

regarding the \$.50 Strike Program to: (i) Expand the permitted price range of the \$.50 Strike Program from \$1.00–\$3.50 to \$0.50–\$5.50; (ii) raise the threshold of the previous day's closing price of the underlying security from \$3.00 to \$5.00; and (iii) expand the number of options classes permitted under the Program from 5 to 20.

Currently, Commentary .05 to Exchange Rule 1012 permits strike price intervals of \$.50 or greater beginning at \$1.00 where the strike price is \$3.50 or less, but only for option classes whose underlying security closed at or below \$3.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months. Further, the listing of \$.50 strike prices is limited to options classes overlying no more than 5 individual stocks as specifically designated by the Exchange. The Exchange is currently restricted from listing series with \$1 intervals within \$.50 of an existing strike price in the same series, except that strike prices of \$2, \$3, and \$4 shall be permitted within \$.50 of an existing strike price for classes also selected to participate in both the \$.50 Strike Program and the \$1 Strike Program.<sup>5</sup>

The Exchange also proposes a corresponding amendment to Commentary .05(a)(i)(B) of Exchange Rule 1012 to add \$5 to the list of strike prices permitted within \$.50 of an existing strike price in the same series for classes selected for both programs.

In its filing with the Commission, the Exchange stated that the number of \$.50 strike options traded on the Exchange has continued to increase since the inception of the Program. The Exchange stated that the proposal would expand \$.50 strike offerings to market participants and thereby should enhance their ability to tailor investing and hedging strategies and opportunities in a volatile marketplace. The Exchange further stated that it believes an expansion of the \$.50 Strike Program would allow investors to better enhance returns and manage risk by providing them with significantly greater flexibility in the trading of equity options that overlie lower price stocks by allowing them to establish equity options positions that are better tailored to meet their investment, trading and risk. In addition, the Exchange represented that \$.50 strikes have had no impact on capacity.

<sup>5</sup> See Exchange Rule 1012, Commentary .05(a)(i)(B) referring to the \$1 Strike Program.

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> which requires, among other things, that the rules of a national securities exchange be 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.

Specifically, the Commission believes that the proposal to expand the \$.50 Strike Program should provide investors with added flexibility in the trading of equity options and further the public interest by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. The Commission also believes that the proposal strikes a reasonable balance between the Exchange's desire to accommodate market participants by offering a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series and the corresponding increase in quotes. The Commission expects that the Exchange will monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's and vendors' automated systems.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-Phlx-2010-118) be, and it hereby is, approved.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>9</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63130; File No. SR-NYSEAmex-2010-52]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .02 of Rule 903G To Permit Certain FLEX Options To Trade Under the FLEX Trading Procedures for a Limited Time

October 19, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on October 5, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .02 of Rule 903G, Terms of FLEX Options, to permit certain FLEX Options to trade under the FLEX Trading Procedures for a limited time. The text of the proposed rule change is available at the Exchange's Web site at <http://www.nyse.com>, on the Commission's Web site at <http://www.sec.gov>, at the Exchange's principal office, 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 those 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 parts of such statements.

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

<sup>2</sup> 15 U.S.C. 78a.

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

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

1. Purpose

The purpose of this filing is to allow certain FLEX options, which are identical in all terms to a Non-FLEX option, to trade using FLEX Trading Procedures for the balance of the trading day on which the Non-FLEX Option is added as an intra-day add.

The Exchange recently adopted rule changes to allow FLEX options to expire within two business days of a third-Friday-of-the-month expiration, including expiration Friday ("expiration FLEX").<sup>4</sup> Such FLEX Options could have either an American Style exercise or a European Style exercise. The same rule change also allowed for FLEX Index Options to expire on or within two business days of a third-Friday-of-the-month expiration, provided they only have an exercise settlement value on the expiration date determined by reference to the reported level of the index as derived from the opening prices of the component securities ("a.m. settlement").

The rule change provided that expiration FLEX options will be permitted before (but not after) Non-FLEX Options with identical terms are listed. Once and if an option series is listed for trading as a Non-FLEX Option series, (i) all existing open positions established under the FLEX Trading procedures shall be fully fungible with transactions in the respective Non-FLEX Options series, and (ii) any further trading in the series would be as Non-FLEX Options subject to the Non-FLEX trading procedures and rules.

The Options Clearing Corporation ("OCC") became concerned that, in certain circumstances, in the event a Non-FLEX Option is listed with identical terms to an existing FLEX option, OCC could not net the positions in the contracts until the next business day. If the Non-FLEX Option were listed intra-day, and the holder of a position in the FLEX option attempted to close the position using the Non-FLEX Option, the holder would be technically long in one contract and short in the other contract. This would expose the holder to assignment risk until the next day despite having offsetting positions.

The limited circumstances are:

- The Non-Flex Option is listed intra-day.
- The FLEX contract is for American style exercise.

