

*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-NYSE-2009-63. 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 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-NYSE-2009-63 and should be submitted on or before August 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60317; File No. SR-NYSEAmex-2009-36]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NYSE Amex LLC Amending NYSE Amex Equities Rule 2 To Redefine the Term "Member Organization"

July 16, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on June 30, 2009, NYSE Amex LLC ("NYSE Amex" or "Exchange") 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 self-regulatory organization. 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 NYSE Amex Equities Rule 2 to redefine the term "member organization." The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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

The Exchange is proposing to amend its rules to broaden the definition of a "member organization" to include a registered broker or dealer that is not a member of the Financial Industry

Regulatory Authority ("FINRA") so long as the broker or dealer is a member of another registered securities exchange. However, member organizations that transact business with public customers or conduct business on the Floor of the Exchange must at all times be members of FINRA. The revised definition as proposed is consistent with the rules of other national securities exchanges that have been approved by the Commission.<sup>3</sup>

Under current NYSE Amex Equities Rule 2(b)(i), a registered broker or dealer must be a member of FINRA in order to qualify as a "member organization" of the Exchange and to be eligible for an NYSE Amex equities trading license. Under this arrangement, FINRA is the DEA for all NYSE Amex equities member organizations. Similarly, NYSE Amex Equities Rule 2(b)(ii) provides that a registered broker or dealer can become a member organization, even though it does not own an NYSE Amex equities trading license, if it agrees to be regulated as such by the Exchange, but only if it is a member of FINRA. The Exchange proposes to make membership more broadly available to other registered brokers or dealers who are not FINRA members but who are members of another registered securities exchange and do not transact business with public customers or conduct business on the Floor of the Exchange. The Exchange believes that this change can be made without any sacrifice of regulatory rigor.

Under the proposed rule change, those NYSE Amex equities member organizations that are also members of FINRA will be regulated pursuant to the terms of an allocation plan pursuant to Rule 17d-2 of the Act among FINRA, New York Stock Exchange LLC ("NYSE"), NYSE Amex, and NYSE Regulation, Inc. ("NYSE Regulation"),

<sup>3</sup> As part of the relocation of NYSE Amex equities trading to trading systems and facilities located at 11 Wall Street, New York, New York, NYSE Amex adopted NYSE Rules 1-1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Amex Equities Rules to govern trading on the NYSE Amex Trading Systems. The NYSE Amex Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1-1004 and the Exchange continues to update the NYSE Amex Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the New York Stock Exchange LLC ("NYSE"). See Securities Exchange Act Release Nos. 58705 (Oct. 1, 2008), 73 FR 58995 (Oct. 8, 2008) (SR-Amex-2008-63); 58833 (Oct. 22, 2008), 73 FR 64642 (Oct. 30, 2008) (SR-NYSE-2008-106); 58839 (Oct. 23, 2008), 73 FR 64645 (Oct. 30, 2008) (SR-NYSEALTR-2008-03); 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR-NYSEALTR-2008-10); and 59027 (Nov. 28, 2008), 73 FR 73681 (Dec. 3, 2008) (SR-NYSEALTR-2008-11). The Exchange is filing this rule proposal as a companion filing to a rule proposal filed by the NYSE. See SR-NYSE-2009-63.

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

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

<sup>14</sup> 17 CFR 200.30-3(a)(12).

and FINRA will continue to be the DEA for these member organizations. For those NYSE Amex equities member organizations that are not members of FINRA, but are members of another registered securities exchange, NYSE Regulation will provide for the exercise of certain of its regulatory responsibilities with respect to these member organizations pursuant to an existing regulatory services agreement among NYSE, NYSE Amex, NYSE Regulation, and FINRA.

The Exchange believes that the proposed rule change is consistent with the rules of other registered national securities exchanges that have previously been approved by the Commission. For example, the rules of BATS Exchange, Inc. ("BATS") provide that "any registered broker or dealer which is a member of another registered national securities exchange or association or any person associated with such a registered broker or dealer shall be eligible" to be a member of that exchange.<sup>4</sup> Stated otherwise, to be eligible for BATS membership, a firm must be a member of either FINRA or another registered national securities exchange. Similarly, the rules of National Stock Exchange, Inc. ("NSX") contain no requirement for FINRA membership in its eligibility requirements and restrictions applicable to a registered broker or dealer that seeks to become an ETP Holder on that Exchange.<sup>5</sup>

