

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62370; File No. SR-NYSEAmex-2010-62)

June 23, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE AMEX LLC to Expand and Permanently Establish Its Short Term Option Program

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 June 17, 2010, NYSE Amex LLC (“NYSE Amex” 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 NYSE Amex. 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, Rule 900C, and Rule 903C so as to make changes to, and make permanent the Short Term Option Series Pilot. 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, on the Commission’s Web site at [www.sec.gov](http://www.sec.gov), 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

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

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

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 Commentary .10 to increase the number of Short Term Options Series in an underlying class from five to twenty. The proposed change is based on an approved rule of the Chicago Board Options Exchange, Inc. (“CBOE”). The Exchange is proposing to adopt the Pilot Program on a permanent basis. In addition, the Exchange is proposing, by amending Rule 903C, certain non-substantive changes to reorganize its rule text related to Short Term Option Series so that applicable terms are located within a single section of the relevant rules. The Exchange is also amending Rule 903 to allow the Short Term Option Opening Date to be either a Thursday or Friday (or, if the Exchange is not open for business on the respective Thursday or Friday, the first business day immediately prior to that respective Thursday or Friday), based on a rule change adopted by the CBOE.<sup>3</sup>

On July 12, 2005, the Securities and Exchange Commission (“Commission”) approved the Pilot Program.<sup>4</sup> The Pilot Program allows NYSE Amex to list and trade Short Term Option Series, which would expire one week after the date on which a series is opened. Under the Pilot

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<sup>3</sup> See Exchange Act Release No. 62170, (May 25, 2010) 75 FR 30889 (June 2, 2010) (SR-CBOE-2010-048).

<sup>4</sup> See Exchange Act Release No. 52014, (July 12, 2005) 70 FR 41244 (July 18, 2005); The Pilot has been extended each year. See Exchange Act Release No. 54131 (July 12, 2006) 71 FR 40760 (July 18, 2006); Exchange Act Release No. 56046 (July 11, 2007) 72 FR 39105 (July 17, 2007); Exchange Act Release No. 58084 (July 2, 2008) 73 FR 39743 (July 10, 2008); Exchange Act Release No. 60286 (July 10, 2009) 74 FR 34834 (July 17, 2009).

Program, NYSE Amex can select up to five approved option classes on which Short Term Option Series could be opened.

If selected for the Pilot Program, the Exchange may open up to five Short Term Option Series for each expiration date in that class. The strike price of each Short Term Option Series are fixed at a price per share, with approximately the same number of strike prices above and below the value of the underlying security or calculated index value at about the time that the Short Term Option Series is opened.

The Exchange proposes to adopt the Pilot Program on a permanent basis. The current Pilot expires on July 12, 2010.

While NYSE Amex did not list any Short Term Option Series during most of the Pilot Period, it did recently select four multiply listed issues in which to list Short Term Options Series.<sup>5</sup> There has been continued investor interest in trading short-term options at the Chicago Board Options Exchange (“CBOE”), and significant investor interest in Short Term Options Series in the four issues selected by NYSE Amex. The CBOE adopted their Pilot Program on a permanent basis after four years of trading “weekly” on four index products, and found no operational or capacity related problems.<sup>6</sup> In order to remain competitive in listing Short Term Option Series in multiply listed classes, and to have the ability to respond to customer interests if warranted, the Exchange proposes to adopt its Pilot Program on a permanent basis.

In the original proposal to establish the Pilot Program the Exchange stated that if it were to propose an extension or an expansion of the program, the Exchange would submit, along with

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<sup>5</sup> On June 3, 2010, the Exchange listed Short Term Options Series expiring June 11, 2010 in NASDAQ 100 Tracking Stock (QQQQ); SPDR S&P 500 ETF (SPY); iShares Russell 2000 Index Fund (IWM); and DIAMONDS Trust (DIA).

