

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 No. SR-BX-2009-005 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-BX-2009-005. 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 inspection and copying in the Commission's Public Reference Room, 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-BX-2009-005 and should be submitted on or before February 25, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59311; File No. SR-BX-2009-007]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Effective Date of the Rule Governing Exchange's Directed Order Process on the Boston Options Exchange

January 28, 2009.

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 January 26, 2009, NASDAQ OMX BX, Inc. (the "Exchange") 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 Exchange has designated the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ 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 proposes to extend the effective date of the amended rule governing the Exchange's Directed Order Process on the Boston Options Exchange ("BOX") from January 31, 2009 to May 29, 2009. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at http://nasdaqtrader.com/Trader.aspx?id=Boston_Stock_Exchange.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

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

On March 14, 2006, the Exchange proposed an amendment to the BOX Rules governing the Directed Order⁵ process on BOX.⁶ The Rules were amended to clearly state that the BOX Trading Host identifies to an Executing Participant ("EP") the identity of the firm entering a Directed Order. The amended rule was to be effective until June 30, 2006 ("Pilot Program"), while the Commission considered a corresponding Exchange proposal⁷ to amend its rules to permit EPs to choose the firms from whom they will accept Directed Orders, while providing complete anonymity of the firm entering a Directed Order.

On June 20, 2006, the Exchange proposed extending the effective date of the rule governing its Directed Order process on BOX from June 30, 2006 to September 30, 2006,⁸ while the Commission continued to consider the corresponding Exchange proposal.

On September 11, 2006; January 16, 2007; July 2, 2007; and January 18, 2008 the Exchange proposed extending the effective date of the amended rule governing the Directed Order process on BOX from September 30, 2006 until January 31, 2007;⁹ from January 31,

⁵ Capitalized terms not otherwise defined herein shall have the meanings prescribed within the BOX Rules.

⁶ See Securities Exchange Act Release No. 53516 (March 20, 2006), 71 FR 15232 (March 27, 2006) (SR-BSE-2006-14).

⁷ See Securities Exchange Act Release No. 53357 (February 23, 2006), 71 FR 10730 (March 2, 2006) (SR-BSE-2005-52).

⁸ See Securities Exchange Act Release No. 54082 (June 30, 2006), 71 FR 38913 (July 10, 2006) (SR-BSE-2006-29).

⁹ See Securities Exchange Act Release No. 54469 (September 19, 2006), 71 FR 56201 (September 26, 2006) (SR-BSE-2006-38).

¹⁷ 17 CFR 200.30-3(a)(12).

2007 until July 31, 2007;¹⁰ from July 31, 2007 until January 31, 2008;¹¹ and from January 31, 2008 until January 31, 2009,¹² respectively, while the Commission considered the corresponding Exchange proposal to amend the BOX Rules to permit EPs to choose the firms from whom they will accept Directed Orders, while providing complete anonymity of the firm entering a Directed Order.

This filing from the Exchange again proposes extending the effective date of the amended rule governing its Directed Order process on BOX, from January 31, 2009 to May 29, 2009.¹³ In the event the Commission reaches a decision with respect to the corresponding Exchange proposal to amend the BOX Rules before May 29, 2009, the amended rule governing the Directed Order process on the BOX will cease to be effective at the time of that decision.

2. Statutory Basis

The amended rule is designed to clarify the information contained in a Directed Order. This proposed rule filing seeks to extend the amended rule's effectiveness from January 31, 2009 to May 29, 2009. This extension will afford the Commission the necessary time to consider the Exchange's corresponding proposal to amend the BOX rule to permit EPs to choose the firms from whom they will accept Directed Orders while providing complete anonymity of the firm entering a Directed Order. Accordingly, the Exchange believes that this proposal is consistent with the requirements of Section 6(b) of the Act,¹⁴ in general, and Section 6(b)(5) of the Act,¹⁵ in particular, in that it is designed 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 for a free and open market and a national market system and, in general, to protect investors and the public interest.

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.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)¹⁶ of the Act and Rule 19b-4(f)(6) thereunder.¹⁷ As required under Rule 19b-4(f)(6)(iii),¹⁸ the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁹ normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)²⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),²¹ which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would continue to conform the BOX rules to BOX's current practice and clarify that Directed Orders on BOX are

not anonymous without interruption.²² Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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.

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-2009-007 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-2009-007. 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days

¹⁰ See Securities Exchange Act Release No. 55139 (January 19, 2007), 72 FR 3448 (January 25, 2007) (SR-BSE-2007-01).

