Exchange or their facilities that would give NYFIX an unfair advantage over its competitors.

(f) None of the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities will disclose any system or design specifications, or any other information, to any employees of NYFIX or any affiliate of NYFIX that would give the Exchange, any other facility of the Exchange, any other affiliate of the Exchange, or NYFIX an unfair advantage over its competitors.

The Exchange believes these measures effectively address the concerns noted above regarding the potential for conflicts of interest and informational advantages favoring NYFIX Millennium and NYFIX Securities vis-à-vis other non-affiliated market participants.

2. Statutory Basis

The Exchange believes that this filing is consistent with Section 6(b)[7] of the Exchange Act,[8] in general, and furthers the objectives of Section 6(b)(1),[9] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5)[10] of the Exchange Act because the rules summarized herein would create a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, 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. In particular, the Proposed Rule Change sets forth certain conditions under which the Routing Services will be provided so as to assure that the potential for conflicts of interests and informational advantages are adequately addressed. The conditions under which the Exchange is permitted to be affiliated with the entities conducting the Routing Services will also be limited to no more than 6 months.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78a, *et seq.*

[9] 15 U.S.C. 78f(b)(1).

[10] 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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.* Please include File No. SR–NYSEAMEX–2009–63 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 No. SR–NYSEAMEX–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 such filing also will be available for inspection and copying at the principal office of NYSE Amex. 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 No. SR–NYSEAMEX–2009–63 and should be submitted on or before October 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–23850 Filed 10–2–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60720; File No. SR–NYSEAmex–2009–64]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Commentary .06 to Rule 903, Series of Options Open for Trading

September 25, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 23, 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 Exchange. The Commission is publishing this notice to

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 .06 to Rule 903, Series of Options Open for Trading in order to establish strike price intervals of $0.50, beginning at $1, for certain options classes whose underlying security closed at or below $3 in it s primary market on the previous trading day. 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 *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 proposed rule change is based on a filing submitted by NASDAQ OMX PHLX Inc (''Phlx'') that was recently noticed for comment and approved by the Commission.[3]

The purpose of the proposed rule change is to expand the ability of investors to hedge risks associated with stocks trading at or under $3. Currently, Commentary .05 to NYSE Amex Rule 903 provides that the interval of strike prices of series of options on individual stocks may be $2.50 or greater where the strike price is $25 or less. Additionally, Commentary .06 to Rule 903 allows the Exchange to establish $1 strike price intervals (the ''$1 Strike Program'') on options classes overlying no more than fifty-five individual stocks designated by the Exchange. In order to be eligible for selection into the $1 Strike Program, the underlying stock must close below $50 in its primary market on the previous trading day. If selected for the $1 Strike Program, the Exchange may list strike prices at $1 intervals from $1 to $50, but no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day. The Exchange may also list $1 strikes on any other option class designated by another securities exchange that employs a similar $1 Strike Program its own rules.[4] The Exchange is restricted from listing any series that would result in strike prices being within $0.50 of a strike price set pursuant to Rule 903 Commentary .06(b).

The Exchange is now proposing to establish strike prices of $1, $1.50, $ 2, $2.50, $3 and $3.50 for certain stocks that trade at or under $3.00.[5] The listing of these strike prices will be limited to options classes whose underlying security closed at or below $3 in its primary market on the previous trading day, and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months. The listing of $0.50 strike prices would be limited to options classes overlying no more than 5 individual stocks (the ''$0.50 Strike Program'') as specifically designated by the Exchange. The Exchange would also be able to list $0.50 strike prices on any other option classes if those classes were specifically designated by other securities exchanges that employed a similar $0.50 Strike Program under their respective rules.

Currently, the Exchange may list options on stocks trading at $3 at strike prices of $1, $2, $3, $4, $5, $6, $7 and $8 if they are designated to participate in the $1 Strike Program.[6] If these stocks have not been selected for the Exchange's $1 Strike Program, the Exchange may list strike prices of $2.50, $5, $7.50 and so forth as provided in Commentary .05, but not strike prices of $1, $2, $3, $4, $6, $7 and $8.[7] The Exchange is now proposing to amend Commentary .06 to Rule 903 by adding new sub-paragraph (d) to list strike prices on options on a number of qualifying stocks that trade at or under $3.00, not simply those stocks also participating in the $1 Strike Program, in finer intervals of $0.50, beginning at $1 up to $3.50. Thus, a qualifying stock trading at $3 would have option strike prices established not just at $2.50, $5.00, $7.50 and so forth (for stocks not in the Exchange's $1 Strike Program) or just at $1, $2, $3, $4, $5, $6, $7 and $8 (for stocks designated to participate in the $1 Strike Program), but rather at strike prices established at $1, $1.50, $2, $2.50 $3 and $3.50.[8]

