

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

The NYSE BBO Service proposes to provide an alternative to existing services that the Participants make available under the CQ Plan. The proposed fees do not alter or rescind any existing fees. In addition, it amounts to a competitive response to the products that Nasdaq, NYSE Amex and NYSE Arca make available or will soon make available. For those reasons, 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.

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

The Exchange has discussed this proposed rules change with those entities that the Exchange believes would be the most likely to take advantage of the proposed NYSE BBO Service by becoming NYSE-Only Vendors. While those entities have not submitted formal, written comments on the proposal, the Exchange has incorporated some of their ideas into the proposal and this proposed rule change reflects their input. 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### 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 No. SR-NYSE-2010-30 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSE-2010-30. 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-NYSE-2010-30 and should be submitted on or before May 13, 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. 34-61913; File No. SR-NYSE-2010-29]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing an Equity Transaction Fee Schedule for Shares Executed on the NYSE MatchPoint<sup>SM</sup> System

April 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 April 12, 2010, New York Stock Exchange LLC ("NYSE" 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. 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 an equity transaction fee schedule for shares executed on the NYSE MatchPoint<sup>SM</sup> ("NYSE MatchPoint" or "MatchPoint") system, effective upon filing with the Securities Exchange Commission (the "SEC" or the "Commission"), which will replace the current transaction fee waiver for all MatchPoint executions.<sup>4</sup> The proposed transaction fee will include criteria that will permit all users a per share fee reduction for entering specified levels of volume in addition to a scaled fee schedule for shares executed on MatchPoint. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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

<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> Currently, MatchPoint charges no transaction fees for MatchPoint executions. See Securities Exchange Act Release No. 61350 (January 14, 2010), 75 FR 3767 (January 22, 2010) (SR-NYSE-2010-01); see also Securities Exchange Act Release No. 61520 (February 16, 2010), 75 FR 8163, (February 23, 2010) (SR-NYSE-2010-06).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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 Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the NYSE's 2010 Price List by adding an equity transaction fee schedule for shares executed on the NYSE MatchPoint system, effective upon filing with the Commission, which will replace the current transaction fee waiver for all MatchPoint executions.<sup>5</sup> The proposed transaction fee will include criteria that will permit all users to obtain a per share fee reduction for MatchPoint executions by entering specified levels of volume into MatchPoint in addition to a scaled per share fee for shares executed on MatchPoint, which is described in more detail below. The proposed fee reduction will only apply when MatchPoint orders are executed.

*Background:* On January 7, 2009, the Exchange filed with the Securities and Exchange Commission a proposed rule change to adopt a temporary equity transaction fee for shares executed on the NYSE MatchPoint system that was effective until February 28, 2009.<sup>6</sup> This temporary equity transaction fee was extended numerous times since the original filing and was scheduled to terminate on January 31, 2010.<sup>7</sup> Each such filing was effective upon filing pursuant to Section 19(b)(3)(A)<sup>8</sup> of the Act and subparagraph (f)(2) of Rule 19b-4.<sup>9</sup>

The temporary equity transaction fee was 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.

On January 7, 2010, the Exchange proposed a transaction fee holiday waiving all MatchPoint transaction fees under the temporary equity transaction fee schedule until January 29, 2010.<sup>10</sup> The temporary waiver of fees was extended until March 31, 2010.<sup>11</sup> Waiver of MatchPoint transaction fees is currently in effect and will terminate when this proposed rule filing is filed with the Commission. The Exchange believed that the temporary waiver of the transaction fee would induce users to enter more single-sided volume<sup>12</sup> into the MatchPoint system. The Exchange intends that the proposed transaction fee schedule will be in effect upon filing with the Commission.

*Proposed Transaction Fee Schedule:* The Exchange proposes to re-establish the scaled fees that were temporarily effective from January 7, 2009 until January 7, 2010 with an additional criterion: to permit fee reductions for MatchPoint executions when users enter certain volume levels into MatchPoint matching sessions. The Exchange believes that the new fee schedule will continue to reward those who have been using the MatchPoint system for share execution, and will provide an additional incentive for users that can add share volume to MatchPoint as described below.

