

The Exchange believes that a higher Listing Fee and Annual Fee for Managed Fund Shares and Managed Trust Securities, compared to other DSPs, is appropriate in that the Exchange generally expends greater resources to provide services in connection with the listing and administration of such securities than for other DSPs.

The Exchange notes further that the proposed Listing Fee and Annual Fee for DSPs are substantially lower than such fees for listing of common and preferred stock on the Exchange. The Listing Fee for common and preferred stock ranges from \$100,000 to \$150,000, and the Annual Fee ranges from \$30,000 to \$85,000.

The Listing Fee and Annual Fee as proposed to be amended will take effect as of January 1, 2010.

2. Statutory Basis

NYSE Arca believes that the proposal is consistent with Section 6(b)⁴ of the Securities Exchange Act of 1934 (the "Act"), in general, and Section 6(b)(4)⁵ of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its issuers and other persons using its facilities. The Exchange believes that the proposed Listing Fee and, for certain DSPs, Annual Fee increases are reasonable and appropriate in view of costs incurred for administrative and regulatory services provided by the Exchange with respect to such DSP issues.

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

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.

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-NYSEArca-2009-106 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 No. SR-NYSEArca-2009-106. 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,⁶ 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 NYSE Arca. 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 No. SR-NYSEArca-2009-106 and should be submitted on or before December 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61112; File No. SR-BX-2009-077]

Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Offer Several Market Data Products

December 4, 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 December 1, 2009, NASDAQ OMX BX ("Exchange" or "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. BX 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 offer several market data products substantially similar to market data products previously approved by the Commission for The NASDAQ Stock Market LLC ("Nasdaq"). The Exchange does not expect that the proposed rule change will have any direct effect, or significant indirect effect, on any other Exchange rule in effect at the time of this filing. The text of the proposed rule

⁶ The text of the proposed rule change is available on NYSE Arca's Web site at <http://www.nyx.com>, on the Commission's Web site at <http://www.sec.gov>, at NYSE Arca, and at the Commission's Public Reference Room.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

change is below. Proposed new language is italicized.⁴

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7039. *BX Last Sale Data Feeds*

(a) *The Exchange shall offer proprietary data feeds containing real-time last sale information for trades executed on the Exchange. There shall be no fee for BX Last Sale Data Feeds.*

(1) *“BX Last Sale for Nasdaq” shall contain all transaction reports for Nasdaq-listed securities; and*

(2) *“BX Last Sale for NYSE/Amex” shall contain all such transaction reports for NYSE- and Amex-listed securities.*

* * * * *

7047. *BX BBO Feeds*

(a) *The Exchange shall offer proprietary data feeds containing real-time market information from the Exchange Market Center. There shall be no fee for BX BBO Feeds.*

(1) *“BX BBO for Nasdaq” shall contain the Exchange’s best bid and offer for Nasdaq-listed securities;*

(2) *“BX BBO for NYSE” shall contain the Exchange’s best bid and offer for NYSE-listed securities; and*

(3) *“BX BBO for Amex” shall contain the Exchange’s best bid and offer for Amex-listed securities.*

* * * * *

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. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

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

1. Purpose

The Exchange proposes to amend its rules to offer certain market data products on the Exchange that have been established by Nasdaq and previously approved by the Commission. As discussed below, these market data products include the BX Last Sale Data Feeds and the BX BBO Feeds.

⁴ Changes are marked to the rules of NASDAQ OMX BX, Inc., found at <http://nasdaqomxbx.cchwallstreet.com>.

BX Last Sale Data Feeds

The Exchange proposes to offer access to real-time market data to data distributors for no fee, enabling those distributors to disseminate the data via the internet and television at no cost to millions of internet users and television viewers.

The proposed BX Last Sale market data products are real-time data feeds that provide real-time last sale information including execution price, volume, and time for executions occurring within the Exchange’s system. The Exchange believes that this data feed will increase transparency and the efficiency of executions by enabling vendors to provide additional market data in a cost efficient manner. Specifically, the Exchange will create the Exchange Last Sale for Nasdaq, as well as the Exchange Last Sale for New York Stock Exchange (“NYSE”) and the Exchange Last Sale for Amex data products, that provides real-time last sale information including execution price, volume, and time for Nasdaq, NYSE- and Amex-securities executions, respectively, occurring within the Exchange’s system.

The Exchange proposes to offer the data feed without charge. The proposed BX Last Sale products are similar to the NASDAQ Last Sale Data Feed offered by Nasdaq.⁵

BX Best Bid and Offer

The Exchange is proposing a product that will offer a real time data feed of the Exchange’s Best Bid and Offer (“BBO”), which will provide investors with necessary information about the market for Nasdaq and NYSE- and Amex-securities. The Exchange will not charge a fee for this product. Quotation information from the Exchange Market Center will be available in three forms, BX BBO for Nasdaq, BX BBO for NYSE and BX BBO for Amex.

The Exchange proposes to offer the data feed without charge. The proposed BX Last Sale products are similar to the NASDAQ Last Sale Data Feed offered by Nasdaq.⁶

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁷ in general and with Sections 6(b)(5) of the Act,⁸ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster

⁵ See Nasdaq Rule 7039.

⁶ See Nasdaq Rule 7039 [sic].

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

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 changes will advance these goals since use of these data feeds is voluntary and they are offered at no cost.

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

Written comments were neither solicited nor received.

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 Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

BX proposes adopting several market data products that are substantially similar to market data products established by Nasdaq.¹¹ BX will provide the data feeds without charge. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 of the Act.

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,

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 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 Exchange has satisfied this requirement.

¹¹ See Nasdaq Rules 7039 and 7047.

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-2009-077 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-2009-077. 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-BX-2009-077 and should be submitted on or before December 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61115; File No. SR-Phlx-2009-97]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Dividend, Merger and Short Stock Interest Strategies

December 4, 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 November 23, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 amend the fee caps on equity option transaction charges on dividend,³ merger,⁴ and short stock interest⁵ strategies, which fee caps are currently set at \$1,000 and \$25,000 on equity option transaction charges on dividend, merger, and short stock interest strategies, to expand these fee caps to apply to equity options

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ For purposes of this proposal, the Exchange defines a "dividend strategy" as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend. See e.g., Securities Exchange Act Release No. 54174 (July 19, 2006), 71 FR 42156 (July 25, 2006) (SR-Phlx-2006-40).

⁴ For purposes of this proposal, the Exchange defines a "merger strategy" as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.

⁵ For purposes of this proposal, the Exchange defines a "short stock interest strategy" as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

transaction fees assessed on all Registered Options Traders (on-floor) ("ROTs"), specialists, firms and broker-dealers, when such members are trading in their own proprietary account.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after December 1, 2009.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, at the principal office of the Exchange, 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 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 purpose of the proposed rule change is to amend the transaction charge for dividend, merger and short stock strategies to apply to all member organizations trading in their own proprietary account to encourage member organizations to trade on the Exchange. The Exchange believes that offering the cap to all member organizations will continue to attract additional liquidity and order flow to the Exchange and allow the Exchange to remain competitive with other options exchanges in connection with these types of options strategies.

Currently, equity options transaction charges assessed to specialists and ROTs are capped at \$1,000 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class. In addition, there is a \$25,000 per member organization fee cap on equity option transaction charges incurred in one month for dividend, merger and short stock interest strategies combined. The

¹² 17 CFR 200.30-3(a)(12).