<sup>6</sup> See Securities Exchange Act Release No. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (SR-CBOE-2009-018).

any filing proposing such amendments to the program, a Pilot Program report (“Report”). The Report would provide an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect. Since the Exchange did not have any Short Term Options Series listed as part of the Pilot Program until very recently, there is no data available to compile such a report at this time. Therefore there is no Report associated with the program included with this proposal to adopt the Program on a permanent basis. NYSE Amex does commit to providing a Report on Short Term Option Series to the Commission no later than May 31, 2011, covering the period from June 3, 2010 through March 31, 2011.

NYSE Amex is proposing to modify the terms of the Pilot Program to provide that up to twenty (as opposed to five) Short Term Option Series may be opened for each expiration date. The Exchange believes this increase in the number of series will provide investors with greater flexibility in the trading of Short Term Option Series by allowing investors to establish options positions that are better tailored to meet their investment objectives. NYSE Amex also believes that allowing for the increased number of series would allow us to better maintain an orderly market, meet customer demand and respond in scenarios when the market price of the underlying moves substantially from the exercise price or prices of the series already opened, which we anticipate will occur as evidenced with the recent volatility in the market.

Consistent with the existing Pilot Program provisions: (i) approximately the same number of strike prices would be opened above and below the value of the underlying security or calculated index value at about the time the Short Term Option Series are initially opened for trading; (ii) if the Exchange has opened less than twenty Short Term Option Series for a given expiration date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the current

value of the underlying security or index moves substantially from the exercise price or prices of the series already opened; and (iii) in any event, the total number of series for a given expiration date will not exceed twenty series.

The Exchange is also changing the Pilot Program rules to include a condition that any strike prices initially listed by the Exchange shall be within thirty percent (30%) above or below the closing price of the underlying security on the preceding day or the current value of the underlying index, as applicable. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current price of the underlying security or current value of the underlying index, as applicable. Under the rule change, the Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security or current value of the underlying index, as applicable, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision. The opening of the new Short Term Option Series shall not affect the series of options of the same class previously opened. The Exchange believes there is sufficient investor interest and demand to increase the number of series.

The Exchange is also proposing to allow Short Term Options Series to be opened on any Thursday (or Friday) that expire on the Friday of the following business week, similar to a recently adopted rule change of the CBOE.<sup>7</sup> This will provide market participants an opportunity to “roll” expiring positions; that is, trade out of an expiring Short Term Option Series and re-establish a new position in the Short Term Option Series expiring one week later.

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<sup>7</sup> See Exchange Act Release No. 62170 (May 25, 2010) 75 FR 30889 (June 2, 2010).

Since the last trading day for A.M.-settled Short Term Option Series on indexes is generally a Thursday, and new A.M.-settled Short Term Options Series on indexes are generally listed on Friday, new and expiring A.M.-settled Short Term Options Series are never available concurrently.

As a result, it is impossible to implement a position roll in A.M.-settled Short Term Options on indexes. The Exchange has been advised that opening A.M.-settled Short Term Options on indexes just one day earlier, and providing an opportunity to roll, would enhance the value of A.M.-settled Short Term Options on indexes as a risk management tool.

In order to avoid investor confusion, the Exchange is proposing to permit the listing of all Short Term Option series (equity and index) on any Thursday or Friday. As proposed, the rule changes give the Exchange the flexibility to list Short Term Option series on any Thursday or Friday, and do not restrict listing to a particular day.

The Exchange believes that the Pilot Program will provide investors with additional means of managing their risk exposures and carrying out their investment objectives. The Exchange also represents that it has the necessary system capacity to support the option series listed under the Pilot Program and the proposed increase in number of series.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)<sup>8</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5)<sup>9</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

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

investors and the public interest. The Exchange believes that increasing the number of available strikes in Short Term Options Series will provide investors with additional means of managing their risk and carrying out their investment objectives.

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>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</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>12</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>13</sup>

The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiver of the operative delay is consistent with the protection of

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

<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)(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 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.

investors and the public interest because the proposal is substantially similar to that of another exchange that was approved by the Commission.<sup>14</sup> Therefore, the Commission designates the proposal operative upon filing.<sup>15</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-2010-62 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-2010-62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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<sup>14</sup> See Securities Exchange Act Release No. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (SR-CBOE-2009-018).

<sup>15</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).



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 10:00 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-NYSEAmex-2010-62 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).