

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹⁰ However, Rule 19b-4(f)(6)¹¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Amex has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay with respect to the proposed rule change to the maximum term of FLEX options is consistent with the protection of investors and the public interest. The Commission notes that this proposed rule change will make the Amex rule substantially similar to the corresponding provisions of the Arca and CBOE rules, and may provide investors with greater flexibility when conducting transactions in FLEX options.¹²

The Commission has also considered NYSE Amex's request to waive the 30-day operative delay with respect to the minimum size pilot. Because, however, the Commission does not believe, practically speaking, that a pilot should retroactively commence, the Commission is only waiving the operative delay as of the date of this notice for the reasons discussed below.

The Commission believes that shortening the 30-day operative delay to allow the commencement of the pilot as of the date of this notice is consistent with the protection of investors and the public interest. The Commission notes that the proposed rule change is substantially similar to a pilot that was previously approved by the Commission and is currently in existence for CBOE.¹³ The Commission also notes that the corresponding CBOE pilot was subject to full notice and comment in the **Federal Register**, and that the Commission only received comments that supported that proposal.¹⁴ Moreover, waiving the operative date as of the date of this notice is consistent with approval of CBOE's pilot, which allowed implementation as of the date of the Commission's approval order. For these reasons, the Commission

designates the portion of the proposal to establish a minimum size pilot to be operative upon the date of issuance of this notice.¹⁵

At any time within 60 days of the filing of Amendment No. 1, 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 the 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. Please include File Number SR-NYSEAmex-2010-40 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-NYSEAmex-2010-40. 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-NYSEAmex-2010-40 and should be submitted on or before June 9, 2010.

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

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62080; File No. SR-BX-2010-035]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ OMX BX Equities System

May 11, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 3, 2010, NASDAQ OMX BX, Inc. ("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 BX. Pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ BX has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. 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

BX proposes to modify pricing for BX members using the NASDAQ OMX BX Equities System. BX will implement the proposed change on May 3, 2010. The text of the proposed rule change is

designated by the Commission. The Exchange has met this requirement.

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

¹¹ *Id.*

¹² See NYSE Arca Equities Rule 5.32(d)(1); CBOE Rule 24A.4(a)(4)(i).

¹³ See CBOE Rule 24A.4 Interpretations and Policies .01(b); see also Securities Exchange Act Release No. 61439 (January 28, 2010) 75 FR 5831 (February 4, 2010) (SR-CBOE-2009-087).

¹⁴ See Securities Exchange Act Release No. 61439 (January 28, 2010) 75 FR 5831 (February 4, 2010) (SR-CBOE-2009-087).

¹⁵ For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

available at <http://nasdaqomxbx.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

BX is proposing to modify its fees for orders that execute at prices below \$1. Currently, BX charges 0.15% (15 basis points) of the total dollar value of the execution to members accessing liquidity, and provides a rebate of 0.05% (5 basis points) of the total dollar value to members providing liquidity. Through this filing, BX will reduce the fee to access liquidity to 0.10% (10 basis points) of the total dollar value and eliminate the rebate for providing liquidity. The change is a competitive response to several other transaction venues that have made recent changes to fees for securities priced under \$1.⁵ The new fees are consistent with the limitations of Regulation NMS, SEC Rule 610(c), for securities with a price of less than \$1.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Section 6(b)(4) of the Act,⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or

controls. The impact of the price changes upon the net fees paid by a particular market participant will depend upon a number of variables, including the relative availability of liquidity on BX and other venues, the prices of the market participant's quotes and orders relative to the national best bid and offer (*i.e.*, its propensity to add or remove liquidity), and the types of securities that it trades. BX believes that the proposed changes are reasonable and equitable in that they apply uniformly to all similarly situated members.

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

BX 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. Because the market for order execution and routing is extremely competitive, members may readily direct orders to BX's competitors if they object to the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder.⁹ 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. Please include File Number SR-BX-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-BX-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 the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-BX-2010-035 and should be submitted on or before June 9, 2010.

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

Elizabeth M. Murphy,
Secretary.

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⁵ See [http://apps.nyse.com/commdata/pub19b4.nsf/docs/50B8C6B6842FEA1E85257700006A989D/\\$FILE/NYSEArca-2010-26.pdf](http://apps.nyse.com/commdata/pub19b4.nsf/docs/50B8C6B6842FEA1E85257700006A989D/$FILE/NYSEArca-2010-26.pdf) (NYSE Arca); <http://www.nsx.com/resources/content/5/1/documents/SR-NSX-2010-04.pdf> (National Stock Exchange); [http://www.ise.com/assets/documents/OptionsExchange/legal/proposed_rule_changes/2010/SR-ISE-2010-29\\$Proposed_Rule_Change_Relating_to_Direct_Edge%20ECN_Fee_Change_for_ISE_Members\\$20100405.pdf](http://www.ise.com/assets/documents/OptionsExchange/legal/proposed_rule_changes/2010/SR-ISE-2010-29$Proposed_Rule_Change_Relating_to_Direct_Edge%20ECN_Fee_Change_for_ISE_Members$20100405.pdf) (Direct Edge).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ 17 CFR 200.30-3(a)(12).