

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

The Exchange neither solicited nor received comments on the proposal.

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

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup> A proposed rule change filed under Rule 19b-4(f)(6)<sup>8</sup> normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>9</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. CBOE has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Because the proposed rule change will harmonize the CBOE rules pertaining to guarantees and profit sharing, confirmations to customers, and options communications with the comparable FINRA rules pursuant to the 17d-2 Agreement, the Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.<sup>10</sup>

**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-CBOE-2010-035 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-CBOE-2010-035. 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 CBOE. 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-CBOE-2010-035 and should be submitted on or before June 1, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-11096 Filed 5-10-10; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62032; File No. SR-NYSEArca-2010-31]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. Amending NYSE Arca Rule 3.3(a) and Section 401(a) of the Exchange's Bylaws to Eliminate the Exchange's Audit Committee, Compensation Committee, and Regulatory Oversight Committee**

May 4, 2010.

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 April 20, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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.

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

The Exchange proposes to amend NYSE Arca Rule 3.3 to eliminate its audit committee (the "NYSE Arca Audit Committee"), its compensation committee (the "NYSE Arca Compensation Committee") and its regulatory oversight committee ("ROC") as committees of the board of directors of the Exchange. References to those board committees will also be deleted from Section 4.01(a) of the Exchange's Bylaws. The formal responsibilities of the NYSE Arca Audit Committee and the NYSE Arca Compensation Committee will, following elimination, be exercised by the committees of the board of directors of the Exchange's ultimate parent company, NYSE Euronext. The formal responsibilities of the ROC will be exercised by the board of directors of NYSE Regulation, Inc. ("NYSER") in part, pursuant to the terms of a regulatory services agreement with the Exchange, and the board of directors of the Exchange in other respects.

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

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

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

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

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

<sup>8</sup> *Id.*

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>10</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

## 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 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 Exchange proposes to delete NYSE Arca Rule 3.3(a)(3) and the NYSE Arca Audit Committee provided for therein, thereby making the audit committee of the NYSE Euronext board (the "NYSE Euronext Audit Committee") the sole committee responsible for all Exchange-related audit functions. Similarly, the Exchange proposes to delete NYSE Arca Rule 3.3(a)(4) and the NYSE Arca Compensation Committee provided for therein, thereby making the human resources and compensation committee of the NYSE Euronext board (the "NYSE Euronext Human Resources and Compensation Committee") the sole committee responsible for all Exchange-related compensation functions. Finally, the Exchange proposes to delete NYSE Arca Rule 3.3(a)(2) and the ROC provided for therein, with the board of directors of NYSE and the board of directors of the Exchange each exercising some portion of the former responsibilities of the ROC related to ensuring (i) the independence of Exchange regulation, (ii) adequate resources for the Exchange to properly fulfill its SRO regulatory obligations and (iii) that Exchange management fully supports the execution of the regulatory process. NYSE performs regulatory responsibilities on behalf of the Exchange pursuant to the terms of a regulatory services agreement ("RSA") between NYSE and the Exchange. As described in more detail below, the Exchange board receives reports on regulatory matters from NYSE and from the Exchange's Chief Regulatory Officer ("CRO"), and the Exchange will still retain ultimate legal responsibility for the performance of its regulatory obligations as well as the ability to take action as required to meet that responsibility. References to the three

aforementioned NYSE Arca board committees will also be deleted from Section 4.01(a) of the Exchange's Bylaws.

#### Background

Since the demutualization of the New York Stock Exchange LLC ("NYSE") in 2006 in connection with the merger of New York Stock Exchange, Inc. and Archipelago Holdings, Inc. ("Archipelago"), the audit and compensation functions of NYSE have been carried out at the parent holding company level.<sup>3</sup> This principle was extended in 2007 with the merger of NYSE Group, Inc. ("NYSE Group") and Euronext, N.V. to form NYSE Euronext (the "NYSE-Euronext Merger"). As noted in the Commission's order approving the NYSE-Euronext Merger,<sup>4</sup> upon consummation, the board of directors of NYSE Euronext (the "Company") was expected to have an audit committee, a human resource and compensation committee, and a nominating and governance committee, each consisting solely of directors meeting the independence requirements of the Company.<sup>5</sup> The order further stated that these committees also would perform relevant functions for NYSE Group, NYSE, NYSE Market, Inc., NYSE Regulation, Inc., Archipelago, NYSE Arca Equities, Inc., and the Exchange, as well as other subsidiaries of the Company, except that the board of directors of NYSE Regulation, Inc. would continue to have its own compensation committee and nominating and governance committee.<sup>6</sup>

