

abusive or coercive practices. On July 8, 2008, the Commission released findings from a 10-month staff examination of three major credit rating agencies. The staff examinations uncovered weaknesses in ratings practices and the need for remedial action by the firms to provide meaningful ratings and the necessary levels of disclosure to investors.

In June and July of 2008, the Commission proposed a three-fold set of reforms that would address further the conflicts of interests, disclosures, internal policies, and business practices of credit rating agencies registered as NRSROs. With respect to the first set of reforms, in February 2009, the Commission issued final rule amendments to existing NRSRO rules. In conjunction with the adoption of these new measures, the Commission proposed an additional amendment that would require NRSROs to disclose ratings history information, in XBRL format, for 100% of all issuer-paid credit ratings determined after June 26, 2007 (the effective date of most of the provisions of the Credit Rating Agency Reform Act of 2006). Finally, in February 2009, the Commission issued a release proposing an amendment that would require NRSROs that are hired by arrangers to perform credit ratings for structured finance products to disclose to other NRSROs (and only other NRSROs) that they are hired to determine credit ratings for those deals and to obtain from such arrangers a representation that they will provide information given to the hired NRSRO to other NRSROs.

Dated: April 13, 2009.

By the Commission.

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59743; File No. SR-NYSEAmex-2009-11]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Making Available an NYSE Amex Order Imbalance Information Datafeed as a Separate, Stand-Alone Market Data Product

April 9, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 2, 2009, NYSE Amex LLC (“NYSE Amex” or “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 NYSE Amex. NYSE Amex filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it 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 make available an NYSE Amex Order Imbalance Information datafeed as a separate, stand-alone market data product. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <http://www.nyse.com>.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Amex 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. NYSE Amex 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

NYSE Amex LLC proposes to make available an NYSE Amex Order Imbalance Information datafeed as a separate, stand-alone market data product.

Currently, NYSE Amex Equities Rules 15 and 123C allow Exchange systems to make available a datafeed of real-time order imbalances that accumulate prior to the opening of trading on the Exchange and prior to the closing of trading on the Exchange. Through this

instant filing, the Exchange proposes to establish the NYSE Amex Order Imbalance Information services to which NYSE Amex Equities Rules 15 and 123C refer.<sup>5</sup>

NYSE Amex Order Imbalance Information is a datafeed of real-time order imbalances that accumulate prior to the opening of trading on the Exchange and prior to the close of trading on the Exchange. The datafeed contains aggregate information about orders that are subject to execution at the market’s opening or closing price, as the case may be, and represent issues that are likely to be of particular trading interest at the opening or closing.

##### Order Imbalance Information Prior to the Opening Transaction

The order imbalance information disseminated prior to the opening transaction, consistent with NYSE Amex Equities Rule 15, contains all interest eligible for execution in the opening transaction of the security in Exchange systems. The previous trading day’s closing price on NYSE Amex in the security will serve as the reference price for the order imbalance information disseminated prior to the opening transaction. The order imbalance information disseminated prior to the opening transaction indicates to market participants the number of shares that would be required to equalize buy and sell interest (*i.e.*, flat) at the reference price. The Exchange proposes to distribute order imbalance information at specified intervals prior to the opening:

- Every five minutes between 8:30 a.m. EST and 9 a.m. EST.
- Every one minute between 9 a.m. EST and 9:20 a.m. EST.
- Every 15 seconds between 9:20 a.m. EST and the opening (or 9:35 a.m. EST if the opening is delayed).

##### Order Imbalance Information Prior to the Closing Transaction

The order imbalance information disseminated prior to the closing transaction is consistent with the provisions of subparagraphs (5) and (6) of NYSE Amex Equities Rule 123C.<sup>6</sup>

<sup>5</sup> NYSE Amex currently makes the NYSE Amex Order Imbalance Information datafeed available to vendors, broker-dealers and any other party that wishes to subscribe to this market data feed service. There is no fee for the service and the Exchange does not propose to establish one at this time. If the Exchange determines to establish fees for this service, it will be submit a proposed rule change to the Commission pursuant to the 19b-4 process.