• All other terms are identical and the contracts are otherwise fungible.

The risk does not occur in expiration Friday FLEX option positions during the five days prior to expiration, as no new Non-FLEX Option series may be listed within five days of expiration. It also does not exist for FLEX option positions that will be identical to Non-FLEX series to be added after expiration, as those new series are added "overnight" and OCC will convert the FLEX position to the Non-FLEX Options series at the time the Non-FLEX series is created.

As an example, suppose underlying issue XYZ, trading around \$25 per share, has options listed on the March cycle, and in February an investor wishes to buy just-out-of-the-money call options that will expire in May. Since the Non-FLEX May Options will not be listed until after the March expiration, the investor enters a FLEX Option order in February to buy 250 Call 30 options expiring on the third Friday of May. If, as expected, the Non-FLEX May 30 call options are listed on the Monday after March expiration, the investor's open FLEX position will be converted by OCC over the weekend following March expiration to the Non-FLEX series.

However, if XYZ stock should decline between the time of the FLEX transaction and March expiration, the May 30 calls may not be added after March Expiration. If that were to occur, the May 30 calls may be added sometime later. Suppose the Exchange receives a request to add the May 30 calls on the morning of the Wednesday after expiration, and the Exchange lists them immediately. The investor with the FLEX position may then decide it is an opportune time to close his position.

Under current rules, the investor would be required to close the position by entering a sell order in the new Non-FLEX Option series. However, when the Non-FLEX transaction is reported to OCC, the investor is considered short in the Non-FLEX Option series, and is still long in the FLEX Option. OCC cannot aggregate the FLEX positions into the Non-FLEX series until after exercise and assignment processing. If a buyer in the new Non-FLEX series were to exercise the options, the original investor who had attempted to close the FLEX position with an offsetting Non-FLEX trade would be at risk of being assigned on the technically short Non-FLEX position.

Because of this risk, OCC will not clear an American style expiration Friday FLEX option. The Exchange has spoken to OCC, and OCC has agreed that allowing the holder of an open position in a FLEX contract to close the position

using a FLEX option in such circumstances will mitigate the risk.

The assignment risk does not exist if the Non-FLEX option is to be added the next trading day. In situations where OCC is aware that a series will be added overnight, they can convert the FLEX Position to a Non-FLEX position before the next trading day. However, OCC cannot guarantee that an identical Non-FLEX series will not be added intra-day, and thus will not clear such American style FLEX options.

NYSE Amex is proposing a limited exception to the requirement that the trading in such options be under the Non-FLEX Trading Procedures. The Exchange proposes that, in the event a Non-FLEX Option is listed intra-day, the holder of a FLEX Option with identical terms could close the FLEX position under the FLEX Trading procedures, but only for the balance of the trading day on which the series is added. Under the proposed rule change, both sides of the FLEX transaction would have to be closing only positions.

This change will allow the holder of a FLEX position to trade in such a manner to mitigate the assignment risk.

A Trading Official<sup>5</sup> has the regulatory responsibility for reviewing the conformity of FLEX trades to the terms and specifications contained in Rule 903G. In the event a Non-FLEX series, having the same terms as an existing expiration Friday FLEX option, is listed intra-day, the Trading Official will review any subsequent FLEX transactions in that series and verify that the order is being executed for the purpose of closing out an existing FLEX position. The Trading Official will not disseminate a FLEX Request for Quote for any order representing a FLEX series having the same terms as a Non-FLEX series, unless such FLEX order is a closing order (and it is the day the Non-FLEX series has been added). In addition, if the Trading Official were to disseminate a FLEX Request for Quotes for a closing order representing a FLEX series having the same terms as a Non-FLEX series, the Trading Official would only accept response quotes and orders from Amex Trading Permit ("ATP") Holders that were closing out an existing FLEX position.

The NYSE Regulatory Department reviews FLEX trading activity, and, in the event a non-FLEX series with the same terms as an expiration Friday FLEX option is listed intra-day, will review any subsequent FLEX

<sup>4</sup> See Exchange Act Release No. 60548, SR-NYSEAmex-2009-44 (August 20, 2009), 74 FR 43191 (August 26, 2009).

<sup>5</sup> Trading Officials are Exchange employees designated pursuant to Rule 900.2NY(82).

transactions in the series to verify that they are closing a position.<sup>6</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)<sup>8</sup> in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest, by giving ATP Holders and investors with additional tools to trade customized options in an exchange environment while allowing the holder of a FLEX position to trade in such a manner as to mitigate inadvertent assignment risk.

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

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of

<sup>6</sup> Through a Regulatory Services Agreement ("RSA") between NYSE Regulation, Inc. ("NYSE Regulation") and NYSE Amex, staff of NYSE Regulation conducts, among other things, surveillances of the NYSE Amex options trading platform for purposes of monitoring compliance with the relevant trading rules by NYSE Amex participants. NYSE Amex represents that, through this RSA, there is appropriate surveillances in place to monitor transactions in FLEX options.

