

the Exchange's general rule relating to locked and crossed markets.<sup>38</sup> These exceptions would be similar to analogous certain trade-through exceptions under proposed Nasdaq Chapter XII, Section 2(b), and relate to when the Exchange is experiencing systems issues, when there exists a crossed market, and when a member simultaneously routes ISOs against the full displayed size of any locked or crossed Protected Bid or Protected Offer.

The Commission believes that the Exchange's proposed rules relating to locked and crossed markets are consistent with the Plan and the Act and should help ensure that the display of locked or crossed markets will be limited and that any such display will be promptly reconciled. The Commission also believes that each of the proposed exceptions to locked and crossed markets relate to circumstances when it is appropriate to permit a limited, narrow exception to the general locked and crossed market rule.

Therefore, the Commission finds that Exchange's rule regarding locked and crossed markets appropriately implements Section 6 of the Plan, and is consistent with Section 6(b)(5) of the Act<sup>39</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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.

The Commission also finds that proposed Nasdaq Chapter XII, Section 4, which facilitates the participation of certain Participating Options Exchanges who may require the use of P/A Orders and Principal Orders after implementation of the Plan, is consistent with the Act. Although the Commission has already approved the Plan,<sup>40</sup> the Commission also recognizes that there may be one or more Participating Options Exchanges that may require a temporary transition period during which they may want to continue to utilize these order types that exist currently under the Old Plan.<sup>41</sup> The Exchange and each of the other Participating Options Exchanges have

proposed substantially identical temporary provisions to accommodate this possibility.<sup>42</sup> Thus, the Commission finds that the proposed rule relating to the Exchange's receipt and handling of P/A Orders and Principal Orders, and imposing certain obligations on the Exchange with respect to such orders that are similar to those that exist under the Old Plan, is appropriate and consistent with Section 6(b)(5) of the Act<sup>43</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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.

Finally, the Commission finds that Nasdaq's proposed amendments to certain other Nasdaq rules to modify and/or delete language that is no longer necessary under the Plan are appropriate and consistent with the Act and the Plan.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>44</sup> that the proposed rule change (SR-NASDAQ-2009-056), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>45</sup>

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

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60548; File No. SR-NYSEAMEX-2009-44]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE AMEX LLC Amending the Permissible Expiration Dates for Flexible Exchange Options

August 20, 2009.

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 August 7, 2009, NYSE Amex LLC ("NYSE Amex" 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 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 its rules regarding permissible expiration dates for Flexible Exchange Options ("FLEX Options").<sup>4</sup> The text of the proposed rule change is available on the Exchange's Web site at <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 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 proposal is to modify the permissible expiration dates for FLEX Options. These options are governed by Trading of Option Contracts, Section 15 (Flexible

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. FLEX Index Options Series may be approved and open for trading on any index that has been approved for Non-FLEX Options trading on the Exchange. FLEX Equity Options may be on underlying securities that have been approved by the Exchange in accordance with NYSE Amex Rule 915, which includes but is not limited to stock options and exchange-traded fund options. Both FLEX Index Options and FLEX Equity Options are subject to the FLEX rules in Section 15.

<sup>38</sup> Section 6 of the Plan permits exceptions to the Plan's locked and crossed market rules as may be contained in the rules of a Participant approved by the Commission.

<sup>39</sup> 15 U.S.C. 78f(b)(5).

<sup>40</sup> See Plan Approval, *supra*, note 5.

<sup>41</sup> The Commission notes that any Participating Options Exchange that wishes to utilize such order types in a manner that would result in a Trade-Through would need to separately request an exemption from the Plan for such use.

<sup>42</sup> The Commission notes that the rules contained in Proposed Nasdaq Chapter XII, Section 4 are not required by the Plan, but rather are rules proposed by the Exchange in order to facilitate the participation in the Plan of certain exchanges during an initial transition period.

<sup>43</sup> 15 U.S.C. 78f(b)(5).

