

operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will enable the Exchange to implement its proposed expansion of the Program contemporaneously with other exchanges,<sup>10</sup> and respond to increased customer demand for \$1 strikes without delay.<sup>11</sup> Therefore, the Commission designates the proposal operative upon filing. The Commission expects that the Exchange will continue to 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.

At any time within 60 days of the filing of such 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.

#### 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 No. SR-Phlx-2009-21 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-Phlx-2009-21. 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 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-Phlx-2009-21 and should be submitted on or before April 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-6330 Filed 3-23-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59587; File Nos. SR-ISE-2009-04, SR-CBOE-2009-001, SR-NYSEArca-2009-10, and SR-NYSEALTR-2009-11]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Chicago Board Options Exchange, Incorporated; NYSE Arca, Inc.; and NYSE Alternext US LLC; Order Granting Accelerated Approval of Proposed Rule Changes, as Amended, To Expand the \$1 Strike Program

March 17, 2009.

#### I. Introduction

Four options exchanges filed with the Securities and Exchange Commission ("Commission") proposed rule changes 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> to expand the \$1 Strike Program. Specifically, the International Securities Exchange, LLC ("ISE") submitted its proposal on January 21, 2009;<sup>3</sup> the Chicago Board Options Exchange, Incorporated ("CBOE") submitted its proposal on January 23, 2009;<sup>4</sup> NYSE Arca, Inc. ("NYSE Arca") submitted its proposal on February 10, 2009; and NYSE Alternext US LLC ("NYSE Alternext") submitted its proposal on February 10, 2009. The proposals submitted by ISE, CBOE, NYSE Arca, and NYSE Alternext (each an "Exchange" and collectively, the "Exchanges") are substantively identical. The proposals were published for comment in the **Federal Register** on February 19, 2009.<sup>5</sup> The Commission received one comment in response to CBOE's proposal.<sup>6</sup> This order approves the proposed rule changes, as amended in the cases of ISE and CBOE, on an accelerated basis.

#### II. Description of the Proposals

The \$1 Strike Program currently allows each Exchange to select a total of 10 individual stocks on which option series may be listed at \$1 strike price intervals. To be eligible for inclusion in the Program, an underlying stock must close below \$50 in its primary market on the previous trading day. For each stock selected for the Program, each Exchange may list strike prices at \$1 intervals from \$3 to \$50, but no \$1 strike price may be listed that is greater than \$5 from the underlying stock's closing price in its primary market on the previous day. Each Exchange also may list \$1 strikes on any other option class designated by another securities exchange that employs a similar program under their respective rules. The Exchanges may not list long-term option series at \$1 strike price intervals for any class selected for the program. Each Exchange is restricted from listing any series that would result in strike prices being \$0.50 apart.

Each Exchange has proposed to amend its rules to expand the \$1 Strike

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

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

<sup>3</sup> ISE filed Amendment Nos. 1 and 2 to its proposal on February 9, 2009 and February 10, 2009, respectively.

<sup>4</sup> CBOE filed Amendment No. 1 to its proposal on February 4, 2009.

<sup>5</sup> See Securities Exchange Act Release Nos. 59377 (February 10, 2009), 74 FR 7719 (SR-ISE-2009-04); 59378 (February 10, 2009), 74 FR 7711 (SR-CBOE-2009-001); 59395 (February 11, 2009), 74 FR 7710 (SR-NYSEArca-2009-10); and 59394 (February 11, 2009), 74 FR 7722 (SR-NYSEALTR-2009-11).

<sup>6</sup> See Letter to Secretary, Commission, from Thomas R. Keyes III, CPA, J.D., dated February 21, 2009, regarding SR-CBOE-2009-001.

<sup>10</sup> See Securities Exchange Act Release No. 59587 (March 17, 2009) (SR-ISE-2009-04, SR-CBOE-2009-001, SR-NYSEArca-2009-10, and SR-NYSEALTR-2009-11) (Order Granting Accelerated Approval of Proposed Rule Changes, as Amended, to Expand the \$1 Strike Program).

<sup>11</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).

