

and mechanical testing, which demonstrate that the 10 CFR 50.46 acceptance criteria and 10 CFR 50 Appendix K methods can be applied to the M5 alloy material, and the planned placement of the LFAs in non-limiting core locations, the NRC staff finds it acceptable to grant a temporary exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 for the use of up to 16 AREVA NP LFAs within SONGS 2 and 3.

Based on the above, no new accident precursors are created by allowing the use of the LFAs with M5 cladding material in the SONGS 2 and/or SONGS 3 reactor cores during operating Cycles 16, 17, and 18; therefore, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety in granting this temporary exemption.

#### *Consistent With Common Defense and Security*

The temporary exemption would allow up to 16 LFAs, with advanced M5 alloy cladding material, to be inserted into the SONGS 2 reactor core or potentially into the SONGS 3 reactor core. Currently, eight AREVA NP LFAs are scheduled to be loaded into the SONGS 2 core for Cycle 16, to be used for up to three operating cycles (Cycles 16, 17, and 18). This change to the reactor core configuration does not affect any existing or planned security measures. Therefore, the common defense and security is not impacted by this temporary exemption.

#### *Special Circumstances*

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 is to establish acceptance criteria for ECCS performance. The wording of the regulations in 10 CFR 50.46 and Appendix K is not directly applicable to the M5 advanced cladding alloy, even though the evaluations discussed above show that the intent of the regulations is met. Therefore, since the underlying purposes of 10 CFR 50.46 and Appendix K are achieved with the use of the M5 advanced cladding alloy, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for granting of an exemption exist.

#### **4.0 Conclusion**

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the temporary exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants SCE temporary exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 to allow up to 16 LFAs clad with M5 alloy and manufactured by AREVA NP, to be inserted into the SONGS 2 reactor core or the SONGS 3 reactor core, in non-limiting core locations, for use for up to three operating cycles (Cycles 16, 17, and 18 for the respective units).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this temporary exemption will not have a significant effect on the quality of the human environment (74 FR 51339; October 6, 2009). This temporary exemption is effective upon issuance.

Dated at Rockville, Maryland, this 17th day of December 2009.

For the Nuclear Regulatory Commission.

**Joseph G. Giitter,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61197; File No. SR-BX-2009-081]

#### **Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Rule 1160 to Reflect the Availability of the FINRA Contact System to NASDAQ OMX BX Members That Are Not Also Members of FINRA**

December 17, 2009.

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 December 9, 2009, 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. BX has designated the

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

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

proposed rule change as constituting a non-controversial rule change under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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**

BX submits this proposed rule change to Rule 1160 to extend the availability of the FINRA Contact System to BX members that are not also members of FINRA.

The text of the proposed rule change is below. Proposed new language is in italics and proposed deletions are in brackets.

##### *1160. Contact Information Requirements*

(a) Each member shall report to the Exchange all contact information required by the Exchange via the *FINRA* [NASD] Contact System [(in the case of Exchange members that are FINRA members) or via electronic mail or paper mail (in the case of Exchange members that are not FINRA members)].

(b)-(c) No change.

\* \* \* \* \*

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

In its filing with the Commission, BX 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. BX 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**

BX is proposing to update Rule 1160 to reflect the availability of the FINRA Contact System (“System”) to BX members that are not also members of FINRA, and to make a technical change to the name of the System. The System maintains contact information records required by both BX and NASD Rules 1120, 1150, 3011, and 3520. Both BX

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

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

and FINRA use this information for regulatory communications, and compliance purposes, among other things. The information is provided to FINRA as part of the membership application. If the applicant is approved for membership, the new member is provided access to the System and is responsible for entering the required information into the System as well as keeping it current thereafter. Historically, FINRA permitted access to the System only to members of FINRA. A BX member that was already a member of FINRA could access the System to fulfill its ongoing obligation to keep the required information current; however, BX members that were not also members of FINRA were not permitted access to the System. As a consequence, such firms could only fulfill their obligation to keep the required information current by submitting the information to BX via e-mail or paper mail.

