

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61035; File No. SR-NYSEArca-2009-105)

November 19, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the \$1.00 Strike Program to Allow Low-Strike LEAPS

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 November 18, 2009, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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 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 Commentary .04 to Rule 6.4 Series of Options Open for Trading to permit the expansion of the \$1.00 Strike Program. 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 [www.nyse.com](http://www.nyse.com), 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

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<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.

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 proposed rule change is based on a filing submitted by Chicago Board Options Exchange Incorporated (“CBOE”) that was recently approved by the Commission.<sup>4</sup>

The purpose of the proposed rule change is to expand the \$1.00 Strike Program (“Program”) in a limited fashion to allow NYSE Arca to list new series in \$1.00 intervals up to \$5.00 in long-term option series (“LEAPS”) in up to 200 option classes on individual stocks. Currently, under the Program, NYSE Arca may not list LEAPS at \$1.00 strike price intervals for any class selected for the Program. NYSE Arca also is restricted from listing any series that would result in strike prices being \$0.50 apart, unless the series are part of the \$0.50 Strike Program.<sup>5</sup>

NYSE Arca believes that this proposal is appropriate and will allow investors to establish option positions that are better tailored to meet their investment objectives, vis-à-vis credit risk, using deep out-of-the-money put options. Deep out-of-the-money put options are viewed as a viable, liquid alternative to OTC-traded credit default swaps

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<sup>4</sup> See Exchange Act Release No. 60978 (November 10, 2009), 74 FR 59296 (November 17, 2009) (approving SR-CBOE-2009-68).

<sup>5</sup> See Exchange Act Release No. 60721 (September 25, 2009) 74 FR 50858 (October 1, 2009).

("CDS"). These options do not possess the negative characteristics associated with CDS, namely, lack of transparency, insufficient collateral requirements, and inefficient trade processing. Moreover, deep out-of-the-money put options and CDS are functionally similar, as there is a high correlation between low-strike put prices and CDS spreads.<sup>6</sup>

NYSE Arca notes that its proposal is limited in scope, as \$1.00 strikes in LEAPS may only be listed up to \$5.00 and in only 200 option classes. As is currently the case, NYSE Arca would not list series with \$1.00 intervals within \$0.50 of an existing \$2.50 strike price in the same series. As a result, NYSE Arca does not believe this proposal will cause a significant increase in quote traffic.

Moreover, as the Commission is aware, NYSE Arca has a vigorous quote mitigation strategy in place in an effort to lessen the growth rate of quotations. When it expanded the Program several months ago, NYSE Arca included a delisting policy that would be applicable with regard to this proposed expansion.<sup>7</sup> NYSE Arca and the other options exchanges amended the Options Listing Procedures Plan ("OLPP") in 2008 to impose a minimum volume threshold of 1,000 contracts national average daily volume per underlying class to qualify for an additional year of LEAP series.<sup>8</sup> Most recently, NYSE Arca, along with the other options exchanges, amended the OLPP to adopt objective exercise price range limitations applicable to equity option classes, options on

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<sup>6</sup> More information on this trading strategy may be found at the website of the CBOE at <http://www.cboe.com/institutional/DOOM.aspx>.

<sup>7</sup> The delisting policy includes a provision that states NYSE Arca may grant OTP Holder requests to add strikes and/or maintain strikes in series of options classes traded pursuant to the Program that are eligible for delisting.

<sup>8</sup> See Exchange Act SEC Release No. 58630 (September 24, 2008), 73 FR 57166 (October 1, 2008).

ETFs and options on trust issued receipts.<sup>9</sup> NYSE Arca believes that these price range limitations will have a meaningful quote mitigation impact.

The margin requirements of NYSE Arca Rule 4 and the position and exercise requirements set forth in Rule 6.8 and Rule 6.9 will continue to apply to these new series, and no changes are being proposed to those requirements by this rule change.

With regard to the impact on system capacity, NYSE Arca has analyzed its capacity and represents 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 series as proposed by this filing.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)<sup>10</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5)<sup>11</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 investors more flexibility to closely tailor their investment decisions.

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<sup>9</sup> See Exchange Act Release No. 60531 (August 19, 2009), 74 FR 43173 (August 26, 2009) (approving Amendment No. 3 to the OLPP). NYSE Arca’s proposal to list \$1.00 strikes in LEAPS to \$5.00 would not be subject to the exercise price range limitations contained in new paragraph (3)(g)(ii) of the OLPP.

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

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

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 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 for 30 days after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission hereby grants that request.<sup>14</sup> The Commission believes that

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give 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 date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement in this case.

<sup>14</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).

waiver of the operative delay is consistent with the protection of investors and the public interest because it recently approved a proposal from CBOE which is identical to the current proposal in all material respects and on which no comments were received.<sup>15</sup>

Therefore, the proposal is operative upon filing.

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-NYSEArca-2009-105 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-NYSEArca-2009-105. This file number should be included on the subject line if e-mail is used. To help the Commission process

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<sup>15</sup> See Securities Exchange Act Release No. 60978, supra note 4.

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 10:00 a.m. and 3:00 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-NYSEArca-2009-105 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Florence E. Harmon  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).