In addition, on October 1, 2008, the American Stock Exchange LLC ("Amex") was acquired by the Company. In connection with the merger, the Amex self-regulatory organization ultimately became known as NYSE Amex LLC ("NYSE Amex"). In its order approving the acquisition,<sup>7</sup> the Commission again noted that, "Amex expects that the committees of the NYSE Euronext board of directors will perform for NYSE [Amex] the board committee functions

relating to audit, governance and compensation."<sup>8</sup>

### The NYSE Euronext Audit Committee Will Become the Sole Committee To Handle All Audit Responsibilities for the Exchange

Among the various U.S. consolidated subsidiary corporations of the Company, only the Exchange has an audit committee that is separate and apart from the NYSE Euronext Audit Committee. Moreover, in practice, the audit responsibilities of the NYSE Arca Audit Committee overlap with those of the NYSE Euronext Audit Committee because the latter reviews the financial condition of the Exchange as part of its audit responsibilities.

Under its charter, the NYSE Euronext Audit Committee has broad authority to assist the board of directors of the Company in its oversight of (a) the integrity of the Company's financial statements and internal controls, (b) compliance with legal and regulatory requirements, including the Company's ethical standards and policies, (c) the qualifications, independence and performance of the Company's independent auditor, (d) the process relating to internal risk management and control systems, (e) the performance of the Company's internal audit function and its independent auditors, and (f) the Company's tax policy. It also prepares the Audit Committee report to shareholders for inclusion in the Company's annual proxy statement. Because the Company's financial statements are prepared on a consolidated basis that includes the financial results of all of the Company's subsidiaries, including the Exchange and any subsidiaries of the Exchange, the NYSE Euronext Audit Committee's purview necessarily includes these subsidiaries. The committee is composed of at least three members, all of whom must meet the independence and experience requirements of the New York Stock Exchange and Rule 10A-3 under the Securities Exchange Act of 1934 (the "Act"). Each member of the committee must be financially literate or become financially literate within a reasonable time after appointment to the committee, and at least one member must have accounting or related financial management expertise.

By contrast, the NYSE Arca Audit Committee has a more limited role, focused solely on the exchange entity and its subsidiary NYSE Arca Equities,

<sup>3</sup> See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order approving NYSE's business combination with Archipelago Holdings, Inc.) at 11257.

<sup>4</sup> Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR-NYSE-2006-120) ("NYSE Euronext Approval Order").

<sup>5</sup> See NYSE Euronext Approval Order, 72 FR at 8036.

<sup>6</sup> *Id.*

<sup>7</sup> Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-Amex-2008-62, SR-NYSE-2008-60) ("NYSE Amex Approval Order").

<sup>8</sup> NYSE Amex Approval Order, 73 FR at 57712. Note 66 following this language reiterates that, "Each of these NYSE Euronext committees is composed solely of directors meeting the independence requirements of NYSE Euronext."

Inc. which operates as a facility of the Exchange. As described in current Exchange Rule 3.3(a)(3)(B), the primary functions of that audit committee are (i) to conduct an annual review with the independent auditors, to determine the scope of their examination and the cost thereof, (ii) to periodically review with the independent auditors and the internal auditor the Exchange's internal controls and the adequacy of the internal audit program, (iii) to review the annual reports submitted both internally and externally, and take such action with respect thereto as it may deem appropriate, and (iv) to recommend to the board independent public accountants as auditors of the Exchange and its subsidiaries. However, to the extent that the committee performs these functions, its activities are duplicative of the activities of the NYSE Euronext Audit Committee which, for example, is specifically responsible under its charter for appointing, overseeing the work of, evaluating the qualifications, performance and independence of, and determining compensation for, the independent auditor. That responsibility also specifically includes reviewing and pre-approving the scope and general extent of the auditor's services and the estimated fees for those services. The independent auditor, in turn, is required to report directly to the NYSE Euronext Audit Committee.

