

structured finance product (*i.e.*, the sponsor, underwriter, and issuer) how they intend to market and sell the structured finance product and how they intend to engage in any secondary market activities (*i.e.*, re-sales) of the structured finance product. An NRSRO may choose to obtain from the arranger a representation upon which the NRSRO can reasonably rely that sales of the structured finance product will meet this condition. Factors relevant to the analysis of whether such reliance would be reasonable would include, but not be limited to: (1) Ongoing or prior failures by the arranger to adhere to its representations; or (2) a pattern of conduct by the arranger where it fails to promptly correct breaches of its representations.

#### V. Request for Comment

The Commission notes that it intends to monitor the use of this temporary exemption to evaluate whether it is being used for transactions that meet the above-described conditions. If the Commission discovers that this temporary exemption is being used otherwise, it will consider whether further action is appropriate, including whether to revise or revoke the exemption. In this connection, the Commission requests comment on the following:

- With respect to foreign regulators, regulations, and laws, what specific conflicts, if any, will arise from the application of Rule 17g-5(a)(3)?
- Do any NRSROs, or credit rating agencies considering applying for registration as an NRSRO, intend to use information required to be provided on password-protected Internet Web sites by Rule 17g-5(a)(3) to determine and monitor credit ratings with respect to credit ratings that are being exempted from the requirements of Rule 17g-5(a)(3)?
- NRSROs or credit rating agencies that intend to use such information to determine and monitor credit ratings with respect to credit ratings that are being exempted are asked to provide specific details on when they expect to be ready to determine and monitor such credit ratings.
- What are the different types of structured finance and similar products used outside the U.S.? What factors should determine whether an instrument sold entirely or primarily outside of the U.S. is a structured finance product?
- What actions are NRSROs taking to prepare to comply with Rule 17g-5(a)(3)'s application to credit ratings that are being exempted by this order? What specific costs—compliance,

operational, and any others—will be associated with that compliance, including costs to arrangers?

Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/exorders.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-04-09 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549-1090.

All submissions should refer to File Number S7-04-09. This file number should be included on the subject line if e-mail is used. To help us 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/exorders.shtml>). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F St., NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. 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.

#### VI. Conclusion

For the foregoing reasons, the Commission believes it would be necessary or appropriate in the public interest and consistent with the protection of investors to grant a temporary exemption from the requirements in Rule 17g-5(a)(3) with respect to certain credit ratings.

Accordingly, it is hereby ordered, pursuant to Section 36 of the Exchange Act, that a nationally recognized statistical rating organization is exempt until December 2, 2010 from the requirements in Rule 17g-5(a)(3) (17 CFR 240.17g-5(a)(3)) for credit ratings where:

- (1) The issuer of the security or money market instrument is not a U.S. person (as defined under Securities Act Rule 902(k)); and

(2) The nationally recognized statistical rating organization has a reasonable basis to conclude that the structured finance product will be offered and sold upon issuance, and that any arranger linked to the structured finance product will effect transactions of the structured finance product after issuance, only in transactions that occur outside the U.S.

By the Commission,  
Elizabeth M. Murphy,  
Secretary.

[FR Doc. 2010-12373 Filed 5-21-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62124; File No. SR-BX-2010-037]

### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by NASDAQ OMX BX, Inc. To Adopt Rule 4120(a)(11) Concerning Individual Stock Trading Pauses and To Adopt Related IM-4120-3

May 19, 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 May 18, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing this proposed rule change to adopt Rule 4120(a)(11) concerning individual stock trading pauses in certain securities, and to adopt related IM-4120-3.

The text of the proposed rule change is below. Proposed new language is in *italics* and proposed deletions are in [brackets].<sup>3</sup>

\* \* \* \* \*

#### 4120. Trading Halts

(a) Authority to Initiate Trading Halts or Pauses

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

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

<sup>3</sup> The text of the proposed rule change is available from BX's Web site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>, at the Exchange's principal office, and at the Commission's Public Reference Room.

In circumstances in which the Exchange deems it necessary to protect investors and the public interest, the Exchange, pursuant to the procedures set forth in paragraph (c):

(1)–(10) No change.

(11) *If a primary listing market issues an individual stock trading pause in any of the Circuit Breaker Securities, as defined in IM-4120-3, the Exchange will pause trading in that security until trading has resumed on the primary listing market. If, however, trading has not resumed on the primary listing market and ten minutes have passed since the individual stock trading pause message has been received from the responsible single plan processor, the Exchange may resume trading in such stock.*

(b)–(c) No change.

IM-4120-1. No change.

IM-4120-2. No change.

IM-4120-3. *Circuit Breaker Securities Pilot*

*The provisions of paragraph (a)(11) of this Rule shall be in effect during a pilot set to end on December 10, 2010. During the pilot, the term “Circuit Breaker Securities” shall mean the securities included in the S&P 500® Index.*

\* \* \* \* \*

## 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

The primary listing markets for U.S. stocks are in the process of amending their rules so that they may, from time to time, issue a trading pause for an individual security if the price of such security moves 10% or more from a sale in a preceding five-minute period. The Exchange is proposing the rule change described below in consultation with other markets and Commission staff to provide for uniform market-wide trading pause standards for individual securities in the S&P 500® Index, as set forth below. The Exchange is not currently the primary listing market for any securities, and thus, will not be issuing any trading pauses pursuant to its rules.