*"Shares Entered":* By this filing, the Exchange proposes to provide an incentive for users to enter share volume into the MatchPoint system because by adding volume, even if such volume is added only to one side of the market (*i.e.*, buy side or sell side), the likelihood of obtaining executions will increase. The proposed fee schedule rewards those users who obtain executions of their orders and who add volume at the specified share levels into any MatchPoint matching sessions (*i.e.*, intra day and after hours sessions). However, no user can obtain the proposed fee reductions unless their MatchPoint orders execute. To be clear, the Exchange is not charging users to

enter volume into MatchPoint. Rather, the proposed fee schedule adds a criterion that will permit a fee reduction for MatchPoint users who enter certain levels of volume when their orders execute on MatchPoint. As the proposed fee schedule provides, a user can have a minimum amount of executions that do not reach the "shares executed" threshold on MatchPoint and still obtain a fee reduction if the user "enters" the specified share levels into the MatchPoint system.

The Exchange will calculate the proposed transaction fees based on whichever criterion (shares "executed" or "entered") achieves the lowest rate on a monthly basis. The date of effectiveness for the proposed fee schedule will be the date of filing. Therefore, the Exchange will calculate a user's transaction fees for April 2010 based on the threshold criteria during the trading days remaining from the date of effectiveness to April 30, 2010. Thereafter, the Exchange will calculate the transaction fees on a monthly basis.

To be eligible for the proposed "shares entered" fee reduction schedule, shares entered into the MatchPoint system must participate in a matching session (*i.e.*, intra day sessions or after hours session) and execute. Shares entered into MatchPoint and cancelled by the user before a matching session commences will not be eligible for the proposed fee reduction. Shares entered into MatchPoint and cancelled due to a system malfunction, or some other Exchange-driven event, will still be eligible for the proposed "entered share" fee reduction.

As the chart below demonstrates, the proposed fee schedule will provide the following rates based on the average daily volume of shares executed and "entered" into the MatchPoint system:

- (1) 50,000 shares or less executed or 499,999 shares or less entered into MatchPoint that participate in a matching session will be charged \$.0015 per share; and
- (2) Over 50,000 to 499,999 shares executed or 500,000 up to and including 4,999,999 shares entered into MatchPoint that participate in a matching session will be charged \$.0010 per share; and

<sup>11</sup> See Securities Exchange Act release No. 61520 (February 16, 2010), 75 FR 8163, (February 23, 2010) (SR-NYSE-2010-06).

<sup>12</sup> Executions in the MatchPoint system occur when buy and sell interest in a security is entered on a matched basis (both buy and sell sides submitted together) or when interest submitted in the system by one user matches against contra side interest submitted by another user.

<sup>5</sup> *Ibid.* footnote 1.[sic]

<sup>6</sup> See Securities Exchange Act Release No. 59229 (January 12, 2009) 74 FR 3119 (January 16, 2009) (SR-NYSE-2009-01).

<sup>7</sup> See Securities Exchange Act Release No. 59491 (March 3, 2009) 74 FR 10107 (March 9, 2009) (SR-NYSE-2009-20); see Securities Exchange Act Release No. 59864 (May 5, 2009) 74 FR 22194 (May 12, 2009) (SR-NYSE-2009-44); see Securities Exchange Act Release No. 60278 (July 10, 2009) 74 FR 34615 (July 16, 2009) (SR-NYSE-2009-67); see

Securities Exchange Act Release No. 60439 (August 5, 2009) 74 FR 40270 (August 11, 2009) (SR-NYSE-2009-78) and see also Securities Exchange Act Release No. 60949 (November 6, 2009) 74 FR 58665 (November 13, 2009) (SR-NYSE-2009-110).

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

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> See Securities Exchange Act Release No. 61350 (January 14, 2010), 75 FR 3767 (January 22, 2010) (SR-NYSE-2010-01).

(3) 500,000 shares and greater executed or over 5,000,000 shares entered into MatchPoint that participate

in a matching session will be charged \$.0005 per share.

THRESHOLD CRITERIA

Average daily volume of shares executed/entered per month	Rate per share executed
50,000 shares or less executed or 499,999 shares or less entered .....	\$.0015 per share.
Over 50,000 to 499,999 shares executed or 500,000 to 4,999,999 shares entered .....	\$.0010 per share.
500,000 and greater shares executed or over 5,000,000 shares entered .....	\$.0005 per share.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the “Act”) <sup>13</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 proposed fee schedule is reasonable in that it carries forward a reduction in fees that was established in the former temporary scaled fee (effective January 7, 2009 until January 7, 2010) and adds another criterion; “entered shares,” which also provides a per share reduction in fees when orders are executed in the MatchPoint. In this way, a MatchPoint user will be able to obtain a reduction in transaction fees if the user reaches the scaled thresholds for executions or the scaled thresholds for shares entered. The proposed fee schedule is designed to make the system more competitive through the entering of specified share levels into the MatchPoint system. The proposed fee schedule, which will be effective upon filing, rewards all MatchPoint users who not only obtain executions but who enter certain levels of volume. Finally, the fees 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.