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

Program to allow each Exchange to select a total of 55 individual stocks on which option series may be listed at \$1 strike price intervals, and to expand slightly the price range on which the Exchange may list \$1 strikes, *i.e.*, from \$1 to \$50. The existing restrictions on listing \$1 strikes, as outlined above, will continue. The provision that each Exchange may also list \$1 strikes on any other option class designated by another securities exchange that employs a similar program under their respective rules will remain unchanged.<sup>7</sup>

Each Exchange also has proposed to add a delisting policy. Specifically, each Exchange will, on a monthly basis, review series listed under the \$1 Strike Program with a strike price more than \$5 from the current value of the underlying security. Each Exchange will delist series with no open interest in both the put and the call series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding each proposed delisting policy, each Exchange will be permitted to grant member requests to add strikes and/or maintain strikes in series eligible for delisting. In addition, each proposed delisting policy provides that if the Exchange identifies series for delisting, it shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed options classes.

Each Exchange represented in its filing that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of options series as proposed by this filing. Each Exchange also represented that it believes its \$1 Strike Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security, and, further, that it has not detected any material proliferation of illiquid options series resulting from the narrower strike price

intervals. Each Exchange also stated in its filing that current market conditions, in which the number of securities trading below \$50 has increased dramatically, further warrant the expansion of the Program.

The Commission received one comment letter in support of the proposed rule change.<sup>8</sup> The commenter described himself as an individual retail non-professional investor and stated that “\$1 strike price intervals provide investors with greater flexibility in the trading of equity options that overlie lower price stocks, by allowing investors to establish equity options positions that are better tailored to meet their investment objectives.”<sup>9</sup> The commenter added that the recent general decline in stock prices has resulted in several stocks being below \$3, the lowest option strike price currently available in the \$1 Strike Program, and stated that trading options at the \$2 or \$1 strike price levels would enable him to minimize losses and “position [his] portfolio for enhanced future gains.”<sup>10</sup>

### III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Changes

After careful review, the Commission finds that the respective proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> In particular, the Commission finds that the respective proposed rule changes are consistent with Section 6(b)(5) of the Act<sup>12</sup> in that they are designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission notes that the Exchanges have represented that current market conditions have resulted in a dramatic increase in the number of securities trading below \$50. The Commission believes that the proposed expansions to the \$1 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, particularly given current market conditions. The Commission also

believes that, with the addition of the delisting policy, the proposals strike a reasonable balance between the Exchanges' 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.

In approving the respective proposed rule changes, the Commission has relied on each Exchange's representation that it has the necessary systems capacity to support the new options series that will be listed under this proposal. Further, the Commission expects that each Exchange will continue to 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 such Exchange's, OPRA's, and vendors' automated systems.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act<sup>13</sup> for approving the proposals prior to the thirtieth day after the date of publication in the **Federal Register**. The Exchanges have represented that they continue to receive customer requests to expand the \$1 Strike Program as soon as possible, and have requested accelerated approval so that each Exchange may respond to increased customer demand for \$1 strikes without delay.<sup>14</sup> In their requests for acceleration, ISE and CBOE also represent that the \$1 Strike Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. CBOE further states that such advantages will be particularly beneficial under current market conditions. In addition, the only comment letter received on the filings was supportive of the expansion.<sup>15</sup> Accordingly, the Commission finds there is good cause, consistent with Section 6(b)(5) of the Act<sup>16</sup> to approve the Exchanges' proposals on an accelerated basis.

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> See e-mails from Samir Patel, Assistant General Counsel, ISE; Patrick Sexton, Associate General Counsel, CBOE; and Andrew Stevens, Chief Counsel, U.S. Equities & Derivatives, NYSE Euronext, Inc. on behalf of NYSE Arca and NYSE Alternext; to Nathan Saunders, Special Counsel, and Heidi Pilpel, Special Counsel, Division of Trading and Markets, Commission, on March 16, 2009.

<sup>15</sup> See *supra* note 6.

<sup>16</sup> 15 U.S.C. 78s(b)(5).

