sup>9</sup> See Securities Exchange Act Release No. 60535 (August 19, 2009), 74 FR 46826 (August 26, 2009) (NYSEAmex–2009–55); see also Securities Exchange Act Release No. 58968 (November 17, 2008), 73 FR 71082 (November 24, 2008) (SR–NYSEArca–2008–111).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60818; File No. SR–BX–2009–048]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving a Proposed Rule Change To Amend the Grandfathered Rules of the Exchange

October 13, 2009.

On August 17, 2009, NASDAQ OMX BX, Inc. (“Exchange”) 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 amend the Grandfathered Rules of the Exchange.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on September 8, 2009.<sup>4</sup> The Commission received no comments on the proposal.

The proposed rule change would incorporate certain provisions of the former Constitution of the Boston Stock Exchange, Incorporated (“BSE”)<sup>5</sup> into the Grandfathered Rules. The provisions to be added to the Grandfathered Rules relate to the following: (1) Participation (formerly Membership) rules, to supplement the By-Laws and the Grandfathered Rules to direct the BOX Options Participants (“Participants”) and prospective participants to Section 6(c) of the Act,<sup>6</sup> as cited in the proposed rule text regarding the investigation and acceptance of an applicant; (2) Non-liability of the Exchange provision, to reinforce to Participants the “non-liability” of the Exchange for damages sustained from use of the facilities of the Exchange; (3) Insolvent Participants, to provide guidance for Insolvent Participants to notify the Exchange, of such insolvency and to state that the Exchange will notify the Commission of such insolvency; and (4) Exchange Inquiries to remind Participants that they may be subject to expulsion or suspension for failure to respond to an Exchange Inquiry.

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> The Grandfathered Rules are operative to the extent that they apply to the Boston Options Exchange Group, LLC (“BOX”) and to Options Participants on the Exchange, and are to be read in conjunction with the Rules of the BOX.

<sup>4</sup> See Securities Exchange Act Release No. 60591 (August 31, 2009), 74 FR 46288.

<sup>5</sup> Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02, –23, –25; SR–BSECC–2008–01) (“Release No. 34–58324”).

<sup>6</sup> 15 U.S.C. 78ff(c).

<sup>3</sup> See Securities Exchange Act Release No. 60622 (September 3, 2009), 74 FR 46826.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>6</sup> 15 U.S.C. 78ff(b)(15).