*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>14</sup> of the Act and subparagraph (f)(2) of Rule 19b-4 <sup>15</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed on its members by the NYSE.

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.

The Exchange believes the proposed fee schedule is reasonable and provides incentives to users to reduce their MatchPoint transaction fees. In addition, the proposed transaction fee schedule is designed to make the system more competitive through the entering of specified share levels into the MatchPoint system. As such, the proposed transaction fee schedule rewards those MatchPoint users who not only obtain executions, but who enter certain levels of volume. Finally, the fees are equitable in that they are available to all members who access the MatchPoint system.

**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-2010-29 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-2010-29. 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 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-2010-29 and should be submitted on or before May 13, 2010.

<sup>13</sup> 15 U.S.C. 78a.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61934; File No. SR-BX-2010-028]

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

April 16, 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 April 5, 2010, 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 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 this proposed rule change to delete Rule 3130 and IM-3130, to adopt a new Rule 4000A series, and to amend Rules 9552, 9554, 9557 and 9559 to conform BX’s rules to recent changes to the rules 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 proposes certain conforming changes to the rules concerning members’ financial responsibilities and the rules concerning expedited hearings in light of changes made to the analogous rules of FINRA. 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”). 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.

As part of this rule consolidation process, FINRA recently made several changes to its financial responsibility rules, which are largely incorporated by reference in BX’s rules.<sup>4</sup> In addition, FINRA also recently amended certain rules under its Rule 9000 Series concerning expedited proceedings, which are closely mirrored in BX’s Rule

9000 Series.<sup>5</sup> Accordingly, BX is proposing to amend its analogous rules consistent with the changes made by FINRA, as discussed below.

##### Financial Responsibility Rules:

FINRA’s new consolidated financial responsibility rules establish criteria that promote the permanency of member’s capital, requiring the review and approval of material financial transactions and establishing criteria intended to identify member firms approaching financial difficulty and to monitor their financial and operational condition. FINRA’s new financial responsibility rules incorporate many of the provisions of the prior NASD and NYSE rules, but streamlined and reorganized the provisions. FINRA also tiered many provisions to apply only to those firms that clear or carry customer accounts.

Currently, BX Rule 3130 and IM-3130 incorporate by reference old NASD Rule 3130 and IM-3130. These rules concerned FINRA’s authority to regulate the activities of members experiencing financial or operational difficulties. In adopting the new financial responsibility rules, FINRA eliminated NASD Rule 3130 and IM-3130, and replaced them with several rules that represented a consolidation of the old NASD and NYSE rules concerning financial responsibility. As a consequence, BX is also deleting Rule 3130 and IM-3130, and replacing them with new rules found under a new Rule 4000A series.<sup>6</sup> These new BX rules incorporate by reference the analogous newly-adopted financial responsibility rules of FINRA found in FINRA Rules 4110, 4120, 4140 and 4521. Consistent with current BX Rule 3130(b), BX is proposing to make clear in proposed Rules 4110A, 4120A and 4140A that references to Rule 9557 are to BX’s Rule 9557.

FINRA also revised FINRA Rule 9557 (Procedures for Regulating Activities Under FINRA Rules 4110, 4120 and 4130 Regarding a Member Experiencing Financial or Operational Difficulties) and FINRA Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series). FINRA Rules 9557 and 9559 address service of notice to member firms that are experiencing financial or operational

<sup>5</sup> Securities Exchange Act Release No. 61242 (December 28, 2009), 75 FR 167 (January 4, 2010) (SR-FINRA-2009-076).

<sup>6</sup> FINRA also eliminated NASD Rule 3131 and adopted FINRA Rule 4130 in its place. NASD Rule 3131 concerned the regulation of members registered with the SEC pursuant to Section 15C of the Exchange Act. BX does not have such a class of membership, and as such, did not adopt NASD Rule 3131 and is not proposing to adopt, or incorporate by reference, FINRA Rule 4130.

<sup>16</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).

<sup>4</sup> Securities Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009) (SR-FINRA-2008-067).