

services in a single uniform fee schedule.<sup>4</sup>

Exchange members may subscribe to co-location services provided by NTS. These co-location services are generally available to all qualified market participants who desire them. The Exchange will continue to offer the storage service to its Members at no charge. If the Exchange determines at a later date to charge a fee for this service, it will file a proposed rule change with the Commission.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions settling on or after March 1, 2010.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>6</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that Members benefit in that the Exchange will continue to offer all Members the ability to store equipment at the Exchange's facility at no charge.

### 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

No written comments were either solicited or 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<sup>7</sup> and paragraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder. 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-Phlx-2010-37 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-Phlx-2010-37. 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 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 Number SR-Phlx-2010-37 and should be submitted on or before April 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-6181 Filed 3-19-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61704; File No. SR-NYSEArca-2010-11]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rule 9.1(f)

March 15, 2010.

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 March 1, 2010, 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 and II, 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.

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

The Exchange proposes to modify its sharing in accounts rule to harmonize its requirements with the Financial Industry Regulatory Authority ("FINRA"). A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room. The text of the proposed rule change is below. Proposed new language is in *italics* and proposed deletions are in [brackets].

Rules of NYSE Arca Equities, Inc.

\* \* \* \* \*

Rule 9.1(f). [Sharing Profits—Losses] *Sharing in Accounts; Extent Permissible*

[No registered employee shall directly or indirectly take or receive a share in the profits of any customer's account or share in any losses sustained in any such account.]

(1)(A) *Except as provided in paragraph (2) no member or person associated with a member shall share directly or indirectly in the profits or*

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 15 U.S.C. 78a.

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

<sup>4</sup> See Securities Exchange Act Release No. 61486 (February 3, 2010), 75 FR 6426 (February 9, 2010) (SR-Phlx-2010-18).

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

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

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

losses in any account of a customer carried by the member or any other member; provided, however, that a member or person associated with a member may share in the profits or losses in such an account if

- (i) such person associated with a member obtains prior written authorization from the member employing the associated person;
- (ii) such member or person associated with a member obtains prior written authorization from the customer; and
- (iii) such member or person associated with a member shares in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by either the member or person associated with a member.

(B) Exempt from the direct proportionate share limitation of paragraph (1)(A)(iii) are accounts of the immediate family of such member or person associated with a member. For purposes of this Rule, the term "immediate family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the member or person associated with a member otherwise contributes directly or indirectly.

(2) Notwithstanding the prohibition of paragraph (1), a member or person associated with a member that is acting as an investment adviser (whether or not registered as such) may receive compensation based on a share in profits or gains in an account if

(A) such person associated with a member seeking such compensation obtains prior written authorization from the member employing the associated person;

(B) such member or person associated with a member seeking such compensation obtains prior written authorization from the customer; and

(C) all of the conditions in Rule 205-3 of the Investment Advisers Act of 1940 (as the same may be amended from time to time) are satisfied.

\* \* \* \* \*

## 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 those 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 parts of such statements.

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

#### 1. Purpose

In order to harmonize its sharing in accounts rule with FINRA rules, the Exchange proposes to delete NYSE Arca Rule 9.1(f), Sharing Profits—Losses, in its entirety, and replace it with the language of FINRA 2150(c), Sharing in Accounts; Extent Permissible. FINRA Rule 2150(c) contains the same general prohibition as NYSE Arca Rule 9.1(f), but with additional limited exceptions. The Exchange proposes to add those limited exceptions in order to bring its rule in line with the FINRA rule.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>4</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>5</sup> in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and to protect investors and the public interest. Specifically, the changes proposed herein, by harmonizing NYSE Arca rules with FINRA rules, provide NYSE Arca Members with a clearer regulatory scheme. The Exchange further notes that the changes proposed herein are neither novel nor controversial and are modeled on existing FINRA rules.

### 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.

### 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and Rule

19b-4(f)(6) thereunder.<sup>7</sup> Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>9</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>10</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),<sup>11</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange requests that the Commission waive the 30-day pre-operative waiting period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>12</sup> The Exchange requests this waiver so that these changes can be both immediately effective and operative, thus minimizing any confusion. As noted above, the changes proposed herein, by harmonizing NYSE Arca rules with FINRA rules, provide NYSE Arca Members with a clearer regulatory scheme. The Commission notes that the FINRA financial responsibility rules are currently in operation. The Commission believes that waiving the 30-day operative delay will permit the Exchange to harmonize its rules with the corresponding FINRA rule immediately, thus promoting clarity and minimizing confusion with respect to the requirements regarding guarantees and sharing in accounts.<sup>13</sup> For this reason, the Commission designates the proposed rule change as operative upon filing. 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

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 pre-filing requirement.

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>4</sup> 15 U.S.C. 78f(b).

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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, as amended, 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-NYSEArca-2010-11 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-NYSEArca-2010-11. 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 such filing also will be available for inspection and copying at the principal office of NYSEArca. 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-NYSEArca-2010-11 and should be submitted on or before April 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-6149 Filed 3-19-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61702; File No. SR-BX-2010-016]

### Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BX Rule 9520 Series Regarding Eligibility Procedures for Persons Subject to Certain Disqualifications

March 12, 2010.

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 February 19, 2010, NASDAQ OMX BX ("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 substantially prepared by BX. BX has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Section 19 under the Act.<sup>3</sup> 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 the Substance of the Proposed Rule Change

BX proposes to amend the BX Rule 9520 Series regarding eligibility procedures for persons subject to certain disqualifications. BX proposes to implement this rule change immediately upon filing. The text of the proposed rule change is available at <http://BXomx.cchwallstreet.com/>, at BX'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, 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

The Exchange is proposing to amend the BX Rule 9520 Series, the Exchange's eligibility proceedings section, to conform to recent changes in the rules of the Financial Industry Regulatory Authority, Inc. ("FINRA").<sup>4</sup> The proposal also includes the proposed Statutory Disqualification Regulatory Alert ("*SD Regulatory Alert*") that outlines the applicable eligibility procedures. The amended rules would incorporate by reference, the procedures in the *SD Regulatory Alert*. As further detailed in the *SD Regulatory Alert*, the need for a member to file an application with BX for approval, notwithstanding the disqualification would depend on (1) the type of disqualification; (2) the date of disqualification; or (3) whether the firm or individual is seeking admission, readmission or continuation in the securities industry.

FINRA recently revised its definition of disqualification to incorporate three additional categories of statutory disqualification, including willful violations of the federal securities or commodities laws, grounds for statutory disqualification that were enacted in the Sarbanes-Oxley Act, and associations with certain other persons subject to disqualification. Although the Exchange's definition has always included these categories, Commission staff informed the NASDAQ Stock Market LLC ("NASDAQ") at the time of its registration as a national securities exchange that, in light of the NASDAQ's origin as a subsidiary of FINRA's predecessor, the National Association of Securities Dealers, Inc., staff would not object if NASDAQ applied FINRA's then more-limited definition, pending adoption of procedures by FINRA to process disqualifications under these additional categories. BX, an affiliate of NASDAQ, adopted the same definition as NASDAQ.

The proposed rule change would amend BX Rule 9522 to address the

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> See Securities Exchange Act Release No. 59586 (March 17, 2009), 74 FR 12166 (March 23, 2009) (SR-FINRA-2008-045); Securities Exchange Act Release No. 59722 (April 7, 2009), (SR-FINRA-2009-022).