Similarly, the NYSE Euronext Audit Committee is responsible under its charter for assessing the effectiveness of the internal audit function and reviewing with management and the independent auditor any major issues as to the adequacy of the Company's internal risk management and internal controls. The NYSE Euronext Audit Committee is also charged with meeting to review and discuss with management and the independent auditor the Company's annual audited financial statements, quarterly financial statements prior to the filing of Form 10-Q, and significant financial reporting issues and judgments made in connection with the preparation of the financial statements. These specific responsibilities of the NYSE Euronext Audit Committee, as well as numerous others in its charter relating to oversight of both the independent and internal auditors, financial statement and disclosure matters, and corporate oversight, result in the responsibilities of the NYSE Arca Audit Committee being fully duplicated by the responsibilities of the NYSE Euronext Audit Committee.

To make the practices of the Exchange consistent with the company-wide

corporate practices of the Company, the Exchange is now proposing to delete NYSE Arca Rule 3.3(a)(3) to eliminate the NYSE Arca Audit Committee and thereby formally establish the NYSE Euronext Audit Committee as the sole committee responsible for audit functions with regard to the Exchange. As has been the case since the creation of the NYSE Euronext Audit Committee, it will continue to be composed at all times of independent directors and will continue to review the financial condition of the Exchange as part of its oversight of the financial processes of the Company and of each of its consolidated subsidiaries.

NYSER, a not-for-profit indirect subsidiary of the Company, has broad authority to oversee the regulatory activities of the Exchange and the other self-regulatory organizations whose ultimate parent is the Company, through delegated authority and regulatory services agreements. It is the practice of the Company's Global Risk and Audit Services Department ("RAS"), which performs internal audit functions, to report to the board of directors of NYSER ("NYSER Board") on all internal audit matters relating to the Exchange's regulatory responsibilities. The Exchange represents that, to ensure that NYSER has the appropriate authority to oversee RAS's activities with respect to the Exchange's regulatory responsibilities pursuant to the provisions of the RSA between the Exchange and NYSER as described below, RAS's written procedures will be amended to stipulate that the NYSE Board may, at any time, request that RAS conduct an audit of a matter of concern to it and report the results of the audit both to the NYSE Board and the NYSE Euronext Audit Committee. The CRO of the Exchange, whose role is described below in more detail and who attends meetings of both the NYSE Board and the Exchange's board of directors, would be in attendance at any meeting of the NYSE Board at which the results of any such audit would be reported by RAS. The CRO would discuss these audit results with each of the NYSE Board and the Exchange's board of directors, as appropriate. NYSER also provides reports on regulatory matters at Exchange board meetings. The Exchange retains the authority to direct NYSER to request that RAS conduct such an audit of a matter of concern to it.

The NYSE Euronext Human Resources and Compensation Committee Will Become the Sole Committee To Handle All Human Resources and Compensation Responsibilities for the Exchange

The Exchange also currently has a separate Compensation Committee whose assigned responsibilities with respect to compensation and personnel matters overlap with the broader mandate of the NYSE Euronext Human Resources and Compensation Committee. The latter committee is charged under its charter with discharging the responsibilities of the Company's board of directors relating to human resources policies and procedures, executive benefit plans, and compensation and compensation disclosure with respect to the Company.

The primary functions of the NYSE Arca Compensation Committee, as described in current Exchange Rule 3.3(a)(4)(B), are relatively limited. The committee is required to (i) review and approve corporate goals and objectives relevant to the Exchange CEO's compensation, (ii) evaluate the CEO's performance in light of those goals and objectives, (iii) set the CEO's compensation level based on this evaluation, and (iv) make recommendations to the board of the Exchange with respect to the design of incentive compensation and equity-based plans. The first three of these functions relate to the determination of the Exchange CEO's compensation. However, the Exchange CEO, as an executive officer of the Company, already has his/her compensation established by the Company's board of directors, in conjunction with recommendations from the NYSE Euronext Human Resources and Compensation Committee.

