

until July 31, 2009 (the "July filing").<sup>7</sup> On August [sic] 31, 2009, the Exchange filed with the Commission a proposed rule change to further extend this temporary equity transaction fee until October 31, 2009 (the "October filing").<sup>8</sup> Through this filing, the Exchange proposes to extend this equity transaction fee to be effective upon filing through January 31, 2010.

Prior to the January filing, the equity transaction fee was \$.0015 per share executed on the MatchPoint system. In the January filing, the Exchange proposed to adopt a scaled fee for MatchPoint users based on the average daily volume of shares executed during a calendar month through the MatchPoint system as follows:

Average daily volume of shares executed	Rate
50,000 shares or less ...	\$.0015 per share.
Over 50,000 to 499,999	\$.0010 per share.
500,000 and greater .....	\$.0005 per share.

The March, April, July and October filings proposed to continue this fee schedule.

The Exchange believes that the extension of the fee schedule through January 31, 2010 will continue to reward those who have been using the MatchPoint system for share execution, and will provide a continued incentive for new participants in MatchPoint.

## 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act")<sup>9</sup> for the proposed rule change is the requirement under Section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes the fees are reasonable in that they carry forward a reduction in fees that the January filing established and that the March, April, July and October filings extended, and are equitable in that they are available to all members who access the MatchPoint system.

### 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>7</sup> See Securities Exchange Act Release No. 60278 (July 10, 2009) 74 FR 34615 (July 16, 2009) (SR-NYSE-2009-67).

<sup>8</sup> See Securities Exchange Act Release No. 60439 (July 31, 2009) [sic] 74 FR 40270 (August 11, 2009) (SR-NYSE-2009-78).

<sup>9</sup> 15 U.S.C. 78a.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>11</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2009-110 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-NYSE-2009-110. 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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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, 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-NYSE-2009-110 and should be submitted on or before December 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60950; File No. SR-BX-2009-069]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add 75 Classes to the Penny Pilot Program

November 6, 2009.

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 October 27, 2009, NASDAQ OMX BX, Inc. (the "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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>12</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.

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

NASDAQ OMX BX, Inc. (the "Exchange") proposes to designate 75 options classes to be added to the Penny Pilot Program, as referenced in Chapter V, Section 33 of the Rules of the Boston Options Exchange Group, LLC ("BOX"). The Exchange intends to notify Participants of the classes to be added to the Penny Pilot Program via Regulatory Circular. The text of the proposed Regulatory Circular is attached as Exhibit 2.<sup>3</sup>

**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 self-regulatory organization 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 self-regulatory organization 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

On Monday, October 19, 2009 the Exchange submitted a proposed rule change with the Securities and Exchange Commission ("Commission") to (i) extend the Penny Pilot Program in options classes ("Penny Pilot Program") previously approved by the Commission through December 31, 2010; (ii) expand

the number of classes included in the Penny Pilot Program; and (iii) replace on a semi-annual basis any Penny Pilot Program classes that have been delisted.<sup>4</sup>

The top 300 most actively traded multiply listed options classes in the prior six calendar months<sup>5</sup> preceding their addition to the Penny Pilot Program that are not yet included in the Penny Pilot Program will be phased-in to the Penny Pilot Program over four successive quarters with 75 classes added in each of November 2009, February 2010, May 2010, and August 2010.<sup>6</sup> Options classes with high premiums will be excluded for the quarterly additions.<sup>7</sup>

Based on trading activity for the six months ending September 30, 2009, the Exchange proposes to add the following 75 classes to the Penny Pilot Program on November 2, 2009:

