

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 Number SR-Phlx-2010-12 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-Phlx-2010-12. 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 available publicly. All submissions should refer to File No. SR-Phlx-2010-12 and should be submitted on or before March 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-2583 Filed 2-5-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61456; File No. SR-BX-2010-011]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add 75 Classes to the Penny Pilot Program

February 1, 2010.

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 January 27, 2010, NASDAQ OMX BX, Inc. (the "Exchange") 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 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

NASDAQ OMX BX, Inc. (the "Exchange") proposes to designate 75

options classes to be added to the Penny Pilot Program, as referenced in Chapter V, Section 33 of the Rules of the Boston Options Exchange Group, LLC ("BOX"). The Exchange intends to notify BOX Options Participants of the classes to be added to the Penny Pilot Program via Regulatory Circular. The text of the proposed Regulatory Circular is attached as Exhibit 2.<sup>3</sup>

#### 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

On October 19, 2009 the Exchange submitted a proposed rule change<sup>4</sup> with the Securities and Exchange Commission ("Commission") to, among other things, expand the number of classes included in the Penny Pilot Program over four successive quarters, with 75 classes added in each of November 2009,<sup>5</sup> February 2010, May 2010, and August 2010.<sup>6</sup> Options classes with high premiums will be excluded from the quarterly additions.<sup>7</sup>

Based on trading activity for the six months ending December 31, 2009, the Exchange proposes to add the following 75 classes to the Penny Pilot Program on February 1, 2010:

2010 shall be determined using data from the six month period ending December 31, 2009.

<sup>7</sup> The threshold for designation as "high priced" at the time of selection of new classes to be included in the Penny Pilot Program is \$200 per share or a calculated index value of 200. The determination of whether a security is trading above \$200 or above a calculated index value of 200 shall be based on the price at the close of trading on the Expiration Friday prior to being added to the Penny Pilot Program.

<sup>10</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 notes that the text of the proposed Regulatory Circular is attached at Exhibit 2 to the Form 19b-4, but is not attached to this Notice.

<sup>4</sup> See Securities and Exchange Act Release No. 60886 (October 27, 2009), 74 FR 56897 (November 3, 2009) (SR-BX-2009-067). This proposal was effective immediately upon filing.

<sup>5</sup> The Exchange filed a proposal similar to the present proposal for the November 2, 2009 expansion of 75 classes. See Securities and

Exchange Act Release No. 60950 (November 6, 2009), 74 FR 58666 (November 6, 2009) [sic] (SR-BX-2009-069). This proposal was effective immediately upon filing.

<sup>6</sup> The quarterly additions will be effective on November 2, 2009, February 1, 2010, May 3, 2010 and August 2, 2010, respectively. For purposes of identifying the classes to be added per quarter, the Exchange shall use data from the prior six calendar months preceding the implementation month, except that the month immediately preceding their addition to the Pilot would not be utilized for purposes of the six month analysis. For example, the quarterly additions to be added on February 1,

Symbol	Company name	Symbol	Company name
ABT	Abbott Laboratories.	LEAP	Leap Wireless International Inc.
AEM	Agnico-Eagle Mines Ltd.	LLY	Eli Lilly & Co.
AET	Aetna Inc.	LO	Lorillard Inc.
AFL	Aflac Inc.	LOW	Lowe's Cos Inc.
AKAM	Akamai Technologies Inc.	M	Macy's Inc.
AMAT	Applied Materials Inc.	MCO	Moody's Corp.
AMR	AMR Corp.	MET	MetLife Inc.
ANF	Abercrombie & Fitch Co.	MMM	3M Co.
APC	Anadarko Petroleum Corp.	MU	Micron Technology Inc.
ATVI	Activision Blizzard Inc.	NUE	Nucor Corp.
BBD	Banco Bradesco SA.	OXY	Occidental Petroleum Corp.
BCRX	BioCryst Pharmaceuticals Inc.	PARD	Poniard Pharmaceuticals Inc. <sup>8</sup>
BK	Bank of New York Mellon Corp/The.	PEP	PepsiCo Inc/NC.
BRCM	Broadcom Corp.	PM	Philip Morris International Inc.
BTU	Peabody Energy Corp.	PNC	PNC Financial Services Group Inc.
BX	Blackstone Group LP.	QID	ProShares UltraShort QQQ.
CAL	Continental Airlines Inc.	SHLD	Sears Holdings Corp.
CF	CF Industries Holdings Inc.	SLM	SLM Corp.
CMCSA	Comcast Corp.	SLW	Silver Wheaton Corp.
CSX	CSX Corp.	SQNM	Sequenom Inc.
CVS	CVS Caremark Corp.	STEC	STEC Inc.
CX	Cemex SAB de CV.	STX	Seagate Technology.
DD	El du Pont de Nemours & Co.	SU	Suncor Energy Inc.
ERTS	Electronic Arts Inc.	TCK	Teck Resources Ltd.
EWJ	iShares MSCI Japan Index Fund.	TEVA	Teva Pharmaceutical Industries Ltd.
FDX	FedEx Corp.	TLT	iShares Barclays 20+ Year Treasury Bond Fund.
FNM	Federal National Mortgage Association.	TZA	Direxion Daily Small Cap Bear 3X Shares.
FRE	Federal Home Loan Mortgage Corp.	UAUA	UAL Corp.
GILD	Gilead Sciences Inc.	URE	ProShares Ultra Real Estate.
GLW	Corning Inc.	UTX	United Technologies Corp.
HBC	HSBC Holdings PLC.	WFR	MEMC Electronic Materials Inc.
HES	Hess Corp.	WFT	Weatherford International Ltd.
HL	Hecla Mining Co.	WLP	WellPoint Inc.
HOG	Harley-Davidson Inc.	XLB	Materials Select Sector SPDR Fund.
HON	Honeywell International Inc.	XRX	Xerox Corp.
JOYG	Joy Global Inc.	XTO	XTO Energy Inc.
JWN	Nordstrom Inc.	YRCW	YRC Worldwide Inc.
KFT	Kraft Foods Inc.		