The Exchange believes that current market conditions demonstrate the appropriateness of the new strike prices. Recently the number of securities trading below $3.00 has increased dramatically.[9] Unless the underlying stock has been selected for the $1 Strike Program, there is only one possible in-the-money call (at $2.50) to be traded if an underlying stock trades at $3.00. Similarly, unless the underlying stock has been selected for the $1 Strike Program, only one out-of-the-money strike price choice within 100% of a stock price of $3 is available if an investor wants to purchase out-of-the-money calls. Stated otherwise, a purchaser would need over a 100% move in the underlying stock price in order to have a call option at any strike price other than the $5 strike price become in-the-money. If the stock is selected for the $1 Strike Program, the available strike price choices are somewhat broader, but are still greatly limited by the proximity of the $3 stock price to zero, and the very large percent gain or loss in the underlying stock price, relative to a higher priced stock,

[3] *See* Exchange Act Release No. 60466 (August 10, 2009), 74 FR 41475 (August 17, 2009) (SR–Phlx–2009–65). Approved in Exchange Act Release No. 60694 (September 18, 2009).

[4] The Exchange may not list long-term option series (''LEAPS'') at $1 strike price intervals for any class selected for the Program.

[5] The Exchange recently amended NYSE Amex Rule 916, Withdrawal of Approval of Underlying Securities or Options, to eliminate the $3 market price per share requirement for continued approval for an underlying security. The amendment eliminated the prohibition against listing additional series or options on an underlying security at any time when the price per share of such underlying security is less than $3. The Exchange explained in that proposed rule change that the market price for a large number of securities has fallen below $3 in the current volatile market environment. *See* Securities Exchange Act Release No. 59348, SR–NYSEALTR–2009–08 (February 3, 2009), 74 FR 6683 (February 10, 2009).

[6] Additionally, market participants may be able to trade $2.50 strikes on the same option at another exchange, if that exchange has elected not to select the stock for participation in its own similar $1 Strike Program.

[7] Again, market participants may also be able to trade the option at $1 strike price intervals on other exchanges, if those exchanges have selected the stock for participation in their own similar $1 Strike Program.

[8] The option on the qualifying stock could also have strike prices set at $5, $7.50 and so forth at $2.50 intervals (pursuant to Commentary .05 to Rule 903) or, if it has been selected for the $1 Strike Program, at $4, $5, $6, $7 and $8.

[9] As of July 31, 2009, stocks trading at or below $3 include E*Trade Financial Corporation, Ambac Financial Group, Inc., Alcatel-Lucent, Federal Home Loan Mortgage Corporation (Freddie Mac) and Federal National Mortgage Association (Fannie Mae). A number of these stocks are widely held and actively traded equities, and the options overlying these stocks also trade actively on NYSE Amex.

that would be required in order for strikes set at $1 or away from the stock price to become in-the-money and serve their intended hedging purpose.

As a practical matter, a low-priced stock by its very nature requires narrow strike price intervals in order for investors to have any real ability to hedge the risks associated with such a security or execute other related options trading strategies. The current restriction on strike price intervals, which prohibits intervals of less than $2.50 (or $1 for stocks in the $1 Strike Program) for options on stocks trading at or below $3, could have a negative affect on investors. The Exchange believes that the proposed $0.50 strike price intervals would provide investors with greater flexibility in the trading of equity options that overlie lower priced stocks by allowing investors to establish equity option positions that are better tailored to meet their investment objectives. The proposed new strike prices would enable investors to more closely tailor their investment strategies and decisions to the movement of the underlying security. As the price of stocks decline below $3 or even $2, the availability of options with strike prices at intervals of $0.50 could provide investors with opportunities and strategies to minimize losses associated with owning a stock declining in price.

With regard to the impact on system capacity, NYSE Amex 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)[10] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[11] in particular in that it is designed to promote just and equitable principles if 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 expanding the ability of investors to hedge risks associated with stocks trading at or below $3. The proposal should create greater trading and hedging opportunities and flexibility, and provide customers with the ability to more closely tailor investment strategies to the price movement of the underlying stocks, trading in many of which is highly liquid.

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[12] and Rule 19b–4(f)(6) thereunder.[13]

The Exchange has requested that the Commission waive the 30-day operative delay to permit the Exchange to compete effectively with Phlx by being able to list the same strike prices as Phlx. The Commission recently approved SR–Phlx–2009–65,[14] and therefore finds that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will encourage fair competition among the exchanges. Therefore, the Commission designates the proposal operative upon filing.[15]

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.* Please include File Number SR–NYSEAmex–2009–64 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–2009–64. 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

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 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 is deemed to have satisfied this requirement.