Regarding the fourth and last primary function of the NYSE Arca Compensation Committee as stated in Exchange Rule 3.3(a)(4)(B), involving recommendations to the Exchange board "with respect to the design of incentive compensation and equity-based plans," the charter of the NYSE Euronext Human Resources and Compensation Committee states that a primary responsibility of that committee of the Company is to "[r]eview and make recommendations to the Board with respect to incentive-compensation and equity based plans that are subject to Board approval." The direct responsibility of the NYSE Euronext Human Resources and Compensation Committee for making such recommendations to the board of the Company is also a requirement for the

Company as a listed company, as provided in Section 303A.05 of the NYSE Listed Company Manual. Because there is no incentive compensation nor any equity-based plans for employees other than as determined at the parent company level, the NYSE Arca Compensation Committee is precluded from exercising its stated function of making such recommendations to the Exchange board (which could not act on any such recommendations in any case).

To make the practices of the Exchange consistent with the company-wide corporate practices of the Company, the Exchange is now proposing to delete NYSE Arca Rule 3.3(a)(4) to eliminate the NYSE Arca Compensation Committee and thereby formally establish the NYSE Euronext Human Resources and Compensation Committee as the sole committee responsible for human resources and compensation functions with regard to the Exchange as anticipated in those Commission orders referenced herein. As has been the case since the creation of the NYSE Euronext Human Resources and Compensation Committee, it will continue to be composed at all times of independent directors and will continue to address human resources policies and procedures, executive benefit plans, and compensation and compensation disclosure with respect to the Company and of each of its consolidated subsidiaries, including the Exchange (and excepting, with respect to certain items, NYSE Regulation, Inc.).

The NYSE Board and the Board of Directors of the Exchange Will Each Exercise a Portion of the Current Responsibilities of the ROC, and the Board of Directors of the Exchange Will Retain Ultimate Legal Responsibility for the Regulation of Its Permit Holders and Its Market

The proposed elimination of the ROC will result in the exercise of the current formal responsibilities of that position being divided between the NYSE Board and the board of directors of the Exchange as described below. Those responsibilities are to ensure (i) the independence of Exchange regulation, (ii) adequate resources for the Exchange to properly fulfill its SRO regulatory obligations and (iii) that Exchange management fully supports the execution of the regulatory process. The Exchange believes that the performance of its regulatory functions following elimination of the ROC will closely parallel the current performance by NYSE Amex of its regulatory functions as previously considered and approved by the Commission.

In the NYSE Amex Approval Order, the Commission noted that “upon the consummation of the Mergers and the Related Transactions, NYSE [Amex] will no longer have a Regulatory Oversight Committee (“ROC”). Instead, NYSE [Amex] will contract with NYSE Regulation to perform all of its regulatory functions. The Commission believes that it is consistent with the Act for NYSE [Amex] to eliminate its ROC and instead contract with NYSE Regulation to perform its regulatory functions because the governance of NYSE Regulation will provide a comparable level of independence that a ROC would provide.”<sup>9</sup> The Exchange has previously entered into the RSA with NYSE to perform all of the Exchange’s regulatory functions on the Exchange’s behalf. The Financial Industry Regulatory Authority (“FINRA”) performs some of the regulatory functions contracted out to NYSE pursuant to a separate multi-party regulatory services agreement with FINRA. These regulatory contractual arrangements closely parallel the regulatory arrangements for NYSE Amex that the Commission reviewed and approved in the NYSE Amex Approval Order.<sup>10</sup>

Regarding the ROC’s current formal responsibility to ensure the independence of Exchange regulation, the Exchange notes the Commission’s comment cited in the prior paragraph that the governance of NYSE will provide a comparable level of independence as that of a ROC. The Exchange represents that the aforementioned statement in the NYSE Amex Approval Order will be equally valid with respect to regulation of the Exchange because of the very similar regulatory contractual arrangements.<sup>11</sup>

<sup>9</sup> NYSE Amex Approval Order, 73 FR at 57717.

<sup>10</sup> See *id.* [“First, NYSE [Amex] will enter into a regulatory contract with NYSE Regulation \* \* \* under which NYSE [Amex] will contract with NYSE Regulation to perform all of NYSE [Amex]’s regulatory functions on NYSE [Amex]’s behalf. However, FINRA may perform some of the regulatory functions contracted out to NYSE Regulation pursuant to a separate multi-party regulatory services agreement \* \* \*. Notwithstanding these regulatory contracts, NYSE [Amex] will retain ultimate legal responsibility for the regulation of its members and its market.”] The Exchange represents that its contractual arrangements with NYSE and FINRA with respect to the performance of its regulatory functions are fully equivalent to the contractual arrangements that NYSE Amex has entered into with NYSE and FINRA as described in this footnote, and that the Exchange retains ultimate legal responsibility for the performance of its regulatory functions and the ability to take action to assure the performance of those functions.