FINRA recently made changes to the System so that BX-only members may also access the System, thus eliminating the need for the existing methods of providing such information. BX believes that having a central electronic location for this information is superior to the paper and e-mail-based methods of warehousing the information. BX will have access to the information maintained in the System for BX-only members in the same way as it has historically had with respect to BX members that are also members of FINRA. As such, BX is proposing to eliminate the language from Rule 1160 that requires BX-only members to provide required information by means other than the System. BX is also proposing to update the rule to reflect the new name of the System adopted by FINRA.<sup>5</sup>

## 2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general and with Sections 6(b)(5) of the Act,<sup>7</sup> 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 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 consistent with these provisions in that it will make available to all BX members an efficient means by which they may provide information required by Exchange rules.

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

BX does not believe that the proposed rule change will impose any burden on competition 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 either solicited or 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, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

Normally, a proposed rule change filed under 19b-4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>10</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. BX has requested that the Commission waive the 30-day operative delay. In its filing, BX noted that the proposal would provide a means for firms to comply with regulatory requirements more easily and quickly, and that keeping such information in a centralized, electronic location would enhance BX's and FINRA's oversight of these members.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that BX has satisfied the five-day pre-filing notice requirement.

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

The Commission believes that waiver of the 30-day operative period is consistent with the protection of investors and the public interest. The proposed rule change would allow contact information, utilized for regulatory communications and compliance purposes, among other things, to be more efficiently collected in a centralized location. In addition, the modification of the rule to reflect the new name of the System will add clarity to BX's rules. Finally, the Commission notes that it recently published and waived the 30-day pre-operative delay for a substantially similar proposal submitted by Nasdaq which was filed for immediate effectiveness.<sup>11</sup> Accordingly, the Commission designates the proposal to be effective upon filing with the Commission.<sup>12</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 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-2009-081 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-2009-081. 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

<sup>11</sup> See Securities Exchange Act Release No. 61151 (December 10, 2009) (SR-NASDAQ-2009-109).

<sup>12</sup> For the 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).

<sup>5</sup> <http://www.finra.org/Industry/Compliance/RegulatoryFilings/FCS/P005662>.

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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 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-2009-081 and should be submitted on or before January 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-30595 Filed 12-24-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61177; File No. SR-NYSE-2009-105]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change Relating to the Designation of NYSE Arca, Inc., as the NYSE's Alternative Trading Facility in an Emergency

December 16, 2009.

#### I. Introduction

On October 13, 2009, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposal to adopt NYSE Rule 49, "Emergency Powers," to allow a qualified NYSE officer to designate the NYSE's corporate affiliate, NYSE Arca, Inc. ("NYSE Arca") to receive and process bids and offers in NYSE-listed securities and to execute orders in NYSE-listed securities on behalf of the NYSE in the event that an emergency condition prevents the NYSE from operating normally.<sup>3</sup> The proposed rule

change was published for comment in the **Federal Register** on November 12, 2009.<sup>4</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The NYSE proposes to adopt NYSE Rule 49 to provide a qualified NYSE officer with the authority to declare an emergency condition with respect to trading on or through the systems and facilities of the NYSE.<sup>5</sup> An emergency condition will not be declared under NYSE Rule 49 unless: (i) There exists a regional or national emergency that would prevent the NYSE from operating normally; and (ii) such declaration is necessary so that the securities markets in general, and the NYSE's systems and facilities, including the Trading Floor, in particular, may continue to operate in a manner consistent with the protection of investors and in pursuit of the public interest.<sup>6</sup> For purposes of NYSE Rule 49, an "emergency" is an emergency as defined in Section 12(k)(7) of the Act,<sup>7</sup> and the NYSE's authority under NYSE Rule 49 is intended to be invoked only in the event of such an emergency.<sup>8</sup> The NYSE will make reasonable efforts to contact the Commission prior to taking action under NYSE Rule 49.<sup>9</sup>

In the event that an emergency condition is declared with respect to trading on or through the NYSE's systems and facilities, the NYSE may designate its corporate affiliate, NYSE Arca, to receive and process bids and offers in NYSE-listed securities and to execute orders in NYSE-listed securities on behalf of the NYSE.<sup>10</sup> Thus, the NYSE would use NYSE Arca as the execution engine for NYSE trades and would ensure that these trades are executed in compliance with Regulation NMS under the Act.<sup>11</sup> Under NYSE Rule 49, quotes or orders for NYSE-listed

trading facility in the event of an emergency condition. See Securities Exchange Act Release No. 61178 (order approving File No. SR-NYSE Arca-2009-90) ("NYSE Arca Order").

