

NYSE Arca would be subject to NYSE Arca Rules governing trading, and such rules would be considered NYSE rules for the purposes of such transactions, except that: (1) NYSE rules governing member firm conduct, including membership requirements and net capital requirements, will continue to apply to NYSE members and Sponsored Participants; and (2) NYSE listing requirements for all listed securities will continue to apply.<sup>17</sup>

NYSE Arca would conduct surveillance of trading in NYSE-listed securities on or through the systems and facilities of NYSE Arca on behalf of the NYSE.<sup>18</sup> NYSE members would remain subject to the NYSE's jurisdiction for any disciplinary action related to the trading of NYSE-listed securities on or through the facilities of NYSE Arca.<sup>19</sup>

The authority granted pursuant to NYSE Rule 49 would remain operative for up to 10 calendar days from the date the NYSE invokes such authority, and the NYSE may terminate actions taken pursuant to the rule at any time.<sup>20</sup> The NYSE may request an extension of this initial 10-day period for a specified amount of time by filing a proposed rule change with the Commission pursuant to Section 19(b)(2) of the Act, and the Commission must approve the NYSE's proposal before any such extension could take effect.<sup>21</sup>

### III. Discussion and Commission Findings

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>22</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>23</sup> which requires, in part, that the rules of a national securities exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and

open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal is reasonably designed to permit the NYSE to continue to operate in the event of an emergency, as defined in Section 12(k)(7) of the Act, by allowing the NYSE to designate its corporate affiliate, NYSE Arca, to receive and process quotations in NYSE-listed securities and to execute orders in NYSE-listed securities on behalf of the NYSE in the event of such an emergency.<sup>24</sup> The NYSE would invoke its authority under NYSE Rule 49 only in an emergency, as defined in Section 12(k)(7) of the Act.<sup>25</sup> The NYSE will make reasonable efforts to consult with the Commission prior to taking action under NYSE Rule 49.<sup>26</sup> Any action taken under NYSE Rule 49 would be operative for up to 10 calendar days from the date that the NYSE invokes its authority under the rule, and the NYSE may terminate action taken under the rule at any time.<sup>27</sup> To extend an action taken pursuant to NYSE Rule 49 beyond the initial 10-calendar day period, the NYSE must file a proposed rule change with the Commission pursuant to Section 19(b)(2) under the Act, and the Commission would need to approve such an extension before it could take effect.<sup>28</sup> In addition, the Commission could, at any time, exercise its authority under Section 12(k)(2) of the Act<sup>29</sup> to terminate an action taken by the NYSE under NYSE Rule 49.

NYSE Rule 49 also addresses surveillance and the disciplinary

procedures that would apply in the event that NYSE Arca serves as the NYSE's alternative trading facility, as provided in the rule. In particular, NYSE Arca would conduct surveillance of trading in Exchange-listed securities on behalf of the NYSE.<sup>30</sup> NYSE members and member organizations would remain subject to the NYSE's jurisdiction for any disciplinary actions related to the trading of NYSE-listed securities on or through the systems and facilities of NYSE Arca, and violations of NYSE Arca's rules would be referred to the NYSE for prosecution according to the NYSE's disciplinary rules.<sup>31</sup>

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>32</sup> that the proposed rule change (File No. SR-NYSE-2009-105) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61204; File No. SR-BX-2009-079]

### Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend IM-1002-1 To Reflect Changes to a Corresponding FINRA Rule

December 18, 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 December 3, 2009, NASDAQ OMX BX, Inc. (the "Exchange" or "BX") 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 Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. The

<sup>17</sup> See NYSE Rule 49(b)(4).

<sup>18</sup> See NYSE Rule 49(b)(5)(i).

<sup>19</sup> See NYSE Rule 49(b)(5)(ii).

<sup>20</sup> See NYSE Rule 49(c)(2) and (3). The NYSE will provide adequate prior notice to members, Sponsored Participants, and investors regarding its intention to terminate any action taken under the rule. See NYSE Rule 49(c)(3).

<sup>21</sup> *Id.*

<sup>22</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>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> The Commission previously has approved proposals by other national securities exchanges to establish back-up trading arrangements. *See, e.g.*, Securities Exchange Act Release Nos. 51717 (May 19, 2005), 70 FR 30160 (May 25, 2005) (File No. SR-CBOE-2004-59) (approving proposal by the Chicago Board Options Exchange, Incorporated to enter into back-up trading arrangements with other exchanges); 51926 (June 27, 2005), 70 FR 38232 (July 1, 2005) (File No. SR-Phlx-2004-65) (approving proposal by the Philadelphia Stock Exchange ("Phlx") to enter into back-up trading arrangements with other exchanges); 40088 (June 12, 1998), 63 FR 33426 (June 18, 1998) (File No. SR-Phlx-98-25) (approving the trading of Dell options listed on the Phlx at the American Stock Exchange on a temporary basis); and 27365 (October 19, 1989), 54 FR 43511 (October 25, 1989) (File Nos. SR-Amex-89-26; CBOE-89-21; PSE-89-28; and Phlx-89-52) (approving proposals to trade options listed on the Pacific Stock Exchange on other exchanges following an earthquake).

<sup>25</sup> See NYSE Rule 49(a)(1) and (3). *See also* note 8, *supra*, and accompanying text.

<sup>26</sup> See NYSE Rule 49(c)(1).

<sup>27</sup> See NYSE Rule 49(c)(2) and (3). The NYSE will provide adequate prior notice to members, Sponsored Participants, and investors of its intention to terminate any action taken pursuant to NYSE Rule 49. See NYSE Rule 49(c).

<sup>28</sup> See NYSE Rule 49(c)(2).

<sup>29</sup> 15 U.S.C. 78j(k)(2).