<sup>6</sup> “MOC” or Market-at-the-Close orders are to be executed in their entirety at the closing price. If not executed due to a trading halt or by its terms, *e.g.*, buy minus or sell plus, the order will be cancelled. “LOC” or Limit-at-the-Close orders are entered for execution at the closing price, provided that the closing price is at or within the limit specified. LOC

Continued

<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).

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

Order imbalance information disseminated prior to the close uses the last sale price in the security on NYSE Amex prior to dissemination of the order imbalance information as its reference price to indicate the number of shares required to close “flat,” *i.e.*, at the reference price.

Similar to the dissemination of order imbalance information prior to the open, order imbalance information disseminated prior to the close is distributed at specified intervals:

- Every fifteen seconds between 3:40 p.m. EST and 3:50 p.m. EST.
- Every five seconds between 3:50 p.m. EST and 4 p.m. EST.

On any day that the scheduled close of trading on the Exchange is earlier than 4 p.m. EST, the dissemination of order imbalance information prior to the closing transaction will commence 20 minutes before the scheduled closing time. Order imbalance information will be disseminated every 15 seconds for approximately 10 minutes. Thereafter, the order imbalance information will be disseminated every five seconds until the scheduled closing time.

NYSE Amex Order Imbalance Information includes the imbalance information that the Exchange is required to disseminate pursuant to NYSE Rule 123C(5), as well as automated real-time streaming order imbalance information at specified intervals. The datafeed containing NYSE Amex Information contains an automated real-time streaming order imbalance information at specified intervals as well as MOC Imbalances that Designated Market Makers disseminate pursuant to NYSE Amex Equities Rule 123C(5) at 3:40 p.m. and 3:50 p.m.

The Exchange proposes to offer this order imbalance information as a stand-alone market data product in order to provide all investors with an opportunity to obtain information regarding opening and closing imbalances on the Exchange. The Exchange is not imposing end-user fees, is not requiring end-users to sign contracts and is subjecting vendor receipt and use of the information to

orders limited at the closing price are not guaranteed an execution. NYSE Amex Equities Rule 123C(5) provides in part: “Imbalance publications will include MOC orders as well as marketable LOC orders. In that regard, LOC orders to buy at a price higher than the last sale price are to be included with the buy MOC orders; LOC orders to sell at a price lower than the last sale price are to be included with the sell MOC orders. LOC orders with a limit equal to the last sale price would not be included in the imbalance calculation. The last sale price at 3:40 p.m. is used for the first mandatory publication and 3:50 p.m. for the second.”

very few administrative burdens (*e.g.*, no reporting requirements and no end-user contracts).

The Exchange proposes to make the NYSE Amex Order Imbalance Information datafeed available under the same contracting arrangement that the Commission has approved for the receipt and use of market data under the CTA and CQ Plans. That arrangement contemplates that each datafeed recipient enter into the Commission-approved standard form of “Agreement for Receipt and Use of Market Data” that Network A uses for data redistributors and other parties that use the data for purposes other than interrogation.<sup>7</sup> Exhibit A to each of those agreements would need to be updated to reflect the receipt and use of NYSE Amex Order Imbalance Information. The arrangement does not require an end-user of the information (other than a data feed recipient) to enter into any agreement.

The Exchange submits that the NYSE Amex Order Imbalance Information datafeed benefits market participants by facilitating their prompt access to widespread order imbalance information.

## 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the “Act”) for the proposed rule change is the requirement under Section 6(b)(5)<sup>8</sup> that an exchange have rules that are designed to promote just and equitable principles of trade, 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 Exchange believes that this proposal is in keeping with those principles by facilitating investors’ prompt access to free, widespread NYSE Amex Order Imbalance Information and providing increased transparency. Additionally, this proposal provides market participants with supplemental market information prior to the execution of the opening and closing transactions on the Exchange, which supports the system of a free and open market.

