

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61978; File No. SR-NYSEAmex-2010-39]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 903 and Adopting Rule 903A

April 23, 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 April 16, 2010, NYSE Amex LLC (“NYSE Amex” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 903 and adopt Rule 903A to apply uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Exchange, and to amend Rule 903 Commentary .03 to delineate the timing for adding new Long Term Equity Option Series. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office, at the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

#### 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of this filing is to amend Rule 903 and adopt Rule 903A to apply uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Exchange, and to amend Rule 903 Commentary .03 to delineate the timing for adding new Long Term Equity Option Series. The Exchange is also proposing to remove provisions in Commentary .03 related to Short Term Option Series and place those provisions in new Commentary .10. Commentary .10 will only contain provisions previously approved by the Commission.<sup>3</sup>

The Options Listing Procedures Plan (“OLPP”) was approved by the Securities and Exchange Commission (the “Commission”) on July 6, 2001 and has been amended several times.<sup>4</sup> The OLPP provides procedures for: (i) Listing and trading new option classes; (ii) selecting new options series; (iii) petitioning The Options Clearing Corporation (“OCC”) to review the eligibility, pursuant to the exchanges' listing standards, of a selected option class without delaying the trading of that option class; (iv) determining operational details for option contracts adjusted pursuant to OCC By-Laws; (v) admitting new sponsors; and (vi) losing eligibility to participate in the OLPP.

This current filing is primarily concerned with codifying certain provisions of the OLPP pertaining to selecting new option series and certain strike setting parameters that have been adopted under the OLPP. The Exchange believes that it is helpful to codify select provisions into NYSE Amex's rules so

that all applicable rules governing series selection and applicable strike setting parameters are located in a single place. In addition, the Exchange understands that other Sponsor Exchanges to the OLPP will be submitting similar filings to codify portions of the OLPP in their respective rulebooks. Below the Exchange briefly describes the provisions of the OLPP that the Exchange is proposing to codify into NYSE Amex's rules.

##### OLPP Amendments Pertaining to LEAPS

Amendments 1 and 2 to the OLPP adopted provisions governing the listing of Long-Term Equity Option Series (“LEAPS”). Amendment 1 provided for a uniform time frame for the introduction of new LEAPS on equity option classes, options on exchange traded funds (“ETFs”), or options on Trust Issued Receipts (“TIRs”). Amendment 2 provided for a uniform minimum volume threshold per underlying class to qualify for the introduction of a new expiration year of LEAPs on equity, ETF and TIR classes. The Exchange is proposing to codify the changes made to the OLPP by Amendments 1 and 2 by amending Rule 903 Commentary .03.

##### Strike Setting Parameters

Amendment 3 to the OLPP adopted uniform objective standards to the range of options series exercise (or strike) prices available for trading on Sponsor Exchanges to the OLPP as a quote mitigation strategy. The Exchange is proposing to codify the changes made to the OLPP by Amendment 3 by inserting a reference in Rule 903 and by adopting new Rule 903A, Select Provisions of Options Listing Procedures Plan. The Exchange is proposing to create a new rule that can be easily amended in the future if other amendments to the OLPP are made which similarly warrant being codified into NYSE Amex's rules.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) <sup>5</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5) <sup>6</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

<sup>3</sup> See Securities Exchange Act Release No. 52014 (July 12, 2005) 70 FR 41244 (July 18, 2005).

<sup>4</sup> See e.g., Securities Exchange Act Release Nos. 44521 (July 6, 2001), 66 FR 36809 (July 13, 2001) (order approving OLPP); 58205 (July 22, 2008), 73 FR 43798 (July 28, 2008) (order granting permanent approval to amendment no. 1 to the OLPP); 58630 (September 24, 2008) 73 FR 57166 (October 1, 2008) (order granting permanent approval to amendment no. 2 to the OLPP); and 60531 (August 19, 2009), 74 FR 43173 (August 26, 2009) (order approving amendment no. 3 to the OLPP).

<sup>10</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>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

public interest. The Exchange believes that codifying certain provisions of the OLPP, as amended, serves to foster investor protection.

#### *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**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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, 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)(iii) thereunder.<sup>10</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change 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 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-2010-39 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-2010-39. 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 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-NYSEAmex-2010-39 and should be submitted on or before May 21, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61981; File No. SR-NASDAQ-2010-051]

#### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning Intermarket Option Linkage**

April 26, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on April 20, 2010, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Nasdaq. 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 is filing with the Commission a proposed rule change to delete its Temporary Rule Governing Phase-Out of P and P/A Orders<sup>3</sup> and amend several references in the rules to the Plan for the Purpose of Creating and Operating an Intermarket Linkage ("Linkage Plan").<sup>4</sup> In addition, the Exchange also proposes to amend its fees in Rule 7050, NASDAQ Options Market, to discontinue its current pilot program (the "pilot") relating to options

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

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

<sup>3</sup> See Chapter XII, Intermarket Linkage Rules, Section 4, Temporary Rule Governing Phase-Out of P and P/A Orders.

<sup>4</sup> See Securities Exchange Act Release No. 57545 (March 21, 2008), 73 FR 16394 (March 27, 2008). On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by the then American Stock Exchange LLC, now NYSE Amex LLC ("NYSE Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), and International Securities Exchange LLC ("ISE"). See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023, (August 4, 2000). Subsequently, Philadelphia Stock Exchange, Inc., now NASDAQ OMX PHLX, Inc. ("Phlx"), Pacific Exchange, Inc., now NYSE Arca, Inc. ("NYSE Arca") and Boston Stock Exchange, Inc., now NASDAQ OMX BX, Inc. ("BSX") joined the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851, (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850, (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029, (February 12, 2004). The Exchange was added as a Participant to the Linkage Plan. Linkage was governed by the Options Linkage Authority under the conditions set forth under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage approved by the Commission.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

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

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

<sup>11</sup> 17 CFR 200.30-3(a)(12).