

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60896; File No. SR-NYSEArca-2009-98)

October 28, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Relating to \$1 Strikes for KBW Bank Index options (BKX)

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 October 27, 2009, NYSE Arca, Inc. (“NYSE Arca” or “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 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 Rule 5.14 Terms of Index Option Contracts in order to establish strike price intervals of \$1.00 in the KBW Bank Index (“BKX”). 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 any comments it received on the proposed rule change. The text of those statements may be examined at the places

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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.

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

The proposed rule change is based on a filing submitted by NASDAQ OMX PHLX Inc. (“PHLX”) that was recently approved by the Commission.<sup>4</sup>

The purpose of the proposed rule change is designed to provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives.

The Exchange proposes to list series at \$1.00 or greater strike price intervals for BKX, if the strike price is less than \$200, and will list at least two strike prices above and two strike prices below the current value of the index at about the time a series is opened for trading on the Exchange. At the time of initial listing, the Exchange shall list strike prices for the index that are within 5 points from the closing value of the index on the preceding day.

Additional series of BKX 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 underlying Index moves substantially from the initial exercise prices or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices shall be within thirty percent (30%) above or below the closing value of the Index. The Exchange may also open additional strike prices that are more than 30% above or below the current Index value provided that demonstrated customer interest exists for such series, as expressed by institutional,

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<sup>4</sup> See Exchange Act Release No. 60840 (October 20, 2009) (order approving SR-PHLX-2009-77).

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. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each series on BKK. In all cases, however, \$1.00 strike price intervals may be listed on BKK only where the strike price is less than \$200.

The Exchange shall not list LEAPS on BKK at intervals less than \$2.50.

The Exchange also proposes an additional Delisting Policy for BKK. With respect to BKK, the Exchange will regularly review series that are outside a range of five (5) strikes above and five (5) strikes below the current value of BKK, and may delist series with no open interest in both the put and the call series having a: (a) strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month, and (b) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding the above delisting policy, customer requests to add strikes and/or maintain strikes in BKK eligible for delisting may be granted.

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>5</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section

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

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 public interest, by providing investors greater flexibility to establish positions that are better tailored to meet 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

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

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

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

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to 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 Exchange has satisfied this requirement.

The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change immediately operative, so that the Exchange may, for competitive reasons, list options on the KBW Bank Index at the same \$1 strike price intervals currently listed by PHLX. The Commission believes such waiver is consistent with the protection of investors and the public interest.<sup>9</sup> Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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-2009-98 on the subject line.

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<sup>9</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2009-98. 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 on official business days between the hours of 10:00 a.m. and 3:00 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 Number SR-NYSEArca-2009-98 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>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).