

series is subject to the Penny Pilot Program,⁵ the Zero Bid Order will be considered a Limit Order to sell at a price of \$.01. If the options series is not subject to the Penny Pilot Program, the Zero Bid Order will be considered a Limit Order to sell at a price of \$.05 or \$.10, depending upon the minimum trading increment for the specific options series of the Zero Bid Order.

The Exchange also seeks to clarify that if the resulting Limit Order would cause either a locked or crossed market, then the original Market Order or BOX-Top Order will be rejected by the Trading Host.

2. Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁶ in general, and Section 6(b)(5) of the Act,⁷ in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in 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 amendments will give greater clarification to Options Participants regarding the handling of Zero Bid Orders and provide enhanced treatment of such orders on BOX.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) By order approve such proposed rule change, or
- (b) Institute proceedings to determine whether the proposed rule change should be 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 e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2009-014 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-2009-014. 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 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-2009-014 and should be submitted on or before March 27, 2009.

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

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59460; File Nos. SR-NASDAQ-2009-010, SR-BX-2009-009, SR-Phlx-2009-14]

Self-Regulatory Organizations; the NASDAQ Stock Market, LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX Phlx, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes To Amend the Certificate of Incorporation of The NASDAQ OMX Group, Inc.

February 26, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 17, 2009, The NASDAQ Stock Market, LLC ("NASDAQ Exchange") and NASDAQ OMX BX, Inc. ("BX"), and on February 20, 2009, NASDAQ OMX Phlx, Inc. ("PHLX") (collectively, the "NASDAQ OMX Exchange Subsidiaries")³ filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been substantially prepared by the NASDAQ OMX Exchange Subsidiaries. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

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

The NASDAQ OMX Exchange Subsidiaries are filing the proposed rule changes with regard to proposed changes to the Restated Certificate of

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Substantially similar filings have been submitted by Boston Stock Exchange Clearing Corporation ("BSECC") (SR-BSECC-2009-001) and Stock Clearing Corporation of Philadelphia ("SCCP") (SR-SCCP-2009-01), the clearing corporation subsidiaries of NASDAQ OMX Group, Inc. ("NASDAQ OMX").

⁵ BOX may trade options contracts in one-cent increments in certain approved issues through March 27, 2009, as part of the Penny Pilot Program. See Securities Exchange Act Release No. 56566 (September 27, 2007), 72 FR 56400 (October 3, 2007) (SR-BSE-2007-40).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

Incorporation (the "Certificate") of their parent corporation, NASDAQ OMX. The proposed rule changes will be implemented as soon as practicable following filing with the Commission. The text of the proposed rule changes is available at <http://www.cchwallstreet.com/nasdaqomx/>, <http://www.nasdaqtrader.com/Trader.aspx?id=BSEIRules2009>, and <http://www.nasdaqtrader.com/Micro.aspx?id=PhlxApprovedRulefilings>, respectively.

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

In their filings with the Commission, each of the NASDAQ OMX Exchange Subsidiaries included statements concerning the purpose of and basis for its proposed rule change and discussed any comments it received on its proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Each of the NASDAQ OMX Exchange Subsidiaries 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

NASDAQ OMX is proposing to make amendments to its Certificate. As provided in Articles XI and XII of the NASDAQ OMX By-Laws, proposed amendments to the Certificate are to be reviewed by the Board of Directors of each self-regulatory subsidiary of NASDAQ OMX, and if any such proposed amendment must, under Section 19 of the Act and the rules promulgated thereunder, be filed with, or filed with and approved by, the Commission before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be. The governing boards of the NASDAQ Exchange, PHLX, BX, BSECC, and SCCC have each reviewed the proposed change and determined that they should be filed with the Commission.⁴ The NASDAQ OMX Exchange Subsidiaries state that the changes to the Certificate are limited in scope, and under Delaware law, they do not require

approval by the stockholders of NASDAQ OMX.

Specifically, NASDAQ OMX proposes to eliminate its Certificate of Designations, Preferences and Rights of Series D Preferred Stock, and all matters set forth therein. NASDAQ OMX's Series D Stock was created in 2005 for the purpose of allowing National Association of Securities Dealers, Inc. to retain voting control over NASDAQ OMX's predecessor, The Nasdaq Stock Market, Inc. In connection with the NASDAQ Exchange commencing operations as a national securities exchange, the sole share of Series D Stock was redeemed in December 2006. Under Delaware law, both a certificate of designations (designating a series of preferred stock) and a certificate of elimination (eliminating a previously adopted designation) are deemed to be amendments to NASDAQ OMX's Certificate.

2. Statutory Basis

The NASDAQ OMX Exchange Subsidiaries believe that their respective proposed rule changes are consistent with the provisions of Section 6 of the Act,⁵ in general, and with Sections 6(b)(1) and (b)(5) of the Act,⁶ in particular, in that the proposal enables the NASDAQ OMX Exchange Subsidiaries to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and self-regulatory organization rules, and 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 changes will enhance the clarity of NASDAQ OMX's governance documents by eliminating provisions relating to a series of preferred stock that is no longer outstanding.

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

The NASDAQ OMX Exchange Subsidiaries do not believe that the proposed rule changes 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

The foregoing rule changes have become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁷ and subparagraph (f)(3) of Rule 19b-4 thereunder.⁸ At any time within 60 days of the filing of the respective proposed rule change by the applicable NASDAQ OMX Exchange Subsidiary, the Commission may summarily abrogate such rule changes 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 changes, are 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 Nos. SR-NASDAQ-2009-010, SR-BX-2009-009, and SR-Phlx-2009-14 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 Nos. SR-NASDAQ-2009-010, SR-BX-2009-009, and SR-Phlx-2009-14. These file numbers 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>).