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>9</sup> in general, and Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed 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 for a free and open market and a national market system and, in

<sup>8</sup>Please note that PARD is presently not listed for trading on BOX. If PARD is listed for trading on BOX at a later date it will be subject to the applicable minimum trading increments as set forth in Chapter V, Section 6(b) of the BOX Rules.

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest, by identifying the options classes added to the Penny Pilot Program in a manner consistent with prior rule changes.

### 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 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

The Exchange has neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Exchange Act<sup>11</sup> and Rule 19b-4(f)(1) thereunder,<sup>12</sup> because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing BOX rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>12</sup> 17 CFR 240.19b-4(f)(1).

otherwise further 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 Number SR-BX-2010-011 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-2010-011. 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 available publicly. All submissions should refer to File No. SR-BX-2010-011 and should be submitted on or before March 1, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61458; File No. SR-ISE-2010-02]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To Amend Exchange Rules Related to Cutoff Time for Contrary Exercise Advice Submissions

February 1, 2010.

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 January 11, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange 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 International Securities Exchange, LLC (the "Exchange" or the "ISE") proposes to amend Rule 1100 in order to extend the cut-off time to submit contrary exercise advices. The text of the proposed rule change is available on the Exchange's Web site <http://www.ise.com>, at the Exchange's Office of the Secretary, 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 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has

prepared summaries, 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 purpose of the proposed rule change is to amend Rule 1100 to extend the cut-off time to submit contrary exercise advices ("Contrary Exercise Advice", or, "CEA")<sup>3</sup> to the Exchange. The Exchange also proposes to make certain non-substantive changes to reorganize the text of Rule 1100 to more clearly present the existing requirements and to eliminate duplicative language.<sup>4</sup>

The Options Clearing Corporation ("OCC") has an established procedure, under OCC Rule 805, that provides for the automatic exercise of certain options that are in-the-money by a specified amount known as "Exercise-by-Exception" or "Ex-by-Ex." Under the Ex-by-Ex process, options holders holding option contracts that are in-the-money by a requisite amount and who wish to have their contracts automatically exercised need take no further action. However, under OCC Rule 805, option holders who do not want their options automatically exercised or who want their options to be exercised under different parameters than that of the Ex-by-Ex procedures must instruct OCC of their "contrary intention."

In addition to and separately from the OCC requirement, under Exchange Rule 1100 option holders must file a CEA with the Exchange notifying it of the contrary intention. Rule 1100 is designed, in part, to deter individuals from taking improper advantage of late breaking news by requiring evidence of an option holder's timely decision to exercise or not exercise expiring equity options. Members satisfy this evidentiary requirement by submitting a CEA form directly to the Exchange, or by electronically submitting the CEA to the Exchange through OCC's electronic communications system. The

<sup>3</sup> Contrary Exercise Advices are also referred to as Expiring Exercise Declarations ("EED") in the OCC rules.

<sup>4</sup> The Exchange proposes to reorganize the current rule text so that the requirement that exercise decisions must be made by 5:30 p.m. Eastern Time is specified in paragraph (c), while the requirements pertaining to submitting CEA instructions are contained in new paragraph (d). The language in new paragraph (d) is comprised of language moved from paragraph (b)(2) and paragraph (c) of the current rule. The Exchange also proposes to eliminate Supplementary Material .03 to Rule 1100 because it is duplicative of the language contained in paragraph (c) of the current rule and paragraph (d)(iii) in the proposal.

<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.