Nat'l ranking	Symbol	Company name	Nat'l ranking	Symbol	Company name
118	ABX	Barrick Gold Corp	120	MRK	Merck & Co Inc/NJ.
134	AUY	Yamana Gold Inc	35	MS	Morgan Stanley.
48	AXP	American Express Co	73	NLY	Annaly Capital Management Inc.
93	BA	Boeing Co/The	99	NOK	Nokia OYJ.
115	BBT	BB&T Corp	121	NVDA	Nvidia Corp.
111	BBY	Best Buy Co Inc	80	ORCL	Oracle Corp.
94	BP	BP PLC	61	PALM	Palm Inc.
67	CHK	Chesapeake Energy Corp	37	PBR	Petroleo Brasileiro SA.
58	CIT	CIT Group Inc	85	PG	Procter & Gamble Co/The.
78	COF	Capital One Financial Corp	41	POT	Potash Corp of Saskatchewan Inc.
68	CVX	Chevron Corp	74	RF	Regions Financial Corp.
130	DE	Deere & Co	124	RIG	Transocean Ltd.
104	DOW	Dow Chemical Co/The	132	RMBS	Rambus Inc.
49	DRYS	DryShips Inc	103	S	Sprint Nextel Corp.
88	EFA	iShares MSCI EAFE Index Fund	83	SDS	ProShares UltraShort S&P500.
64	ETFC	E*Trade Financial Corp	122	SKF	ProShares UltraShort Financials.
32	EWZ	iShares MSCI Brazil Index Fund	107	SLB	Schlumberger Ltd.
25	FAS	Direxion Daily Financial Bull 3X Shares	91	SLV	iShares Silver Trust.
33	FAZ	Direxion Daily Financial Bear 3X Shares.	84	SRS	ProShares UltraShort Real Estate.
112	FITB	Fifth Third Bancorp	119	SSO	ProShares Ultra S&P500.
70	FSLR	First Solar Inc	101	STI	SunTrust Banks Inc.
26	FXI	iShares FTSE/Xinhua China 25 Index Fund.	125	SVNT	Savient Pharmaceuticals Inc.
82	GDX	Market Vectors—Gold Miners ETF	92	TBT	ProShares UltraShort 20+ Year Treasury.
127	GG	Goldcorp Inc	14	UNG	United States Natural Gas Fund LP.
18	GLD	SPDR Gold Trust	117	UNH	UnitedHealth Group Inc.
129	HGSI	Human Genome Sciences Inc	110	UPS	United Parcel Service Inc.
62	HIG	Hartford Financial Services Group Inc	81	USB	US Bancorp.
72	HPQ	Hewlett-Packard Co	44	USO	United States Oil Fund LP.
59	IBM	International Business Machines Corp	60	UYG	ProShares Ultra Financials.
45	IYR	iShares Dow Jones US Real Estate Index Fund.	96	V	Visa Inc.
105	JNJ	Johnson & Johnson	10	WFC	Wells Fargo & Co.
131	JNPR	Juniper Networks Inc	133	WYNN	Wynn Resorts Ltd.

<sup>3</sup> The Commission notes that the text of the proposed Regulatory Circular is attached at Exhibit 2 to the Form 19b-4, but is not attached to this Notice.

<sup>4</sup> See Securities and Exchange Act Release No. 60886 (October 27, 2009) (SR-BX-2009-067). This proposal was effective immediately upon filing.

<sup>5</sup> For purposes of assessing national average daily volume the Exchange will use data compiled and disseminated by the Options Clearing Corporation.

<sup>6</sup> The quarterly additions will be effective on November 2, 2009, February 1, 2010, May 3, 2010 and August 2, 2010, respectively. For purposes of identifying the classes to be added per quarter, the Exchange shall use data from the prior six calendar months preceding the implementation month, except that the month immediately preceding their addition to the Pilot would not be utilized for purposes of the six month analysis. For example, the quarterly additions to be added on November

2, 2009 shall be determined using data from the six month period ending September 30, 2009.

<sup>7</sup> The threshold for designation as "high priced" at the time of selection of new classes to be included in the Penny Pilot Program is \$200 per share or a calculated index value of 200. The determination of whether a security is trading above \$200 or above a calculated index value of 200 shall be based on the price at the close of trading on the Expiration Friday prior to being added to the Penny Pilot Program.

Nat'l ranking	Symbol	Company name	Nat'l ranking	Symbol	Company name
98	KO	Coca-Cola Co/The	52	X	United States Steel Corp.
39	LVS	Las Vegas Sands Corp	114	XHB	SPDR S&P Homebuilders ETF.
87	MCD	McDonald's Corp	86	XLI	Industrial Select Sector SPDR Fund.
71	MGM	MGM Mirage	79	XLU	Utilities Select Sector SPDR Fund.
113	MON	Monsanto Co	54	XRT	SPDR S&P Retail ETF.
63	MOS	Mosaic Co/The			

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>8</sup> in general, and Section 6(b)(5) of the Act,<sup>9</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, by identifying the options classes added to the Pilot in a manner consistent with prior rule changes.

### 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Exchange Act<sup>10</sup> and Rule 19b-4(f)(1) thereunder,<sup>11</sup> because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing BOX rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would

otherwise further 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-2009-069 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-2009-069. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 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 No. SR-BX-2009-069 and should be submitted on or before December 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60944; File No. SR-NYSEArca-2009-99]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Fee Schedule

November 5, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 29, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. NYSE Arca filed the proposal pursuant to Section 19(b)(3)(A)<sup>4</sup> of the Act and Rule 19b-4(f)(2)<sup>5</sup> thereunder. 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 the section of its Schedule of Fees and

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>11</sup> 17 CFR 240.19b-4(f)(1).