

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)

March 17, 2009

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

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

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<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).

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 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

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<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.

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

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<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.

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

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<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).

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

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

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.

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<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).

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

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

<sup>18</sup> 17 CFR 200.30-3(a)(12).