[14] *See* Securities Exchange Act Release No. 60694 (September 18, 2009) (SR–Phlx–2009–65) (order approving a $0.50 strike program substantially the same as the $0.50 Strike Program proposed by NYSE Amex).

[15] 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).

submissions should refer to File Number SR–NYSEAmex–2009–64 and should be submitted on or before October 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–23851 Filed 10–2–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60727; File No. SR–CBOE–2009–067]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Bid/Ask Differentials

September 28, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 21, 2009, 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, II, and III 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[3] and Rule 19b–4(f)(6) thereunder.[4] 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 its rules relating to bid/ask differentials. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Office of the Secretary, CBOE and at the Commission.

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

CBOE proposes to amend its rules pertaining to the bid/ask differential requirements. Currently, Rule 8.7(b)(iv) specifies the bid/ask differential requirements applicable to Market-Makers when bidding and offering in open outcry, during opening rotations and when quoting electronically on the Hybrid Trading System.[5] With respect to bidding and offering in open outcry and during opening rotations, the requirements vary depending on the price of the bid. For example, Rule 8.7(b)(iv)(A) states that the quote widths shall not be more than: $0.25 if the bid is less than $2; $0.40 where the bid is at least $2 but does not exceed $5; $0.50 where the bid is more than $5 but does not exceed $10; $0.80 where the bid is more than $10 but does not exceed $20; and $1 where the bid is more than $20. With respect to electronic quoting on the Hybrid Trading System, the bid/ask differential requirement is $5. Rule 8.7(b)(iv) also provides that CBOE may establish quote width differences other than those set forth above for one or more option series. Some or all of these quote width differentials are also applicable to LMMs in Hybrid 3.0 classes (see Rule 8.15), LMMs in Hybrid classes (see Rule 8.15A), DPMs (see Rule 8.85), and e-DPMs (see Rule 8.93), depending on the manner in which the market participant functions.

CBOE proposes to amend its rules to allow the Exchange to set the bid/ask differential requirements on a class by class basis, and delete from its rules the specific differentials identified in Rule 8.7(b)(iv). CBOE would announce the bid/ask differentials to its members via circular. Although CBOE at this time does not anticipate materially changing the bid/ask differentials from their current levels, it believes that this change provides it with additional flexibility to tailor the bid/ask differential requirements to particular option classes and to take into consideration the market conditions and the trading and liquidity in a particular option class and its underlying security when setting the bid/ask differentials. Under its existing rules, CBOE from time to time grants bid/ask relief in various option classes based on market conditions and it has not experienced any negative effects from such actions. CBOE believes that the proposed rule change will allow CBOE to continue to set the bid/ask differentials at an appropriate level which may be different than the existing bid/ask differentials, rather than waiting for market participants to request bid/ask relief as it traditionally has been done. CBOE notes that the rules of the Nasdaq Options Market do not contain any bid/ask differential requirements, even though CBOE does not anticipate mimicking that market structure. Accordingly, CBOE believes that this proposed change is consistent with the Act.

In connection with this proposal, CBOE proposes to make related changes to Rules 6.2B, 6.13, 6.25, 6.53C, 8.14, 8.15, 8.15A, 8.85, and 8.93, which currently reference the bid/ask differentials in Rule 8.7(b)(iv).

Finally, CBOE proposes to amend Rule 8.93(iv) to state that an e-DPM is obligated to assure that its market quotations comply with the minimum size requirements prescribed by CBOE, which minimum shall be at least one contract. Last year, CBOE amended its rules to allow the Exchange to set a minimum quotation size requirement for electronic and open outcry quotes on a class by class basis, provided the minimum set by the Exchange is at least one contract.[6] In that filing, changes to Rule 8.93 were inadvertently omitted.

2. Statutory Basis

The proposed rule change would permit the Exchange to set the bid/ask differential requirements on a class by class basis. CBOE believes that this flexibility will enable the Exchange to tailor the bid/ask differential requirements to particular classes and to take into consideration the market conditions and the trading and liquidity

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii)

[4] 17 CFR 240.19b–4(f)(6).

[5] Pursuant to Rule 1.1(aaa), reference to Hybrid Trading System includes the Hybrid 3.0 Platform unless otherwise specified.

[6] *See* Securities Exchange Act Release No. 58828 (October 21, 2008), 73 FR 63749 (October 27, 2008), granting immediate effectiveness to SR–CBOE–2008–107.