

series that do not meet current requirements. On April 24, 2008, Amex submitted Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on May 1, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

## II. Description of the Proposal

The Exchange proposes to add new Commentary .06 to Rule 903C to permit the listing and trading of additional index options series that do not meet current Rule 903C requirements if such options series are listed on at least one other national securities exchange in accordance with the applicable rules of such exchange for the listing and trading of index options. For each additional options series listed by the Exchange pursuant to proposed Commentary .06, the Exchange would submit a proposed rule change with the Commission that is effective upon filing within the meaning of Section 19(b)(3)(A) of the Act.

Rule 903C provides the mechanism for the Exchange to list or open options expiration month series on particular index options classes approved for listing and trading on the Exchange. Currently, up to six expiration month series may be listed at any one time. Amex Rule 903C(a) permits the Exchange to open options expiration month series on approved index options classes as follows: (i) Consecutive Month Series; (ii) Cycle Month Series; (iii) Long-Term Options Series; (iv) Short-Term (1 week) Options Series; and (v) Quarterly Options Series. This proposal seeks to permit the Exchange to list additional index options expiration month series if another options exchange does so, regardless of whether the additional series listing complies with the requirements of Rule 903C.

Consistent with this proposal, the index options class must either be specifically reviewed and approved by the Commission under Section 19(b)(2) of the Act and rules thereunder, or comply with Commentary .02 or .03 to Rule 901C, for the Exchange to be able to list the additional series.

## III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

exchange.<sup>4</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>5</sup> which requires that an exchange have rules designed 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.

The Commission notes that in order for Amex to list any additional expiration month series of an index option class pursuant to new Commentary .06 to Rule 903C, such series must: (1) Be already listed on another options exchange; (2) belong to an index options class that has been specifically reviewed and approved by the Commission under Section 19(b)(2) of the Act or that complies with Commentary .02 or .03 to Rule 901C; and (3) Amex must submit a proposed rule change with the Commission that is effective upon filing within the meaning of Section 19(b)(3)(A) of the Act.<sup>6</sup> In addition, the Commission notes that the proposal would allow Amex the ability to quickly list and trade additional expiration month series of an index options class based on the listing of the series by another options exchange.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-Amex-2008-14), as modified by Amendment No. 1, is hereby approved.

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

**Florence E. Harmon,**

*Acting Secretary.*

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<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>6</sup> Commentary .02 (Broad Stock Index Groups) and Commentary .03 (Stock Index Industry Groups) of Rule 901C provide the requirements that must be met before those specific options groups may be traded on the Exchange pursuant to Rule 19b-4(e) under the Act.

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

<sup>8</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57918; File No. SR-Amex-2008-42]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Equity Linked Term Notes

June 4, 2008.

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 16, 2008, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves it on an accelerated basis.

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

The Exchange proposes to revise Section 107B of the Amex Company Guide ("Company Guide") to clarify that Rule 19b-4(e) under the Act<sup>3</sup> applies to the listing of equity-linked term notes ("ELNs")<sup>4</sup> that meet the generic listing criteria of Section 107B. The text of the proposed rule change is available at Amex's principal office, the Commission's Public Reference Room, and <http://www.amex.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, Amex included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

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

<sup>3</sup> 17 CFR 240.19b-4(e).

<sup>4</sup> ELNs are the non-convertible debt of an issuer, whose value is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock.

<sup>3</sup> See Securities Exchange Act Release No. 57707 (April 24, 2008), 73 FR 24098 ("Notice").

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

1. Purpose

Section 107B of the Amex Company Guide details the Exchange's listing criteria for ELNs. The original listing criteria for Section 107B were approved in 1990 and amended to reflect specific standards for ELNs<sup>5</sup> prior to the adoption of Rule 19b-4(e) under the Act.<sup>6</sup> The listing criteria allowed Amex to list ELNs that met the standards set forth in Section 107B of the Company Guide. In this manner, the Exchange was able to list ELNs linked to a basket of up to 30 securities, as long as specified standards were met.<sup>7</sup>

Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4,<sup>8</sup> if the Commission has approved, pursuant to Section 19(b) of the Act,<sup>9</sup> the self-regulatory organization's trading rules, procedures, and listing criteria for the product class that would include the new derivative securities product, and the self-regulatory organization has a surveillance program for the product class.

The Exchange proposes to revise Section 107B of the Company Guide, which sets forth Amex's listing criteria for ELNs, to clarify that the listing and trading of ELNs on Amex is subject to Rule 19b-4(e) under the Act. Section 107B of the Company Guide would provide that income instruments which are linked, in whole or in part, to the

<sup>5</sup> See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (SR-Amex-89-29) (approving listing standards to accommodate new securities not readily categorized under Amex's traditional listing guidelines for common and preferred stocks, bonds, debentures, and warrants); Securities Exchange Act Release No. 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (SR-Amex-92-42) (approving rules for the listing and trading of ELNs based on a single security).

<sup>6</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (New Products Release adopting Rule 19b-4(e)).