⁴ The NASDAQ Exchange, PHLX, BX, BSECC, and SCCC are each submitting a filing pursuant to Section 19(b)(3)(A)(iii) of the Act, 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(1), (5).

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(3).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal offices 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 Nos. SR-NASDAQ-2009-010, SR-BX-2009-009, and SR-Phlx-2009-14, and should be submitted on or before March 27, 2009.

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

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59472; File No. SR-NYSEALTR-2008-14]

Self-Regulatory Organizations; NYSE Alternext US LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Establish Rules for the Trading of Listed Options

February 27, 2009.

I. Introduction

On December 19, 2008, NYSE Alternext US LLC ("Alternext" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the rules governing the trading of options on the Exchange. The proposed

rule change was published for comment in the **Federal Register** on December 31, 2008.³ The Exchange filed Amendment No. 1 to the proposed rule change on February 27, 2009.⁴ The Commission received one comment on the proposal.⁵ This notice and order provides notice of Amendment No. 1 and grants accelerated approval to the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

On October 1, 2008, NYSE Euronext—the parent company of the New York Stock Exchange ("NYSE")—through a series of mergers and related transactions ("Mergers"), acquired the American Stock Exchange LLC ("Amex"). Amex was renamed NYSE Alternext US LLC and became a subsidiary of NYSE Euronext and an affiliate of NYSE.⁶ After the Mergers, all physical and electronic access to Alternext's trading facilities was made available to the former Amex's members through temporary trading permits offered by Alternext. As Amex's principal place of business at the time of the Mergers was 86 Trinity Place, New York, New York, these temporary trading permits are known as "86 Trinity Permits."

Subsequently, Amex's cash equities trading floor was moved from 86 Trinity Place to NYSE's principal place of business at 11 Wall Street, New York, New York, and co-located with the NYSE's cash equities trading floor ("Equities Relocation"). The system that supports Alternext's cash equities trading is now the same system that supports NYSE's cash equities trading and is operated by the NYSE on behalf of the Exchange. In connection with the Equities Relocation, the Exchange adopted new trading and membership rules and offered each of its members an Alternext cash equities trading license in exchange for a valid 86 Trinity Permit.⁷

Alternext now proposes to move its options trading business from 86 Trinity Place to 11 Wall Street ("Options Relocation"). In connection with the Options Relocation, the Exchange

proposes to issue Amex Trading Permits ("ATPs") that will permit holders to effect options transactions on the Exchange's trading facilities.⁸ A holder of an 86 Trinity Permit under the current rules will be issued an ATP upon submission of the appropriate form to the Exchange.

Trading on the Exchange's relocated facilities at 11 Wall Street will continue to occur on a hybrid system, involving both a physical floor and an electronic system, the NYSE Amex System ("System"). Although the options trading floor will be physically separated from the NYSE and Alternext cash equity trading floor, the options trading floor will be managed and overseen by NYSE Euronext employees. Only ATP Holders that have been approved to perform a floor function—Floor Brokers and Floor Market Makers (including Specialists)—will be authorized to enter into transactions on the trading floor.

Alternext has proposed to update and reorganize its rules for trading options in open outcry and to establish a new set of rules that will govern trading on the System.⁹ The Exchange has submitted a separate proposed rule change to delete certain existing Exchange rules.¹⁰

Alternext will retain many of its existing member rules, including those relating to capital, margin, recordkeeping, customer protection, and account maintenance. The Exchange also has proposed to keep certain existing options-related rules, including rules on position and exercise limits and listing standards. With respect to transactions in Flexible Exchange Options ("FLEX Options") conducted on the Trading Floor, the Exchange stated that current NYSE Alternext Rules 900G through 909G will remain operative.¹¹

⁸ In addition, the Exchange would allow access to the System by "Sponsored Participants." A Sponsored Participant is a person that has entered into an agreement with a Sponsoring ATP Holder through which it may execute transactions on the System. See proposed Rule 902.1NY(c). This proposed rule is substantially similar to Rule 6.2A of the Rules of NYSE Arca, Inc. ("NYSE Arca").

⁹ In a separate filing, the Exchange described the relationship between the Exchange and its routing broker and the conditions related to its operation. The Commission is approving that proposed rule change in a separate action today. See Securities Exchange Act Release No. 59473 (February 27, 2009) (SR-NYSEALTR-2009-18).

¹⁰ See Securities Exchange Act Release No. 59454 (February 25, 2009) (SR-NYSEALTR-2009-17). The deletions effected by SR-NYSEALTR-2009-17 will become operative simultaneously with the operativeness of the rules proposed in this filing.

¹¹ The Exchange noted that certain terms in existing NYSE Alternext Rules 900G–909G will become outdated upon approval of the rules

Continued

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59142 (December 22, 2008), 73 FR 80494.

⁴ For a discussion of Amendment No. 1, see *infra* Section III.H.

⁵ See letter from Jennifer M. Lamie, Assistant General Counsel, Chicago Board Options Exchange ("CBOE"), to Florence E. Harmon, Deputy Secretary, Commission, dated February 4, 2009.

⁶ See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (order approving proposed rule change relating to the acquisition).

⁷ See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008).