

## MARS

## MARS Eligible Contracts

The Exchange's proposal to replace the 5,000 Eligible Contracts with ADVs of either: 2,500, 5,000 or 10,000 does not impose an undue burden on intra-market competition because the criteria for Eligible Contracts and ADVs will be uniformly applied to all qualifying NOM Participants. Also, only counting add liquidity from Firms, Non-NOM Market Makers, Broker-Dealers, JBOs and Professionals which are electronically delivered and executed does not impose an undue burden on intra-market competition because the Exchange will uniformly calculate the number of Eligible Contracts for all NOM Participants.

## MARS Payment

The Exchange's proposal to replace the \$0.10 per contract MARS Payment with a 3 tiered MARS Payment based on Eligible Contract ADVs does not impose an undue burden on intra-market competition because the Exchange will uniformly pay all NOM Participants the proposed 3 tiered MARS Payments provided the NOM Participant has executed the requisite number of Eligible Contracts. Moreover, the Exchange believes that the proposed MARS Payments offered by the Exchange does not impose an undue burden on intra-market competition because any qualifying NOM Participant that offers market access and connectivity to the Exchange and/or utilizes such functionality themselves may earn the MARS Payment for all Eligible Contracts.

The Exchange's proposal to pay the applicable MARS Payment on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System, does not impose an undue burden on intra-market competition because the Exchange will uniformly calculate the MARS Payment for all NOM Participants and uniformly pay the MARS Payment on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System.

The Exchange believes that paying the proposed MARS Payment to qualifying NOM Participants that have System eligibility and have executed the Eligible Contracts does not create an undue burden on intra-market competition, even when a different NOM Participant, other than the NOM Participant receiving the subsidy, may be liable for transaction charges, because this sort of arrangement already exists on the Exchange and would be

uniformly applied to all qualifying NOM Participants.

*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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>31</sup>

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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2016-015 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2016-015. This file number should be included on the subject line if email 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 10:00 a.m. and 3:00 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-NASDAQ-2016-015, and should be submitted on or before March 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-77128; File No. SR-NYSEArca-2015-107]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, To List and Trade Shares of the REX Gold Hedged S&P 500 ETF and the REX Gold Hedged FTSE Emerging Markets ETF Under NYSE Arca Equities Rule 8.600**

February 12, 2016.

On December 10, 2015, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to list and trade shares of the REX Gold Hedged S&P 500 ETF and the REX Gold Hedged FTSE Emerging Markets ETF under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal**

<sup>32</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>31</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

**Register** on December 30, 2015.<sup>3</sup> On January 15, 2016, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>4</sup> On January 27, 2016, the Exchange submitted Amendment No. 2 to the proposed rule change.<sup>5</sup> On February 11, 2016, the Exchange submitted Amendment No. 3 to the proposed rule change.<sup>6</sup> The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act<sup>7</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute

<sup>3</sup> See Securities Exchange Act Release No. 76761 (December 23, 2015), 80 FR 81564.

<sup>4</sup> In Amendment No. 1, which replaced and superseded the original filing in its entirety, the Exchange clarified the Funds' direct and indirect principal and other investments; the determination of the value of certain underlying assets for purposes of the Funds' net asset value calculation; and the availability of price information for certain underlying assets. Because Amendment No. 1 is a technical amendment that adds clarification to the proposal and does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment (Amendment No. 1 to the proposed rule change is available at: <http://www.sec.gov/comments/sr-nysearca-2015-107/nysearca2015107-1.pdf>).

<sup>5</sup> In Amendment No. 2, the Exchange made additional clarifying changes regarding the Funds' other investments; the availability of price information for certain underlying assets; and the dissemination of the Portfolio Indicative Value. Because Amendment No. 2 is a technical amendment that adds clarification to the proposal and does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 2 is not subject to notice and comment (Amendment No. 2 to the proposed rule change is available at: <http://www.sec.gov/comments/sr-nysearca-2015-107/nysearca2015107-2.pdf>).

<sup>6</sup> In Amendment No. 3, the Exchange expanded the application of the criteria for non-U.S. equity securities in the REX Gold Hedged FTSE Emerging Markets ETF portfolio so that they will apply on a continual basis. Because Amendment No. 3 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 3 is not subject to notice and comment.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 13, 2016. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> designates March 29, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NYSEArca-2015-107), as modified by Amendment Nos. 1, 2, and 3 thereto.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77129; File No. SR-BX-2016-010]

### Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees and Rebates Applicable to Firms and To Adopt Tiers Applicable to Options Overlying SPY

February 12, 2016.

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 February 1, 2016, NASDAQ BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(31).

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

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

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 its Options Pricing at Chapter XV Section 2, entitled "BX Options Market—Fees and Rebates," which governs pricing for BX members using the BX Options Market ("BX Options"). The Exchange proposes to modify certain fees and rebates (per executed contract) to: (1) Adopt fees and rebates applicable to Firm<sup>3</sup> and (2) adopt tiers applicable to options overlying Standard and Poor's Depository Receipts/SPDRs ("SPY").<sup>4</sup>

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxbx.cchwallstreet.com/>, 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.

<sup>3</sup> The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC. BX Chapter XV.

<sup>4</sup> SPY options are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index, and are Penny Pilot Options. The Penny Pilot was established in June 2012 and extended in 2015. See Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030) (order approving BX option rules and establishing Penny Pilot); and 75326 (June 29, 2015), 80 FR 38481 (July 6, 2015) (SR-BX-2015-037) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016).