The Exchange proposes to add a new paragraph to BX Rule 4120(a) to allow

the Exchange to pause trading in an individual stock when the primary listing market for such stock issues a trading pause in any Circuit Breaker Securities, as defined below and in proposed IM-4120-3. If, however, trading has not resumed on the primary listing market and ten minutes have passed since the individual stock trading pause message has been received from the responsible single plan processor, the Exchange may resume trading in such stock.

The proposed rule would apply to trading pauses issued by primary listing markets in “Circuit Breaker Securities,” as defined in proposed IM-4120-3. Specifically, on a pilot basis, set to end on December 10, 2010, Circuit Breaker Securities would mean the securities included in the S&P 500® Index. Thus, proposed paragraph (11) of the Rule would be in effect only with respect to securities in the S&P 500® Index.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Sections 6(b)(5) of the Act,<sup>5</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is also designed to support the principles of Section 11A(a)(1)<sup>6</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

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

<sup>6</sup> 15 U.S.C. 78k-1(a)(1).

### 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

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 self-regulatory organization 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.<sup>7</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 Exchange 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-2010-037 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-2010-037. 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

<sup>7</sup> The Commission notes that the Exchange has requested accelerated approval of the filing.

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-BX-2010-037 and should be submitted on or before June 3, 2010.<sup>8</sup>

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-12416 Filed 5-21-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62128; File No. SR-NYSEArca-2010-41]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change Adding NYSE Arca Equities Rule 7.11 To Provide for a Trading Pause for Individual Securities When the Price Moves 10 Percent or More

May 19, 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 May 18, 2010, NYSE Arca, Inc. ("NYSE Arca" or 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 NYSE Arca. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>8</sup> The Commission believes that a 10-day comment period is reasonable, given the urgency of the matter. It will provide adequate time for comment.

<sup>9</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.

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

The Exchange proposes to add NYSE Arca Equities Rule 7.11 to provide for a trading pause for individual securities when the price moves 10 percent or more. 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.

### 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to add NYSE Arca Equities Rule 7.11 to provide for a trading pause for individual securities for which the Exchange is the primary listing market if the price of such security moves 10% or more from a sale in a preceding five-minute period. The Exchange is proposing this rule addition in consultation with other markets and staff of the Securities and Exchange Commission to provide for uniform market-wide trading pause standards for individual securities in the S&P 500<sup>®</sup> Index that experience rapid price movement, as set forth below.

The Exchange is proposing that this rule be implemented on a pilot basis, set to end on December 10, 2010. During this pilot period, the rule would be in effect only with respect to securities included in the S&P 500<sup>®</sup> Index securities. During that pilot period, the Exchange will continue to assess whether additional securities need to be added and whether the parameters of the rule would need to be modified to accommodate trading characteristics of different securities.

As proposed, NYSE Arca Equities Rule 7.11 would enable the Exchange to pause trading in an individual security listed on the Exchange if the price moves by 10% as compared to prices of

that security in the preceding five-minute period during a trading day, which period is defined as a "Trading Pause." To enable the market to absorb the opening price of a security and to participate in the close, as proposed, the proposed rule would be in effect from 6:45 a.m. to 12:35 p.m., Pacific Time.

Proposed NYSE Arca Equities Rule 7.11(b) sets forth the re-opening procedures following a Trading Pause. As proposed, the Exchange will re-open trading in the security at the end of the Trading Pause subject to the procedures set forth in NYSE Arca Equities Rule 7.35 for a Trading Halt Auction. As proposed, in the event of a significant imbalance, the Exchange may delay the re-opening of the security past the five-minute Trading Pause period. The Exchange will notify other markets if it cannot reopen because of issues unrelated to an order imbalance, thereby enabling other markets to resume trading even if the primary market has not re-opened. The Exchange notes that if it re-opens the security after other markets have resumed trading, such reopening is subject to Rule 611(b)(3) of Regulation NMS as an exception to the Order Protection Rule.

The 10% or more move in price will be calculated every second by comparing each last consolidated sale price of a security ("Trigger Trade") during the preceding second to a reference price (the "Calculation Time"). For purposes of this calculation, the reference price shall be any transaction in that security printed to the Consolidated Tape during the five-minute period before the Calculation Time. Because the calculation period begins at 6:45 a.m., trades occurring after 6:45 a.m. may be a Trigger Trade, however, the reference price(s) for such Trigger Trades will begin at 6:45 a.m. In such case, in the first five minutes of the calculation period, the reference prices for a Trigger Trade will not be based on five minutes of trading in that security. For example, a trade at 6:45:05 will be compared only to trades between 6:45:00 and 6:45:05. The last potential Trigger Trade will be at 12:35 p.m., so that such Trading Pause will end at 12:40 p.m.

As proposed, only regular way, in-sequence transactions qualify as either a Trigger Trade or a reference price. To ensure that erroneous executions do not trigger a Trading Pause, the Exchange also proposes that it can exclude a transaction price from use as a reference price or Trigger Trade if it concludes that the transaction price resulted from an erroneous execution.

The proposed rule further provides that if a Trading Pause is triggered, the