

affiliated SRO”), will carry out oversight and enforcement responsibilities as the designated examining authority designated by the Commission pursuant to Rule 17d-1 under the Act⁸ with the responsibility for examining Ballista Securities for compliance with applicable financial responsibility rules;

- The Exchange shall enter into a plan pursuant to Rule 17d-2 under the Act⁹ with a non-affiliated SRO to relieve the Exchange of regulatory responsibilities for Ballista Securities with respect to rules that are common rules between the Exchange and the SRO;¹⁰

- With respect to unique ISE rules, ISE shall enter into a regulatory services contract with a non-affiliated SRO to perform certain regulatory responsibilities for Ballista Securities;

- The regulatory services contract with the non-affiliated SRO shall require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively, “exceptions”) in which Ballista Securities is identified as a participant that has potentially violated ISE or Commission rules, and shall require that the non-affiliated SRO provide a report to the Exchange quantifying exceptions on not less than a quarterly basis;

- ISE shall establish and maintain procedures and internal controls reasonably designed to ensure that Ballista Securities and its affiliates do not develop or implement changes to its systems on the basis of nonpublic information obtained as a result of ISE Holdings’ ownership interest in Ballista Securities, until such information is available generally to similarly situated members of the Exchange; and

- The ownership interest of ISE Holdings in Ballista Securities is subject to the foregoing conditions and is approved on a temporary basis, for a period not to exceed one year.

Additionally, ISE Holdings currently owns less than a 9% equity interest in Optifreeze and does not own a controlling interest in Optifreeze or otherwise have any veto or other special voting rights with respect to the management or operation of Optifreeze. The Exchange has acknowledged that neither it, nor any of its affiliates, may directly or indirectly increase its equity

ownership in Optifreeze without prior Commission approval.¹¹

The Commission finds the proposed limitations and conditions of Rule 312(c) to be consistent with the Act, particularly Section 6(b)(5) thereunder.¹² Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange’s self-regulatory obligations and its commercial interest when the exchange, or one of its affiliates, holds an ownership interest in a member, the proposed conditions appear reasonably designed to mitigate concerns about potential conflicts of interest and unfair competitive advantage. The Commission believes that the oversight of Ballista Securities by a non-affiliated SRO,¹³ combined with the requirement that ISE provide the non-affiliated SRO with information regarding exceptions relating to Ballista Securities on not less than a quarterly basis, promote robust and independent regulation of Ballista Securities. ISE and Ballista Securities must also establish and maintain procedures and internal controls that are reasonably designed to prevent Ballista Securities and its affiliates from deriving any unfair informational advantage resulting from its relationship with ISE. Finally, the Commission believes that ISE’s proposal on a pilot basis will provide ISE and the Commission an opportunity to assess whether there might be any adverse consequences of the exception and whether a permanent exception is warranted. The Commission believes that, taken together, these limitations and conditions are reasonably designed to mitigate potential conflicts between the commercial interests of the Exchange or its parent company in Ballista Securities and the Exchange’s regulatory responsibilities with respect to Ballista Securities.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (File No. SR-ISE-2009-45) is hereby approved on a pilot basis through September 1, 2010.

¹¹ See Notice, 74 FR at 38069.

¹² 15 U.S.C. 78f(b)(5).

¹³ This oversight will be accomplished through a 17d-2 agreement and a regulatory services contract between ISE and a non-affiliated SRO. The Commission notes that ISE has not yet entered into such agreements.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-21637 Filed 9-4-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60597; File No. SR-NYSE-2009-92]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending Until September 8, 2009, the Operation of Interim NYSE Rule 128 Which Permits the Exchange To Cancel or Adjust Clearly Erroneous Executions if They Arise Out of the Use or Operation of Any Quotation, Execution or Communication System Owned or Operated by the Exchange, Including Those Executions That Occur in the Event of a System Disruption or System Malfunction

August 31, 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 August 31, 2009, 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 and II below, which Items have been prepared by the Exchange. NYSE has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,³ 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 until September 8, 2009, the operation of interim NYSE Rule 128 (“Clearly Erroneous Executions for NYSE Equities”) which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁸ 17 CFR 240.17d-1.

⁹ 17 CFR 240.17d-2.

¹⁰ Common rules are ISE rules that are substantially similar to the rules of the non-affiliated SRO.

of a system disruption or system malfunction. 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, 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 extend until September 8, 2009, the operation of interim NYSE Rule 128 ("Clearly Erroneous Executions for NYSE Equities") which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction.

Prior to the implementation of NYSE Rule 128 on January 28, 2008,⁴ the NYSE did not have a rule providing the Exchange with the authority to cancel or adjust clearly erroneous trades of securities executed on or through the systems and facilities of the NYSE.

In order for the NYSE to be consistent with other national securities exchanges which have some version of a clearly erroneous execution rule, the Exchange is drafting an amended clearly erroneous rule which will accommodate such other exchanges but will be appropriate for the NYSE market model.

The NYSE notes that the Commission approved an amended clearly erroneous execution rule for Nasdaq in May 2008.⁵ On July 28, 2008, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until

October 1, 2008⁶ in order to review the provisions of Nasdaq's clearly erroneous rule and to consider integrating similar standards into its own amendment to Rule 128. On October 1, 2008⁷, the Exchange filed with the SEC a further request to extend the operation of interim Rule 128 until January 9, 2009 in order to consider integrating similar standards into the amendment to Rule 128. On January 9, 2009⁸, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until March 9, 2009, indicating that the Exchange was still in the process of reviewing the Nasdaq rule with a view towards incorporating certain provisions into the amendment of interim Rule 128.