<sup>8</sup> See *supra* note 4.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> In approving these proposed rule changes, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> CBOE also proposed to amend its \$1 Strike Program by eliminating from Rule 24.9.11 the provision stating that if CBOE lists strike prices in \$1 intervals in the Mini-SPX options class, the number of classes CBOE can select to participate in the \$1 Strike Program is reduced by one.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule changes, as amended (SR–ISE–2009–04; SR–CBOE–2009–001; SR–NYSEArca–2009–10; and SR–NYSEALTR–2009–11) be, and they hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–6327 Filed 3–23–09; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59585; File No. SR–CBOE–2009–017]

#### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Complex Order Book

March 17, 2009.

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 March 13, 2009, the Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b–4(f)(6) thereunder.<sup>4</sup> 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 6.53C, *Complex Orders on the Hybrid System*, to permit conversions and reversals<sup>5</sup> to be eligible for routing

to the complex order book (“COB”). The text of the proposed rule change is 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 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

When the Exchange originally adopted its electronic COB rule in 2005, the rule contained a provision related to the routing of conversions and reversals. Specifically, the rule provided that conversions and reversals will not be eligible for routing to the COB and that, when the Exchange determines to allow conversions and reversals to route to COB, it will submit to the Commission a rule filing pursuant to Section 19(b)(3)(A) of the Act.<sup>6</sup>

The Exchange has enhanced its COB system functionality and has determined to permit conversions and reversals to be routed to COB. As such, as provided in the rule, this rule change is being submitted pursuant to Section 19(b)(3)(A) to eliminate the restriction on routing conversions and reversals to COB. Conversions and reversals, as well as any other complex orders with stock that have more than one option leg, will be handled by COB in the same manner as stock-option orders that have only one option leg with one exception.<sup>7</sup>

For stock-option orders that have only one option leg, the rule currently provides that the option leg will not be executed on the Hybrid System at the Exchange’s best bid (offer) in that series

if one or more public customer orders are resting at that price on the electronic book, unless the option leg trades with such public customer order(s). This COB provision is consistent with CBOE’s open outcry priority rules for stock-option orders that have only one option leg.<sup>8</sup> For conversions, reversals and other complex orders with stock that have more than one option leg, the rule text will clarify that this provision will apply only if there are public customer orders resting on the Hybrid System at the Exchange’s best bid (offer) in the electronic book for each of the options legs of the conversion, reversal or stock-option order. Thus, the options legs of such an order would not execute on the Hybrid System at the Exchange’s best bid (offer) if one or more public customer orders are resting at that price in the electronic book in *each* of the options legs, unless the options legs trade with such public customer orders. This proposed COB provision is consistent with CBOE’s open outcry priority rules for stock-option orders that have more than one option leg.<sup>9</sup>

###### 2. Statutory Basis

The Exchange believes 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 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. In particular, the Exchange believes that the addition of conversions and reversals to the list of complex orders eligible for electronic handling under Rule 6.53C is a significant enhancement for investors

<sup>8</sup> In open outcry, stock-option orders that have only one option leg have priority over bid (offers) of the trading crowd, but not over bids (offers) in the public customer limit order book. *See, e.g.*, Rules 6.45A(b)(ii) and 6.45B(b)(ii).

<sup>9</sup> In open outcry, stock-option orders that have more than one option leg are handled in the same manner as other complex orders that have more than one option leg and, as such, have priority over equivalent bids (offers) in the individual series legs that are represented in the trading crowd or in the public customer limit order book provided at least one leg of the order better the corresponding bid (offer) in the public customer limit order book by at least the minimum trading increment or a \$0.01 increment, which increment shall be determined by the Exchange on a class-by-class basis. *Id.*

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

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

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b–4(f)(6).

<sup>5</sup> A conversion (reversal) order is an order involving the purchase (sale) of a put option and the sale (purchase) of a call option in equivalent units with the same strike price and expiration in the same underlying security, and the purchase

(sale) of the related instrument. *See* Rule 6.53C(a)(9).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> As a result of being eligible for COB, these complex orders will also be eligible for electronic auction via the complex order auction (“COA”), the automated improvement mechanism (“AIM”) and/or the solicitation auction mechanism (“AIM SAM”). *See* Rules 6.53C.06, 6.74A.07 and 6.74B.01.