<sup>11</sup> Some of the specific reasons cited by the Commission in support of its conclusion that independence of SRO regulation would exist under NYSE Amex’s contractual arrangements with

Further, regarding the ROC’s current formal responsibility to ensure adequate resources for the Exchange to properly fulfill its SRO regulatory obligations, the Exchange notes the Commission’s statement in the NYSE Amex Approval Order that “NYSE Euronext has agreed to provide adequate funding to NYSE Regulation to conduct its regulatory activities with respect to NYSE, NYSE Arca and \* \* \* NYSE [Amex].”<sup>12</sup> That funding arrangement led the Commission to state that “the Commission believes that NYSE Euronext’s commitment to provide adequate funding to NYSE Regulation to conduct its regulatory activities is designed to ensure that NYSE [Amex] can perform its obligations under the Act.”<sup>13</sup> Because that funding commitment by NYSE Euronext is also applicable by its terms to the Exchange, the Commission’s conclusion in the preceding sentence regarding adequate funding of NYSE for the conduct of regulatory activities is equally valid as applied to the Exchange’s SRO regulatory obligations.

As with NYSE Amex, and notwithstanding these regulatory agreements, the Exchange retains ultimate legal responsibility for the regulation of its permit holders<sup>14</sup> and its market and has full authority to take action to assure that its regulatory responsibilities are met. In addition, the Exchange board of directors will directly assume the ROC’s current formal responsibility to ensure that Exchange management fully supports the execution of the regulatory process.

In connection with the foregoing arrangements, as stated above, the Exchange retains the authority to direct NYSE and FINRA to take any action necessary to fulfill the Exchange’s statutory and self-regulatory obligations, and NYSE provides a report on regulatory matters at each meeting of the Exchange board. The Exchange board appoints its CRO who is also an officer of NYSE and reports to the Chief Executive Officer of NYSE. The CRO is also an officer of the Exchange, and in that capacity is charged with reporting on regulatory matters to the Exchange

NYSE are that “all directors on the Board of NYSE Regulation (other than its CEO) are, and will be, required to be independent of management of NYSE Euronext and its subsidiaries, as well as of NYSE, NYSE Arca, and NYSE [Amex] members and listed companies.” The Commission further noted that, “In addition, a majority of the members of the NYSE Regulation board must be directors that are not also directors of NYSE Euronext.” See *id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Permit holders at the Exchange are “members” of the Exchange as that term is defined in Section 3 of the Act.

board. These arrangements also closely track the current arrangements for NYSE Amex that were considered by the Commission in issuing the NYSE Amex Approval Order<sup>15</sup> and will assure that the Exchange board receives reports on regulatory matters that are sufficient to enable it to take action as necessary in the performance of its regulatory responsibilities.

As a consequence of realigning its regulatory arrangements to closely match those of NYSE Amex, which arrangements were previously considered and approved by the Commission, the Exchange believes that the proposed rule change is non-controversial and presents no new or novel issues. In the NYSE Amex Approval Order, the Commission found that NYSE Amex's proposed regulatory structure "is consistent with the Act, including Section 6(b)(1) of the Act \* \* \*" and further stated that, "The Commission believes that it is consistent with the Act to allow NYSE [Amex] to contract with NYSE Regulation and FINRA to perform its regulatory functions, including its examination, enforcement, and disciplinary functions."<sup>16</sup> The Commission also determined that NYSE Amex's "proposal to appoint a CRO reporting to the NYSE [Amex] Board will further NYSE [Amex]'s ability to satisfy these self-regulatory obligations consistent with Section 6(b)(1) of the Act."<sup>17</sup> Because all of the same elements will be present in the Exchange's regulatory arrangements following the elimination of the ROC, the Exchange believes that the proposed rule change is fully consistent with the Act.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>18</sup> of the Act,<sup>19</sup> in general, and furthers the objectives of Section 6(b)(1)<sup>20</sup> of the Act, which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The proposed rule

<sup>15</sup> See NYSE Amex Approval Order, 73 FR at 57717. ["NYSE [Amex] also will retain the authority to direct NYSE Regulation, FINRA, or any other SRO that provides regulatory services to take any action necessary to fulfill NYSE [Amex]'s statutory and self-regulatory obligations. In addition, the NYSE [Amex] Board will appoint a CRO, who will be an officer of NYSE [Amex] and will report directly to the NYSE [Amex] Board."]