On February 10, 2009, NYSE Arca submitted a proposal to the SEC to amend its clearly erroneous rule. The NYSE Arca proposed rule differed in certain respects from the Nasdaq clearly erroneous rule. On March 9, 2009, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until June 9, 2009⁹ to finalize review of NYSE Arca's proposed amended CEE rule, which included market wide CEE initiatives, to determine if it was appropriate to incorporate such provisions into the Rule 128 amendment.

Thereafter, on April 24, 2009, NYSE Arca filed a revised rule change with the Commission to amend its clearly erroneous rule (NYSE Arca Rule 7.10).¹⁰ The Exchange was in the process of finalizing its review of NYSE Arca's revised CEE rule change, which also included market wide CEE initiatives, to determine if it was appropriate to incorporate all such provisions into NYSE's interim Rule 128 amendment. On June 9, 2009, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until July 15, 2009¹¹ to finalize review of NYSE Arca's proposed amended CEE rule. On

July 15, 2009¹² the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 1, 2009 to finalize review of NYSE Arca's proposed amended CEE rule. On July 31, 2009 the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 10, 2009¹³ to finalize review of NYSE Arca's proposed amended CEE rule. On August 11, 2009 the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 21, 2009¹⁴ to finalize review of NYSE Arca's proposed amended CEE rule. On August 21, 2009 the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 31, 2009¹⁵ to finalize review of NYSE Arca's proposed amended CEE rule.

The Exchange anticipates finalizing proposed rule text of its clearly erroneous execution rule shortly, and is, therefore, requesting to extend the operation of interim Rule 128 until September 8, 2009. Prior to September 8, 2009, the Exchange intends to formally file a 19b-4 rule change amending interim Rule 128.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act")¹⁶ for this proposed rule change is the requirement under Section 6(b)(5)¹⁷ 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.

As articulated more fully in the "Purpose" Section above, the proposed rule would place the NYSE on equal footing with other national securities exchanges. This will promote the integrity of the market and protect the public interest, since it would permit all exchanges to cancel or adjust clearly erroneous trades when such trades occur, rather than canceling them on all other markets, but leaving them standing on only one market.

⁴ See Securities Exchange Act Release No. 57323 (February 13, 2008), 73 FR 9371 (February 20, 2008) (SR-NYSE-2008-09).

⁵ See Securities Exchange Act Release No. 57826 (May 15, 2008), 73 FR 29802 (May 22, 2008) (SR-NASDAQ-2007-001).

⁶ See Securities Exchange Act Release No. 58328 (August 8, 2008), 73 FR 47247 (August 13, 2008) (SR-NYSE-2008-63).

⁷ See Securities Exchange Act Release No. 58732 (October 3, 2008), 73 FR 61183 (October 15, 2008) (SR-NYSE-2008-99).

⁸ See Securities Exchange Act Release No. 59255 (January 15, 2009) 74 FR 4496 (January 26, 2009) (SR-NYSE-2009-02).

⁹ See Securities Exchange Act Release No. 59581 (March 9, 2009) 74 FR 12431 (March 24, 2009) (SR-NYSE-2009-26).

¹⁰ See Securities Exchange Act Release No. 59838 (April 28, 2009) 74 FR 20767 (May 5, 2009) (SR-NYSEArca-2009-36) (See NYSE Arca Rule 7.10).

¹¹ See Securities Exchange Act Release No. 60131 (June 17, 2009) 74 FR 30196 (June 24, 2009) (SR-NYSE-2009-57).

¹² See Securities Exchange Act Release No. 60312 (July 15, 2009) 74 FR 36298 (July 22, 2009) (SR-NYSE-2009-70).

¹³ See Securities Exchange Act Release No. 60419 (August 7, 2009) 74 FR 39987 (August 10, 2009) (SR-NYSE-2009-79).

¹⁴ See Securities Exchange Act Release No. 60478 (August 11, 2009) 74 FR 41769 (August 18, 2009) (SR-NYSE-2009-81).

¹⁵ See Securities Exchange Act Release No. 60563 (August 21, 2009) 74 FR 44423 (August 28, 2009) (SR-NYSE-2009-87).

¹⁶ 15 U.S.C. 78f(a) [sic].

¹⁷ 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)²¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE requests that the Commission waive the 30-day operative delay because the Exchange believes that the absence of such a rule in an automated and fast-paced trading environment poses a danger to the integrity of the markets and the public interest. NYSE notes that immediate effectiveness of the proposed rule change will immediately and timely enable NYSE to cancel or adjust clearly erroneous trades that may present a risk to the integrity of the equities markets and all related markets. The Commission believes that waiving the 30-day operative delay²² is consistent with the protection of investors and the

public interest because such waiver will permit the Exchange to continue operation of interim NYSE Rule 128 on an uninterrupted basis, and therefore designates the proposal operative upon filing.

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-NYSE-2009-92 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-NYSE-2009-92. 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 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 publicly available. All submissions should refer to File Number SR-NYSE-2009-92 and should be submitted on or before September 29, 2009.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-21636 Filed 9-4-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60592; File No. SR-BX-2009-050]

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

August 31, 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 August 17, 2009, 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 the Exchange. 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

BX is filing a proposed rule change to modify pricing for BX members using the NASDAQ OMX BX Equities System. BX will implement the proposed rule change on September 1, 2009. The text of the proposed rule change is attached as Exhibit 5 and is available at <http://nasdaqomxbx.cchwallstreet.com>.³

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that Exhibit 5 is attached to the rule filing filed with the Commission but not to this release. The text of the proposed rule change is available at BX, on its Web site (<http://nasdaqomxbx.cchwallstreet.com>), and at the Commission's Public Reference Room.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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 Commission has determined to waive the five-day pre-filing period in this case.

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6).

²² For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).