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>11</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission notes that the proposed rule change is substantially similar to a proposed rule change previously submitted by NYSE Arca which was published for notice and comment in the **Federal Register**.<sup>12</sup> The Commission notes that it did not receive any comments on the NYSE Arca proposal, and does not believe the Exchange's proposal raises any new or novel issues. Further, as noted above, because of the inadvertent assignment risk, market participants could not trade previously approved American style FLEX Options expiring on Expiration Friday. The proposal seeks to mitigate such assignment risks by limiting certain FLEX transactions to closing only, thereby allowing the trading of previously approved FLEX Options. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and therefore, designates the proposed rule change operative upon filing.<sup>13</sup>

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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> See Securities Exchange Act Release No. 62321 (June 17, 2010), 75 FR 36130 (June 24, 2010) (SR-NYSEArca-2010-46).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-NYSEAmex-2010-52 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-NYSEAmex-2010-52. 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 No. SR-NYSEAmex-2010-52 and should be submitted on or before November 15, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63133; File No. SR-NYSEArca-2010-93]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. To Establish a Pilot Program To List Series With Additional Expiration Months for Each Class of Options Opened for Trading on the Exchange

October 19, 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 October 18, 2010, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II 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 adopt Commentary .09 to NYSE Arca Options Rule 6.4 to establish a Pilot Program to list additional expiration months for each class of options opened for trading on the Exchange. The text of the proposed rule change is available at the Exchange, on the Commission’s Web site at <http://www.sec.gov>, at the Commission’s Public Reference Room, and <http://www.nyse.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, 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 those 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 parts 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 adopt a Pilot Program to list additional expiration months for each class of options opened for trading on the Exchange, similar to a Pilot Program recently approved for use by the International Securities Exchange, Inc. (“ISE”),<sup>3</sup> by adding proposed Commentary .09 to NYSE Arca Options Rule 6.4, Series of Options Open for Trading.

Pursuant to NYSE Arca Rule 6.4(a), the Exchange currently opens four expiration months for each class of options open for trading on the Exchange, the first two being the two nearest months, regardless of the quarterly cycle on which that class trades; the third and fourth being the next two months of the quarterly cycle previously designated for that specific class. For example, if the Exchange listed in late May a new equity option on a January-April-July-October quarterly cycle, the Exchange would list the two nearest term months (June and July) and the next two months of the cycle (October and January). When the June series expires, the Exchange would add the August series as the next nearest month. And when the July series expires, the Exchange would add the September series.

The Exchange believes that there is market demand for a greater number of expiration months. The Exchange therefore proposes to adopt a Pilot Program pursuant to which it will list up to an additional two expiration months, for a total of six expiration months for each class of options open for trading on the Exchange. The proposal will become effective on a pilot basis for a period of twelve months to commence on the next full month after approval is received to establish the pilot program. Under the proposal, the additional months listed pursuant to the pilot program will result in four consecutive expiration months plus two months from the quarterly cycle. For example, for option classes in the January cycle that have expiration months of June, July, October, and January, the Exchange would

additionally list the August and September series. For options classes in the February quarterly cycle that have expiration months of October, November, February, and May, the Exchange would additionally list the December and January series. Under the proposal, no additional LEAP Series will be created.

The Exchange seeks to limit the proposed rule change to 20 actively traded options classes. By limiting the pilot to a small number of classes, the Exchange will be able to gauge interest in the pilot while limiting any additional demands on system resources. It has been estimated that this pilot could add up to six or seven percent to current quote traffic, although changes in market maker quoting behavior may reduce that increase by up to half. The Exchange believes that a limited pilot is a prudent step to determine actual market demand for additional expiration months.

If the Exchange were to propose an extension or an expansion of the pilot program, or should the Exchange propose to make the pilot program permanent, NYSE Arca will submit, along with any filing proposing such amendments to the pilot program, a pilot program report (“Report”) that will provide an analysis of the Pilot Program covering the first nine months of the pilot program and shall submit the Report to the Commission at least sixty (60) days prior to the expiration date of the pilot program. The Report will include, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which additional expiration months were opened; (2) an assessment of the appropriateness of the options classes selected for the pilot program; (3) an assessment of the impact of the pilot program on the capacity on NYSE Arca, OPR, and on market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the pilot program and how NYSE Arca addressed such problems; (5) any complaints that NYSE Arca received during the operation of the pilot program and how NYSE Arca addressed them; and (6) any additional information that would assist the Commission in assessing the operation of the Pilot Program.

Finally, the Exchange represents that it has the necessary systems capacity to support new options series that will result from the introduction of additional expiration months listed pursuant to this proposed rule change.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Exchange Act Release No. 63104 (October 14, 2010) approving SR-ISE-2010-91.