<sup>4</sup> See Securities Exchange Act Release No. 60922 (November 3, 2009), 74 FR 58341 ("Notice").

<sup>5</sup> For purposes of NYSE Rule 49, a "qualified Exchange officer" is the NYSE Euronext Chief Executive Officer or his or her designee, or the NYSE Regulation, Inc. Chief Executive Officer or his or her designee. If these individuals are unable to act due to incapacitation, the most senior surviving officer of NYSE Euronext or NYSE Regulation, Inc. will be a "qualified Exchange officer" for purposes of NYSE Rule 49. See NYSE Rule 49(a)(3)(ii).

<sup>6</sup> See NYSE Rule 49(a)(2).

<sup>7</sup> 15 U.S.C. 78l(k)(7).

<sup>8</sup> See NYSE Rule 49(a)(3)(i) and Notice, *supra* note 4, at note 5 and accompanying text.

<sup>9</sup> See NYSE Rule 49(c)(1).

<sup>10</sup> See NYSE Rule 49(b)(1).

<sup>11</sup> See Notice, *supra* note 4, at note 9.

securities entered or executed on or through the systems and facilities of NYSE Arca would be reported to the Consolidated Quotation System or the Consolidated Tape as quotations or executions, respectively, made on or through the systems and facilities of the NYSE.<sup>12</sup> Bids and offers entered pursuant to NYSE Rule 49 would be deemed to be bids and offers of the NYSE.<sup>13</sup>

NYSE members and Sponsored Participants would be permitted to enter quotations and to execute orders on or through the systems and facilities of NYSE Arca regardless of whether they were members or sponsored participants of NYSE Arca when the emergency condition was declared.<sup>14</sup> NYSE members registered as Designated Market Makers ("DMMs") that are designated as temporary members of NYSE Arca in accordance with the NYSE Arca Equities Rules ("NYSE Arca Rules")<sup>15</sup> would not be considered DMMs for the duration of the designation, but would be considered "Market Makers" pursuant to NYSE Arca Rules for the purpose of trading Exchange-listed securities on and through the systems and facilities of NYSE Arca.<sup>16</sup>

All trades in Exchange-listed securities entered or executed on or through the systems and facilities of

<sup>12</sup> See NYSE Rule 49(b)(2)(ii). Accordingly, for the duration of the emergency condition, trades in NYSE-listed securities would print as "N" trades on the Consolidated Tape and quotes would be designated as NYSE quotes in the Consolidated Quotation System, notwithstanding the fact that they were processed on or through the systems and facilities of NYSE Arca. See Notice, *supra* note 4, at note 14 and accompanying text.

<sup>13</sup> See NYSE Rule 49(b)(3)(i).

<sup>14</sup> See NYSE Rule 49(b)(3)(i)(A). As described in greater detail in the Notice, *supra* note 4, NYSE Arca will provide temporary membership and/or access to NYSE members and Sponsored Participants that are not already NYSE Arca members or sponsored participants when the emergency condition is declared. Similarly, the NYSE may designate NYSE Arca members that are not members of the NYSE at the time the emergency condition is declared as temporary members of the NYSE, and may authorize temporary access for sponsored participants of NYSE Arca that do not have sponsored access to the NYSE. The temporary memberships or access will be valid only until regular trading resumes on the NYSE's systems and facilities. See NYSE Rule 49(b)(3)(ii) and (iii).

<sup>15</sup> See NYSE Arca Rule 2.100(b)(3)(i)(C) (approved in the NYSE Arca Order, *supra* note 3).

<sup>16</sup> See NYSE Rule 49(b)(3)(i)(B). According to the NYSE, NYSE Arca is not able to support DMMs operating in the same manner as they operate on the NYSE because of differences between the systems of the NYSE and NYSE Arca. The NYSE notes that DMMs will not have access to orders on the NYSE Arca system different from that of other market participants. DMMs designated as Market Makers under the NYSE Arca Rules will be obligated to meet the requirements of those rules. See Notice, *supra* note 4, at note 13 and accompanying text.

<sup>13</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.

<sup>3</sup> The Commission today is approving a companion proposal by NYSE Arca that allows NYSE Arca to serve as the NYSE's alternative