Finally, the rules of The NASDAQ Stock Market LLC ("Nasdaq") provide for membership in Nasdaq of a registered broker or dealer that is either a member of FINRA or a member of another registered securities exchange, with the additional requirement (also being proposed herein by the Exchange) that "Nasdaq members that transact business with customers shall at all times be members of FINRA."<sup>6</sup> The term "customers" in the foregoing sentence refers to public customers and does not include brokers or dealers.<sup>7</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>8</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>9</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and

coordination with persons engaged in 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. More specifically, the Exchange believes that, by (i) expanding the number of registered brokers and dealers that are eligible to become NYSE Amex equities member organizations and trade on the Exchange, while maintaining high regulatory standards with respect to such firms, and (ii) aligning NYSE Amex equities membership requirements more closely with those of other registered securities exchanges, the proposed rule change will contribute to perfecting the mechanism of a free and open market and a national market system, which outcomes are also consistent with the protection of investors and the public interest.

### 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 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange may expand the number of registered brokers and

dealers that are eligible to become NYSE Amex member organizations and trade on the Exchange without delay. The Commission has determined that waiving the 30-day 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 extend Exchange membership to registered broker-dealers that are members of other exchanges in a manner that is consistent with the rules of other exchanges, which previously were approved by the Commission.<sup>12</sup> Therefore, the Commission designates the proposal operative upon filing.<sup>13</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-2009-36 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-2009-36. 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/>

<sup>12</sup> See, e.g., Securities Exchange Act Release Nos. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (order approving rules of BATS Exchange); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (order approving rules of the Nasdaq Stock Market LLC).

<sup>13</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>4</sup> See BATS Rule 2.3.

<sup>5</sup> See NSX Rules 2.3 and 2.4.

<sup>6</sup> See Nasdaq Rule 1002(e). See also Nasdaq Rule 1014(a)(3).

<sup>7</sup> See Nasdaq Rule 0120(g).

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

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

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

<sup>11</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 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.

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 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-2009-36 and should be submitted on or before August 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60316; File No. SR-CBOE-2009-050]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Immediately Add New FAZ and FAS Option Series Within Five Days of Expiration

July 16, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 15, 2009, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 Exchange filed the

proposal as a "non-controversial" 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

CBOE is seeking to immediately list new option series on Direxion Daily Financial Bear 3X Shares ("FAZ") and on Direxion Daily Financial Bull 3X Shares ("FAS") that expire this Friday, July 17, 2009, notwithstanding Interpretation and Policy .04 to Rule 5.5, *Series of Option Contracts Open for Trading*. The Exchange is not proposing any rule text changes. The Exchange is not proposing any rule text changes.[sic] Although the proposed rule change would not amend the text of Rule 5.5.04, the proposed change would have the effect of permitting the Exchange to immediately add new series of FAZ and FAS options within five business days prior to expiration on Friday, July 17, 2009.

#### 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of this proposed rule change is to allow the Exchange to immediately list new option series on FAZ and FAS that expire this Friday, July 17, 2009, notwithstanding Interpretation and Policy .04 to Rule 5.5, *Series of Option Contracts Open for Trading*. CBOE Rule 5.5.04 permits the Exchange to list new series of options until the beginning of the month in which the option contract will expire. Due to unusual market conditions, CBOE, in its discretion, may add new

series of options until five business days prior to expiration.

On July 14, 2009, NASDAQ OMX PHLX listed additional series on FAZ that expire on July 17, 2009, and on July 15, 2009, NASDAQ OMX PHLX listed additional series on FAS that expire on July 17, 2009. Specifically, NASDAQ OMX PHLX listed July 2009 options on FAZ with the following strikes: 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44, and NASDAQ OMX PHLX listed July 2009 options on FAS with the following strikes: 25, 26, 27 and 28. NASDAQ OMX PHLX does not have restrictions pertaining to the timing of adding new series. See NASDAQ OMX PHLX Rules 1012, *Series of Options Open for Trading*, and 1101A, *Terms of Option Contracts*. However, under CBOE's existing rules, the Exchange is not permitted to add these same series. As a result, the Exchange has submitted this current filing seeking to immediately list the same series listed by NASDAQ OMX PHLX on July 14 and 15, 2009. To the extent any additional series are added by NASDAQ OMX PHLX between the time this filing is submitted and Friday, July 17, 2009, the Exchange similarly seeks to immediately list such same series.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act<sup>5</sup> and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> requirements that the rules of an exchange be 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. The Exchange believes adding the new FAZ and FAS series will foster competition and benefit investors.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).