<sup>7</sup> See Securities Exchange Act Release No. 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (SR-Amex-99-42) (approving listing standards for ELNs based on a basket of up to 20 equity securities); Securities Exchange Act Release No. 47055 (December 19, 2002), 67 FR 79669 (December 30, 2002) (SR-Amex-2002-110) (amending the standards to allow for the listing of ELNs based on a basket of up to 30 equity securities). Clarified in an e-mail from Jeffrey Burns, Vice President and Associate General Counsel, Amex, to Mitra Mehr, Special Counsel, Division of Trading and Markets, Commission, dated June 2, 2008.

<sup>8</sup> 17 CFR 240.19b-4(c)(1).

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

market performance of up to 30 common stocks or non-convertible preferred stocks will be considered for listing, pursuant to Rule 19b-4(e) under the Act, as long as the applicable conditions set forth in Section 107B are met. Thus, within five business days after commencement of trading of an ELN in reliance on Section 107B, the Exchange would file a Form 19b-4(e) with the Commission.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>11</sup> in particular, in that it is 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.

The Exchange submits that the proposal meets the forgoing objectives by clarifying the application of Rule 19b-4(e) under the Act to Section 107B of the Company Guide and providing notice to the Commission of new products listed under Section 107B.

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

Amex 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. 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-Amex-2008-42 on the subject line.

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

*Paper Comments*

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

All submissions should refer to File Number SR-Amex-2008-42. 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 the 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-Amex-2008-42 and should be submitted on or before July 2, 2008.

**III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change**

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>13</sup>—which requires that the rules of an exchange be designed, among other things, 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

<sup>12</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general, to protect investors and the public interest—because it seeks to clarify that the Exchange's listing and trading of ELNs is subject to Rule 19b-4(e) under the Act.

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the **Federal Register**. The Commission notes that it has recently approved similar proposals of other exchanges,<sup>14</sup> and Amex's proposal does not raise any novel regulatory issues.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-Amex-2008-42) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57913; File No. SR-CBOE-2008-31]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change to List and Trade CBOE S&P 500 Three-Month Realized Variance Options and CBOE S&P 500 Three-Month Realized Volatility Options

June 3, 2008.

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 23, 2008, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 substantially 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 certain of its rules, including Rules 5.5, 24.1, and 24.9, to provide for the listing and trading of options that overlie two statistical measurements of market variability: Realized variance and realized volatility of the S&P 500 Composite Stock Price Index ("S&P 500 Index"). CBOE S&P 500 Three-Month Realized Variance options and CBOE S&P 500 Three-Month Realized Volatility options would be cash-settled and have European-style exercise. The text of the rule proposal and proposed contract specifications for CBOE S&P 500 Three-Month Realized Variance options are available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary and at the Commission.

#### 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.

##### 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 permit the Exchange to list and trade cash-settled options having European-style exercise on two statistical measurements of market variability: Realized variance and realized volatility of the S&P 500 Index. These statistical measurements are attributes of and based on a broad-based security index (*i.e.*, S&P 500 Index). Three-month realized variance is a measure of the historical variability of the S&P 500 Index, based on actual prices that have been reported, or "realized," historically looking back over a three-month period. The

calculation uses daily returns for the three-month period relative to an average (mean) daily price return of zero. Three-month realized volatility is the square root of three-month realized variance. The Exchange also proposes to make technical changes to some of the rules that would be amended in order to list and trade realized variance and realized volatility options.

Currently, the Exchange lists and trades options on the 30-day implied volatility of the S&P 500 Index (CBOE Volatility Index ("VIX") options).<sup>3</sup> With the introduction of realized variance and realized volatility options, market participants would be able to trade options that settle to the actual or realized volatility of the S&P 500 Index that has accrued over a three-month time period. Different from VIX options, realized variance and realized volatility options would allow market participants to take a position on what they anticipate the actual volatility of the S&P 500 Index would be at expiration. In addition, the Exchange also notes that realized variance contracts are a popular and successful product in the over-the-counter ("OTC") market. By providing a listed and standardized market for realized variance and realized volatility options, the Exchange seeks to attract investors who desire to trade options on realized variance and realized volatility but at the same time prefer the certainty and safeguards of a regulated and standardized marketplace.

##### Calculation of Realized Variance and Realized Volatility

The formula for three-month realized variance and three-month realized volatility uses continuously compounded daily returns for a three-month period assuming a mean daily price return of zero. The calculated realized variance is then annualized assuming 252 business days per year.<sup>4</sup> The exercise-settlement value for CBOE S&P 500 Three-Month Realized Variance options is 10,000 times the three-month realized variance of the S&P 500 Index, and the exercise-settlement value for CBOE S&P 500 Three-Month Realized Volatility options is 100 times the three-month realized volatility of the S&P 500 Index, both of which are calculated using the following standardized formula: REALIZED VARIANCE AND REALIZED VOLATILITY FORMULAS:

measures implied volatility, but the Exchange currently does not list VXV options.

<sup>4</sup> The annualization factor for realized volatility is the square root of 252.

<sup>14</sup> See, e.g., Chicago Board Options Exchange Rule 31.5; Securities Exchange Act Release No. 57758 (May 1, 2008), 73 FR 25814 (May 7, 2008) (SR-CBOE-2008-44).

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

<sup>16</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 Exchange also calculates the CBOE S&P 500 Three-Month Volatility Index ("VXV"), which