

derivative, tax, and focus risks the Commodity Return Strategy Portfolio is exposed to as a result of the latter's primary investment in commodity-linked instruments. Lastly, because the Commodity Return Strategy Portfolio invests in the Credit Suisse Cayman Commodity Fund II, Ltd., the Portfolio also is indirectly exposed to the risks associated with that portfolio's investments.

29. The Applicants represent that the investment management fee of the Natural Resources Portfolio is lower than that of the Commodity Return Strategy Portfolio, and each Portfolio imposes a 12b-1 fee of 0.25%. Moreover, total operating expenses of the Natural Resources Portfolio were lower than those of the Commodity Return Strategy Portfolio as of December 31, 2010.

30. The Applicants represent that the Natural Resources Portfolio outperformed the Commodity Return Strategy Portfolio for the one-year period ending December 31, 2010 and since inception. In addition, the assets of the Natural Resources Portfolio have been consistently (and significantly) higher than those of the Commodity Return Strategy Portfolio as of December 31, 2010 and for each of the prior four calendar years.

31. For purposes of the approval sought pursuant to Section 26(c) of the Act, the Applicants represent that the Substitution will not be completed unless all of the following conditions are met.

- The Commission shall have issued an order approving the Substitution under Section 26(c) of the Act as necessary to carry out the transactions described in the Application.
- Each Contract owner will have been sent (i) prior to the Effective Date, a copy of the effective prospectus for the Replacement Portfolio, (ii) prior to the Effective Date, a Pre-Substitution Notice describing the terms of the Substitution and the rights of the Contract owners in connection with the Substitution, and (iii) within five (5) days after the Substitution occurs, a notice informing Contract owners affected by the Substitution that the Substitution was carried out (this notice will restate the information set forth in the Pre-Substitution Notice, and also explain that the contract values attributable to investments in the Substituted Portfolio were transferred to the Replacement Portfolio without charge (including sales charges or surrender charges) and without counting toward the number of transfers that may be permitted without charge).

- The Applicants have satisfied themselves that (i) the Contracts allow the substitution of the Portfolios in the manner contemplated by the Substitution and related transactions described herein, (ii) the transactions can be consummated as described in the Application under applicable insurance laws, and (iii) any applicable regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the transaction.

32. The Applicants acknowledge that reliance on exemptive relief, if granted, depends upon compliance with all of the representations and conditions set forth in the Application.

#### Conclusion

Applicants assert that, for all the reasons stated in the Applicant, the Substitution is consistent with the protection of investors and the purposes fairly intended by the policy of the Contracts and provisions of the Act and that the requested order should be granted.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

**Cathy H. Ahn,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64577; File No. SR-BX-2011-028]

### Self-Regulatory Organizations; The NASDAQ OMX BX Inc. LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Correction of an Inadvertent Error in Exchange Rule 7019(c)

June 1, 2011.

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 May 20, 2011, The NASDAQ BX OMX, Inc. LLC ("BX" or "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 BX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

BX proposes to make a correction to the definition of "Direct Access" in Exchange Rule 7019(c). The Exchange proposes to implement the proposed rule change immediately.

The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>.

### 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

The Exchange proposes to make a correction to Exchange Rule 7019(c) of its Market Data Distributor Fees rule to correct an inadvertent error in the definition of "Direct Access" contained in a recent filing ("previous filing").<sup>3</sup> The previous filing intended to amend the fee schedule to correct an anomaly that effectively exempted certain customers residing within the Exchange's co-location facility from paying a monthly fee for direct access to Exchange data, while customers that received data from an extranet and resided outside the co-location facility were assessed the fee. The previous filing also deleted outdated verbiage in the fee schedule in order to eliminate confusion regarding application of the fees. However, the rule language contained an inadvertent error that effectively still exempts certain co-located customers receiving Exchange data feeds from paying a direct access fee.

The definition should be corrected to make clear that the definition of "Direct

<sup>3</sup> Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029, (December 10, 2010) (SR-BX-2010-081).

Access” is also applicable to a telecommunications interface with the Exchange for receiving Exchange data feeds (and not Exchange data) within the Exchange co-location facility as well. The Exchange is making this change due to an inadvertent clerical error in the previous filing and is making no other changes to Exchange Rule 7019.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Sections 6(b)(5) of the Act,<sup>5</sup> in particular. The proposal 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 to correct an inadvertent error in the definition of “Direct Access” in Exchange Rule 7019(d) of its Market Data Distributor Fees rule.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### 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

Pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(3) thereunder,<sup>7</sup> the Exchange has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization. Accordingly, the Exchange believes that its proposal should become immediately effective.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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, as amended, 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-2011-028 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-2011-028. 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 Web site viewing and printing 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 Number SR-BX-2011-028, and should be submitted on or before June 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Cathy Ahn,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64578; File No. SR-Phlx-2011-71]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Correction of an Inadvertent Error in the Fee Schedule

June 1, 2011.

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 May 20, 2011, NASDAQ OMX PHLX LLC (“Phlx” or the “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 make a correction to the definition of “Direct Access” in the fee schedule. The Exchange shall implement this rule proposal immediately.

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

<sup>4</sup> 15 U.S.C. 78f.

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b 4(f)(3).

<sup>8</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.