¹¹ See Securities Exchange Act Release No. 56014 (July 5, 2007), 72 FR 38104 (July 12, 2007) (SR-BSE-2007-31).

¹² See Securities Exchange Act Release No. 57195 (January 24, 2008), 73 FR 5610 (January 30, 2008) (SR-BSE-2008-04).

¹³ In the event that the issue of anonymity in the Directed Order process is not resolved by May 29, 2009 the Exchange will consider whether to submit another filing under Rule 19b-4(f)(6) extending this rule and system process.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

²¹ *Id.*

²² For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-BX-2009-007 and should be submitted on or before February 25, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-2297 Filed 2-3-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59309; File No. SR-NYSE-2009-04]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Establish Fees for NYSE Trades

January 28, 2009.

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 January 27, 2009, the New York Stock Exchange LLC ("NYSE" 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 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 proposes to introduce its NYSE Trades service and to establish fees for that service. NYSE Trades is a new NYSE-only market data service that allows a vendor to redistribute on a real-time basis the same last sale information that NYSE reports to the Consolidated Tape Association ("CTA") for inclusion in CTA's consolidated data stream and certain other related data elements ("NYSE Last Sale Information").

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

a. *The Service.* The Exchange proposes to introduce NYSE Trades, a new service pursuant to which it will allow vendors, broker-dealers and others ("NYSE-Only Vendors") to make available NYSE Last Sale Information on a real-time basis.³ NYSE Last Sale Information would include last sale information for all securities that are traded on the Exchange.

The Exchange will make NYSE Last Sale Information available through its new NYSE Trades service at the same time as it provides last sale information to the processor under the CTA Plan. In addition to the information that the Exchange provides to CTA, NYSE Last Sale Information will also include a unique sequence number that the Exchange assigns to each trade and that allows an investor to track the context of the trade through such other Exchange market data products as NYSE OpenBook® and NYSE Info Tools®.

Contemporaneously with the proposed rule change, the Exchange submitted a proposed rule change that seeks to establish a pilot program for the receipt and redistribution of the NYSE Trades datafeed(s) without charge to either the datafeed recipient or the end-user. The Exchange proposes to provide that free offering on a pilot program basis until the later of Commission approval of the proposed rule change and the end of the pilot period.

b. *The Fees.*

i. *Access Fee.* For the receipt of access to the datafeeds of NYSE Last Sale Information that the Exchange will make available, the Exchange proposes

to charge \$1500 per month. For that fee, the datafeed recipient will receive access to each of the NYSE Last Sale Information datafeeds that NYSE makes available. Currently, the Exchange trades only Network A securities. The Exchange does not propose to impose any program classification charges for the use of NYSE Trades.

ii. *Device Fee.* The Exchange proposes to charge each subscriber to an NYSE-Only Vendor's NYSE Trades service \$15 per month per display device for the receipt and use of NYSE Last Sale Information. The Exchange does not currently perceive a demand for a nonprofessional subscriber fee for NYSE Trades, but will monitor customer response.

In a proposed rule change that the Exchange anticipates filing contemporaneously with the proposed rule change (the "Unit-of-Count Filing"), the Exchange will propose to revise the unit of count that determines the device fees payable by NYSE OpenBook® data recipients. Upon Commission approval of that filing, the Exchange proposes to incorporate the unit of count set forth in the Unit-of-Count Filing into the NYSE Trades service.

Under the Unit-of-Count Filing, the Exchange would no longer define the Vendor-subscriber relationship based on the manner in which a data feed recipient or subscriber receives data (i.e., through controlled displays or through data feeds). Instead, the Exchange would adopt billing criteria that are more objective. Those criteria would newly define "Vendors," "Subscribers," "Subscriber Entitlements" and "Subscriber Entitlement Controls" as the basis for setting device fees. The Exchange believes that these changes more closely align with current data consumption and will reduce costs for the Exchange's customers.

c. *The Fees are Non-Discriminatory.*

No investors or broker-dealers are required to subscribe to the product, as they can find the same NYSE last sale prices in the Exchange's NYSE Realtime Reference Prices service.⁴ Or, they can find them integrated with the prices that other markets make available under the CTA Plan. Indeed, even though NYSE Trades' Last Sale Information provides a less expensive alternative to the consolidated price information that investors and broker-dealers receive from CTA, the Exchange believes that the information that NYSE contributes to the CTA consolidated datafeed and

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange notes that it will make NYSE Trades available to vendors no earlier than it makes its last sale information available to the processor under the CTA Plan.

⁴ See Release No. 34-57966; 73 Federal Register 35182 (June 20, 2008); File No. SR-NYSE-2007-04.