

market data fees.¹³ In the NYSE Arca Order, the Commission stated that “when possible, reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory.”¹⁴ It noted that the “existence of significant competition provides a substantial basis for finding that the terms of an exchange’s fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.”¹⁵ If an exchange “was subject to significant competitive forces in setting the terms of a proposal,” the Commission will approve a proposal unless it determines that “there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder.”¹⁶

There are a variety of alternative sources of information that impose significant competitive pressures on the Exchange in setting the terms for distributing its market data. The Commission believes that the availability of those alternatives, as well as the NYSE’s compelling need to attract order flow, imposed significant competitive pressure on the NYSE to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because the NYSE was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-NYSE-2009-120) is hereby approved.

¹³ See *supra* note 6. In the NYSE Arca Order, the Commission describes in great detail the competitive factors that apply to non-core market data products. The Commission hereby incorporates by reference the data and analysis from the NYSE Arca Order into this order.

¹⁴ *Id.* at 74781.

¹⁵ *Id.* at 74781-82.

¹⁶ *Id.* at 74781.

¹⁷ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61402; File No. NYSEAmex-2010-05]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Postponing the Implementation Date of Information Memo 10-03, Which Provides Updated Parameters for, and Guidance on the Application of, the Exchange’s Gap Quote Policy

January 22, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 19, 2010, NYSE Amex LLC (the “Exchange” or “NYSE Amex”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 change the implementation date of Information Memo 10-03, which provides updated parameters for, and guidance on the application of, the Exchange’s Gap Quote Policy (the “Policy”). 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 purpose of the proposed rule change is to change the implementation date of Information Memo 10-03, which provides updated parameters for, and guidance on the application of, the Policy.³

The updated Policy was adopted by the Exchange and approved by the Commission in a separate rule filing.⁴ In that filing, the Commission approved the changes to the Policy contingent on their implementation within 10 business days of the date of the Commission’s approval order, *i.e.*, by January 19, 2010. On January 7, 2010, the Exchange announced these changes to the Policy through the publication of Information Memo 10-03.

As set forth in Information Memo 10-03, the Exchange proposed to implement the changes to the Policy on January 11, 2010. However, implementation of the new requirements was delayed and did not occur on January 11, 2010, as planned. The Exchange notified the public of the implementation delay by a Trader Update Notice issued on January 11, 2010, and by Information Memo 10-06 published on January 11, 2010.

Because the Exchange will not be able to implement the changes to the Policy described in Information Memo 10-03 by January 19, 2010, the Exchange now proposes that the changes to the Policy will be implemented on or before February 15, 2010, and that the Exchange will notify the public of the specific implementation date by issuing both a Trader Update Notice and an Information Memo. In addition, should the Exchange again need to change the implementation date, it will do so by issuing a Trader Update Notice and an Information Memo.

³ The Exchange’s corporate affiliate, New York Stock Exchange LLC (“NYSE”), has submitted an identical companion filing. See SR-NYSE-2010-05. Information Memo 10-03 was issued by NYSE Regulation, Inc. on behalf of both the Exchange and NYSE.

⁴ See Securities Exchange Act Release No. 61276 (January 4, 2010), 75 FR 1439 (January 11, 2010) (SR-NYSEAmex-2009-82) (approving Information Memo 10-03).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,⁵ in general, and further the objectives of Section 6(b)(5) of the Act,⁶ in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, 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.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸ Because the 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 prior to 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 and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁰ the

Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest so that the Exchange may keep the public, including market participants, aware of the implementation date for the revised Policy and thereby prevent investor confusion. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.¹¹

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 NYSEAmex-2010-05 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 NYSEAmex-2010-05. 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/>

change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

¹¹ 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).

[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 the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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 NYSEAmex-2010-05 and should be submitted on or before February 18, 2010.

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. 34-61399; File No. SR-BX-2010-007]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Order Routing Pilot on the Boston Options Exchange Facility

January 22, 2010.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder,² notice is hereby given that on January 15, 2010, NASDAQ OMX BX, Inc. (the "Exchange" or "BX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide 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 filing of the proposed rule