<sup>16</sup> NYSE Amex Approval Order, 73 FR at 57717.

<sup>17</sup> *Id.*

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78.

<sup>20</sup> 15 U.S.C. 78f(b)(1).

change is also consistent with, and furthers the objectives of Section 6(b)(5)<sup>21</sup> of the Act, in that it 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 facilitating transactions in securities, 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.

More specifically, the Exchange believes that the proposed rule change will promote efficiency and just and equitable principles of trade by simplifying the corporate structure of the Exchange through allowing the Exchange to eliminate two board committees whose responsibilities overlap with, and are adequately handled by, corresponding committees of the board of directors of the Exchange's ultimate parent. This will allow directors of the Exchange to focus their attention on matters falling directly within the purview of the Exchange's board. Similarly, elimination of the ROC will further simplify the corporate structure of the Exchange, thereby promoting efficiency, by aligning the structure relating to the performance of the regulatory functions of the Exchange more closely with the structure of NYSE Amex relating to its performance of those same functions. As discussed above, the Commission has previously determined that the regulatory structure of NYSE Amex is consistent with the Act, including Section 6(b)(1) of the Act.

### 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 with respect to the proposed rule change.

## 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 NYSE consents, the Commission will:

(A) By order approve such 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 Number SR-NYSEArca-2010-31 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-2010-31. 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, 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

<sup>21</sup> 15 U.S.C. 78f(b)(5).

submissions should refer to File Number SR–NYSEArca–2010–31 and should be submitted on or before June 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

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

[FR Doc. 2010–11094 Filed 5–10–10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62043; File No. SR–BX–2010–033]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Options Regulatory Fee

May 5, 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 30, 2010, 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 Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

NASDAQ OMX BX, Inc. (the “Exchange”) proposes to amend the Fee Schedule of the Boston Options Exchange Group, LLC (“BOX”) to eliminate the minimum one-cent Options Regulatory Fee charged per trade. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room, on the Exchange’s Internet Web site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXB/Filings/>, and on the

Commission’s Web site at <http://www.sec.gov>.

#### 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

The Exchange charges an Options Regulatory Fee (“ORF”) of \$0.0030 per contract to each BOX Options Participant for all options transactions executed or cleared by the BOX Options Participant that are cleared by the Options Clearing Corporation (“OCC”) in the customer range, excluding Linkage orders, regardless of the exchange on which the transaction occurs.<sup>5</sup> The ORF is collected indirectly from BOX Options Participants through their clearing firms by OCC on behalf of the Exchange.

There is presently a minimum one-cent (\$0.01) ORF charged per trade. The Exchange proposes to eliminate this minimum charge from its fee schedule and that this fee change be operative on May 3, 2010.

###### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. In particular, the Exchange believes that this proposal will align the calculation of the ORF

<sup>5</sup> The ORF was established in January 2010. See Securities Exchange Act Release No. 61388 (January 20, 2010), 75 FR 4431 (January 27, 2010) (SR–BX–2010–001) (Notice of Filings and Immediate Effectiveness of Proposed Rule Change Relating to Registered Representative Fee and Options Regulatory Fee).

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

with that of other options exchanges<sup>8</sup> while also simplifying the Exchange’s administration of the ORF.

##### 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

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)(ii) of the Exchange Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder, because it establishes or changes a due, fee, or other charge applicable only to a member.

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–2010–033 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.

<sup>8</sup> See Securities Exchange Act Release Nos. 61529 (February 17, 2010), 75 FR 8421 (February 24, 2010) (SR–PHLX–2010–17) and 61641 (March 3, 2010) 75 FR 11220 (March 10, 2010) (SR–CBOE–2010–20).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b–4(f)(2).

<sup>22</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)(ii).

<sup>4</sup> 17 CFR 240.19b–4(f)(2).