<sup>44</sup> 15 U.S.C. 78s(b)(2).

<sup>45</sup> 17 CFR 200.30-3(a)(12).

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

Exchange Options) pursuant to the Rules of NYSE Amex LLC. Under current NYSE Amex Rule 903G, FLEX options may not expire on any business day that fall on, or within two business days of, a third Friday-of-the-month expiration day for any Non-FLEX Options (an "Expiration Friday").<sup>5</sup> However, subject to aggregation requirements<sup>6</sup> for cash settled options, the current FLEX Rules do permit the expiration of FLEX Options on the same day that Non-FLEX quarterly index options ("QIX") expire.

The Exchange is now proposing to eliminate the expiration date restriction so that FLEX Options may expire on any given business day. Although the expiration date restrictions would be eliminated, the Exchange notes that position and exercise limits under applicable NYSE Amex rules will continue to apply. FLEX Index Options remain subject to position limits under Rules 904 and 904C, as applicable. Additionally, all FLEX Options remain subject to the position reporting requirements of NYSE Amex Rule 906. Moreover, the Exchange has the authority, pursuant to Rule 461, to impose additional margin requirements as deemed advisable.

Beyond the above described position limit and reporting requirements for FLEX Options that expire on Expiration Friday, the proposed rule change includes an aggregation requirement under NYSE Amex Rule 906G for position limit purposes. Specifically, for as long as the options positions remain open, positions in FLEX Options that expire on Expiration Friday shall be aggregated with positions in Non-FLEX options on the same underlying (e.g., the same underlying security in the case of a FLEX Equity Option and the same underlying index in the case of a FLEX Index Option) (referred to as "Comparable Non-FLEX options"). Such FLEX Options and comparable Non-FLEX options would be subject to the position and exercise limits that are applicable to the Non-FLEX Options.<sup>7</sup> The aggregation requirement would

apply to both cash and physically settled options.

In addition, in the case of FLEX Index Options only, the proposed rule change provides that FLEX Index Options expiring on or within two business days of an Expiration Friday may not have an exercise settlement value on the expiration date determined by reference to the closing price of the index or specified averages. Therefore, the exercise settlement value on such expiration dates may only be determined by a.m. settlement values. These limitations on exercise settlement value calculations are intended to serve as a safeguard against potential adverse effects that might be associated with triple witching.<sup>8</sup>

In conjunction with the elimination of the expiration date restriction, the proposed rule change also states that, provided the options on an underlying security or index are otherwise eligible for FLEX trading, FLEX Options will be permitted in puts and calls that do not have the same exercise style, same expiration date and same exercise price as Non-FLEX Options that are already available for trading on the same underlying security or index. The proposed rule change also provides that FLEX options will be permitted before (but not after) the options are listed for trading as Non-FLEX Options. Once and if an option series is listed for trading as a Non-FLEX Option series, (i) all existing open positions established under the FLEX Trading procedures shall be fully fungible with transactions in the respective Non-FLEX Options series, and (ii) any further trading in the series would be as Non-FLEX options subject to the Non-FLEX trading procedures and rules, as governed by Section 900NY.

For example, a FLEX trader could establish a FLEX Options position in a European-style, a.m. settled Mini-Nasdaq 100 Index ("MNX") 210 Call Option Series with an expiration of August 19, 2011 (which will be an Expiration Friday). In such instance, once and if the Non-FLEX, European-style, a.m.-settled MNX 210 Call Option Series that expires on August 19, 2011 is listed for trading, the established FLEX Option position would be fully fungible with transactions in the Non-FLEX Option series. Any further trading

in the series would be as Non-FLEX Options subject to the Non-FLEX trading procedures.

The Exchange will report any undue effects or unanticipated consequences that may occur due to the elimination of the blackout period.