<sup>30</sup> See NYSE Rule 49(b)(5)(i).

<sup>31</sup> See NYSE Rule 49(b)(5)(ii).

<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</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> 17 CFR 240.19b-4(f)(6).

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 [sic] Substance of the Proposed Rule Change**

The Exchange is filing this proposed rule change to amend BX IM-1002-1 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority ("FINRA"). The Exchange will implement the proposed rule change thirty days after the date of the filing. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com>, at the Exchange's principal office, 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**

BX based much of its rules on those of The NASDAQ Stock Market LLC ("NASDAQ"). Similarly, many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). As a consequence, many of BX's rules closely mirror those of FINRA. During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, BX also has initiated a process of modifying its rulebook to ensure that BX rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it is not possible for the rule numbers of BX rules to mirror corresponding FINRA rules, because existing or planned BX rules make use of those numbers. However, wherever

possible, BX plans to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses BX IM-1002-1, which prohibits members and associated persons from filing with BX misleading information relating to membership or registration, and which formerly corresponded to NASD IM-1000-1. In SR-FINRA-2009-009,<sup>4</sup> FINRA redesignated that rule as FINRA Rule 1122 and made amendments to clarify and simplify the rule. NASD IM-1000-1 provided that the filing of membership or registration information as a Registered Representative with FINRA which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed conduct inconsistent with just and equitable principles of trade and may be subject to disciplinary action.

FINRA's rule change clarified the rule's applicability to members and persons associated with members by specifying that "no member or person associated with a member" shall file incomplete or misleading membership or registration information. FINRA also eliminated the reference to the filing of registration information "as a Registered Representative" to clarify that the rule applies to the filing of registration information regarding any category of registration. In addition, FINRA deleted the reference that the prohibited conduct may be deemed inconsistent with just and equitable principles of trade and subject to disciplinary action as unnecessary and to better reflect the adoption of the NASD IM as a stand-alone FINRA rule. Likewise, BX is proposing to make changes to the text of IM-1002-1 that virtually mirror the changes made by FINRA to NASD IM-1000-1 so that the rules remain consistent for regulatory purposes.

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

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Sections [sic] 6(b)(5) of the Act,<sup>6</sup> in particular, in that the proposal is 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 regulating, clearing, settling, processing information with respect to,

and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed changes will conform BX IM-1002-1 to recent changes made to a corresponding FINRA rule, to promote application of consistent regulatory standards.

#### *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**

Because the foregoing 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

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

<sup>4</sup> Securities Exchange Act Release No. 59789 (April 20, 2009), 74 FR 18767 (April 24, 2009) (SR-FINRA-2009-009).

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

No. SR-BX-2009-079 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 No. SR-BX-2009-079. 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,<sup>9</sup> 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 BX. 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-2009-079 and should be submitted on or before January 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61202; File No. SR-Phlx-2009-103]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify Certain Provisions of the Options Listing Procedures Plan Into Phlx's Rules

December 18, 2009.

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, notice is hereby given that on December 7, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 change from interested persons.

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

The Exchange is filing with the Commission a proposal to amend its Rule 1012 (Series of Options Open for Trading) by adding Commentary .10 to apply uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Exchange. The Exchange is also amending Options Floor Procedure Advice F-22 (Intra-Day Addition of Strike Prices) ("OFPA" or "Advice") to add a cross-reference to Commentary .10 to Rule 1012.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/filings/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/filings/>, 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of the proposal is to implement in Phlx rules, specifically Commentary .10 to Rule 1012, changes that were recently made to the Plan for the Purpose of Developing and Implementing Procedures Designated to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934, also known as the Options Listing Procedures Plan ("OLPP"), in Amendment No. 3 thereto;<sup>3</sup> and to cross-reference Commentary .10 to Rule 1012 in OFPA F-22. The proposed rule change in Commentary .10 incorporates uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Exchange, as a quote mitigation strategy intended to reduce the overall number of option series available for trading, which will in turn lessen the rate of increase in quote traffic ("range limitations" or "range limitation strategy").<sup>4</sup>

Rule 1012 currently indicates what series of option contracts may be open for trading after a particular class of options has been approved for trading on the Exchange. This proposal adds Commentary .10 to Rule 1012 that applies certain "range limitations" to

<sup>3</sup> See Securities Exchange Act Release No. 60531 (August 19, 2009), 74 FR 43173 (August 26, 2009)(order approving Amendment No. 3 to the OLPP, which would apply uniform objective standards to the range of options series exercise or strike prices available for trading on exchanges that are sponsors of OLPP). The sponsors of OLPP include Phlx, Chicago Board Options Exchange, Incorporated; International Stock Exchange LLC; NASDAQ OMX BX, Inc.; The NASDAQ Stock Market LLC; NYSE Amex, LLC; and NYSE Arca, Inc. (together known as the "Plan Sponsor Exchanges"). The OLPP is a national market system plan that, among other things, sets forth procedures governing the listing of new options series and replaces and supersedes the Joint-Exchange Options Plan ("JEOP"). See Securities Exchange Act Release No. 44521 (July 6, 2009), 66 FR 36809 (July 13, 2001)(order approving OLPP). See also Securities Exchange Act Release No. 29698 (September 17, 1991), 56 FR 48954 (September 25, 1991)(order approving JEOP).

<sup>4</sup> The Exchange expects that other Plan Sponsor Exchanges will file similar rule change proposals implementing range limitations in their rules to mitigate quotes. See, for example, Securities Exchange Act Release No. 60995 (November 13, 2009), 74 FR 60008 (November 19, 2009)(SR-CBOE-2009-084)(notice of filing and immediate effectiveness).

<sup>9</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

<sup>10</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.