<sup>7</sup> The Participants in the CTA and CQ Plans first submitted the Consolidated Vendor Form to the Commission for immediate effectiveness in 1990. See Securities Exchange Act Release No. 28407 (September 6, 1990), 55 FR 37276 (September 10, 1990) (SR-CTA/CQ-4-281). The Commission approved a revised version of it in 1996 in conjunction with the participants’ restatement of the CTA and CQ Plans. See Securities Exchange Act Release No. 37191 (May 9, 1996), 61 FR 24842 (May 16, 1996) (SR-CTA/CQ-96-1).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

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

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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing 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 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) of the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup>

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.<sup>11</sup> However, Rule 19b-4(f)(6)(iii)<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change 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 the Exchange may immediately provide increased transparency to market participants without charge by disseminating supplemental information prior to the execution of the opening and closing transactions on the Exchange. Therefore, the Commission

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has complied with this requirement.

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

designates the proposal operative upon filing.<sup>13</sup>

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](mailto:rule-comments@sec.gov). Please include File No. SR-NYSEAmex-2009-11 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-NYSEAmex-2009-11. 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 NYSE Amex. All comments

<sup>13</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2009-11 and should be submitted on or before May 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59742; File No. SR-BX-2009-014]

#### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving a Proposed Rule Change Relating to Zero Bid Orders on the Boston Options Exchange Facility

April 9, 2009.

On February 26, 2009, NASDAQ OMX BX, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change relating to zero bid orders on the Boston Options Exchange Facility. The proposed rule change was published for comment in the **Federal Register** on March 6, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposal.

The proposed rule change amends Chapter V, Section 14 of the Rules of the Boston Options Exchange Group, LLC ("BOX") to clarify the treatment of Market Orders to sell and BOX-Top Orders to sell when the highest bid on BOX is zero in the options series for a particular order ("Zero Bid Order"). Currently, Section 14 states, in part, that: "[i]n the case where the lowest offer for any options contract is \$.05, and an Options Participant enters a Market Order to sell that series, any such Market Order shall be considered a Limit Order to sell at a price of \$.05."<sup>4</sup> The Exchange is amending Section 14 so that it will apply equally to Market Orders to sell and BOX-Top Orders to

sell when the highest bid on BOX is zero in the options series. In this case such Zero Bid Orders will be considered Limit Orders to sell at a price, above zero, that is equal to the minimum trading increment applicable to that particular options series.

Consequently, where the BOX market displays a zero bid and the options series is subject to the Penny Pilot Program,<sup>5</sup> the Zero Bid Order will be considered a Limit Order to sell at a price of \$.01. If the options series is not subject to the Penny Pilot Program, the Zero Bid Order will be considered a Limit Order to sell at a price of \$.05 or \$.10, depending upon the minimum trading increment for the specific options series of the Zero Bid Order. Further, if the resulting Limit Order would cause either a locked or crossed market, then the original Market Order or BOX-Top Order will be rejected by the Trading Host.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>6</sup> and, in particular, the requirements of Section 6 of the Act.<sup>7</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>8</sup> in that the proposal has been designed to promote just and equitable principles of trade, and to protect investors and the public interest. The Commission believes that the proposed rule change will provide greater clarification to market participants regarding the handling of Zero Bid Orders on BOX. In addition, the Commission believes that the proposal will benefit the public interest by preventing locked or crossed markets in situations where the Limit Order resulting from the Zero Bid Order would cause such a lock or cross.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-BX-2009-014) is approved.

<sup>5</sup> BOX may trade options contracts in one-cent increments in certain approved issues through July 3, 2009, as part of the Penny Pilot Program. See Securities Exchange Act Release No. 59629 (March 26, 2009), 74 FR 15021 (April 2, 2009) (SR-BX-2009-17).

<sup>6</sup> The Commission has considered the proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 59475 (February 26, 2009), 74 FR 9830.

<sup>4</sup> See Chapter V, Section 14 of the BOX Rules.