NYSE Amex believes that expanding the eligible dates for FLEX expirations is important and necessary to the Exchange's efforts to create a product and market that provides ATP Holders and investors interested in FLEX-type options with an improved but comparable alternative to the over-the-counter ("OTC") market in customized options, which can take on contract characteristics similar to FLEX options but are not subject to the same restrictions (such as the three business day expiration restriction or the p.m. settlement restriction).<sup>9</sup> By expanding the eligible expiration dates for FLEX Options, market participants will now have greater flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. NYSE Amex believes market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness because of the role of The Options Clearing Corporation ("OCC") as issuer and guarantor of FLEX Options.

## 2. Statutory Basis

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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will

<sup>5</sup> For example, under the current rule, a FLEX Option could expire on the Tuesday before Expiration Friday, but could not expire on the Wednesday or Thursday before Expiration Friday. Similarly, a FLEX Option could expire on the Wednesday after Expiration Friday, but could not expire on the Monday or Tuesday after Expiration Friday. This restriction is hereinafter referred to as the "three business day" expiration restriction.

<sup>6</sup> See NYSE Amex Rule 906G(a)(ii).

<sup>7</sup> Position Limits for Non-FLEX equity options are governed by Rule 904; Exercise Limits for Non-FLEX equity options are governed by Rule 905. Position Limits for Non FLEX index options are governed by Rule 904 and 904C; Exercise Limits for Non Flex index options are governed by Rule 905 and 905C.

<sup>8</sup> The expiration of the contracts for stock index futures, stock index options, and stock options all expire on the same days occurring on the third Friday of March, June, September, and December (which is referred to as "triple witching"). The Exchange's proposed limitations on p.m. exercise settlement values and exercise settlement values based on a specified average would apply during triple witching expirations, as well as on all other Expiration Fridays.

<sup>9</sup> Through a Regulatory Services Agreement ("RSA") between NYSE Regulation, Inc. ("NYSE Regulation") and NYSE Amex, staff of NYSE Regulation conducts, among other things, surveillances of the NYSE Amex options trading platform for purposes of monitoring compliance with the relevant trading rules by NYSE Amex participants. NYSE Amex represents that, through this RSA, there are appropriate surveillances in place to monitor transactions in FLEX options.

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

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

provide ATP Holders<sup>12</sup> and investors with additional opportunities to trade customized options in an exchange environment.

#### *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>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup> Because the foregoing rule 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 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, provided that the self-regulatory organization has given 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,<sup>15</sup> the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

Under Rule 19b-4(f)(6) of the Act,<sup>18</sup> a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange has requested that the Commission waive the 30-day operative date. The Exchange believes that waiver of the 30-day operative date will: (i) Permit the Exchange to offer investors additional opportunities to trade

customized options in response to recent member requests; and (ii) level the current competitive landscape by permitting the Exchange to implement changes similar to those recently implemented by another self-regulatory organization. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and thus designates the proposal as operative upon filing.<sup>19</sup> The Commission notes that the Exchange's proposal is based on a similar proposed rule change adopted by the Chicago Board Options Exchange.<sup>20</sup> That proposal was subject to full notice and comment and no comments were received. Based on this, the Commission believes that it is appropriate to designate the proposal 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-NYSEAMEX-2009-44 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-2009-44. 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 20549-1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at <http://www.nyse.com>. 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-2009-44 and should be submitted on or before September 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60542; File No. SR-NYSE-2009-60]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change in Connection With the Proposal of NYSE Euronext To Require That at Least Three-Fourths of Its Directors Satisfy Independence Requirements**

August 19, 2009.

#### **I. Introduction**

On June 23, 2009, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant

<sup>12</sup> See NYSE Amex Rule 900.2NY(5).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> The Exchange has fulfilled this five day requirement.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>18</sup> *Id.*

<sup>19</sup> For purposes only of waiving the operative date 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). See also 17 CFR 200.30-3(a)(59).

<sup>20</sup> Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (SR-CBOE-2008-115).

<sup>21</sup> 17 CFR 200.30-3(a)(12).