

the Exchange pursuant to Rule 19b-4 of the Act.<sup>10</sup>

(c) NYFIX will not share employees or databases with the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities, and will be housed in a separate office.

(d) NYFIX will only be notified of any changes or improvements to any of the Exchange's operations or trading facilities in the same manner that other persons are notified of such changes or improvements;

(e) NYFIX will not disclose any system or design specifications, or any other information, to any employees of the Exchange, any facility of the Exchange, or any other affiliate of the 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 Commission also notes that each of NYFIX Millennium and NYFIX Securities has the Financial Industry Regulatory Authority ("FINRA"), an unaffiliated self-regulatory organization ("SRO"), as its designated examining authority and neither broker-dealer is a member of the Exchange.<sup>11</sup>

The Commission finds that the temporary proposed affiliation between the Exchange and NYFIX Millennium and NYFIX Securities, pursuant to the proposed terms and conditions, is consistent with the Act, particularly Section 6(b)(5) thereunder.<sup>12</sup> The Commission continues to be concerned about potential unfair competition and conflicts of interest when an exchange, or one of its affiliates, is the parent company of a broker-dealer that provides Routing Services that may be in competition with services provided by members of that exchange. The Commission believes, however, that the temporary nature of the affiliation, together with the proposed terms and conditions, are reasonably designed to mitigate concern about potential unfair competition and conflicts of interest between the commercial interests of the

Exchange or its affiliates, and the Exchange's regulatory responsibilities.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NYSE-2009-96), as amended, is hereby approved.

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. 34-60978; File No. SR-CBOE-2009-068]

#### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change To Amend the \$1 Strike Program To Allow Low-Strike LEAPS

November 10, 2009.

On September 16, 2009, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend CBOE's \$1 Strike Program. The proposed rule change was published for comment in the **Federal Register** on October 7, 2009.<sup>3</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

LEAPS are long-term equity options that expire from 12 to 39 months from the time they are listed.<sup>4</sup> The proposed rule change expands the Exchange's \$1 Strike Program ("Program") to permit the exchange to list LEAPS with low strike prices<sup>5</sup> and at \$1 strike price

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<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> See Securities Exchange Act Release No. 60749 (September 30, 2009), 74 FR 51632.

<sup>4</sup> See CBOE Rule 5.8.

<sup>5</sup> CBOE, along with the other options exchanges, recently amended the Options Listing Procedures Plan ("OLPP") to adopt objective, exercise price range limitations applicable to options on individual equity securities, ETFs, and trust-issued receipts. See Securities Exchange Act Release No. 60531 (August 19, 2009), 74 FR 43173 (August 26, 2009) (approving Amendment No. 3 to the OLPP). The exercise price range limitations of paragraph (3)(g) of the OLPP state that the exercise price of each newly listed option on an equity security, ETF,

intervals. Specifically, the Exchange will be able to list LEAPS series having strike prices of \$1, \$2, \$3, \$4, and \$5 in up to 200 option classes on individual securities that are in the Exchange's Program or another exchange's Program.<sup>6</sup> CBOE believes that deep out-of-the-money put options that could be listed under this proposal are functionally similar to credit default swaps and could be a viable, liquid alternative to OTC-traded credit default swaps.

The margin requirements set forth in Chapter XII of the Exchange's rules and the position and exercise requirements set forth in CBOE Rules 4.11 and 4.12 will apply to these new series, and no changes to those requirements were proposed.

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, 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 believes that the low-strike LEAPS contemplated in this proposal will provide investors with a potentially useful investment choice. The proposal will extend to these options the benefits of a listed exchange market, which

or trust-issued receipt shall be fixed at a price per unit that is reasonably close to the price of the underlying security at or about the time of the series listing. Under paragraph (3)(g)(i), if the price of the underlying security is less than or equal to \$20, the exchange shall not list new option series with an exercise price more than 100% above or below the price of the underlying security; and if the price of the underlying security is greater than \$20, the exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security. However, paragraph (3)(g)(ii) of the OLPP states that these exercise price range limitations do not apply with regard to, among others, option classes participating in the Program. Therefore, LEAPS series listed under this proposal would not be subject to the exercise price range limitations contained in paragraph (3)(g).

<sup>6</sup> However, if the Exchange already has listed a LEAPS series with a \$2.50 strike price, it would be permitted under this proposal to list additional series with strike prices of \$1, \$4, and \$5, but not series with strike prices of \$2 or \$3. See CBOE Rule 5.5, Interpretation .01(a)(3).

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78a.

<sup>11</sup> See Notice.

<sup>12</sup> 15 U.S.C. 78(f)(b)(5).

include a centralized forum for price discovery, pre- and post-trade transparency, standardized contract specifications, and the guarantee of the Options Clearing Corporation.

The Commission believes that the proposal strikes a reasonable balance between the Exchange's desire to offer a wider array of products with the need to avoid unnecessary proliferation of options series and the corresponding increase in quotes. In approving the proposed rule change, the Commission has relied on the Exchange's representation that it has the necessary systems capacity to support the new options series that will be listed under this proposal. This approval order is conditioned on CBOE's adherence to this representation. The Commission expects the Exchange to continue to monitor for options with little or no open interest and trading activity and to act promptly to delist such options. In addition, the Commission expects that CBOE will monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, the Options Price Reporting Authority's, and vendors' automated systems.

#### Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-CBOE-2009-068), be, and hereby is, approved.

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60979; File No. SR-NSX-2009-06]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fee and Rebate Schedule to Exclude, for Purposes of Calculating the Automatic Execution Mode of Order Interaction ("AutoEx") Liquidity Adding Displayed Order Rebate, An ETP Holder's Lowest Full Trading Day's Liquidity Adding Volume From The Determination of The ETP Holder's "Liquidity Adding Average Daily Volume"

November 10, 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 October 29, 2009, National Stock Exchange, Inc. filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. ("NSX" or "Exchange") is proposing to amend the Fee and Rebate Schedule (the "Fee Schedule") issued pursuant to Exchange Rule 16.1(c) in order to exclude, for purposes of calculating the Automatic Execution Mode of order interaction ("AutoEx") liquidity adding displayed order rebate with respect to each ETP Holder during each measurement period, such ETP Holder's lowest full trading day's liquidity adding volume from the determination of the ETP Holder's "liquidity adding average daily volume."

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nsx.com>, at the principal office of the Exchange, 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 Exchange 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 these 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

With this rule change, the Exchange is proposing to make a change to the Fee and Rebate Schedule (the "Fee Schedule") solely with respect to calculation of the rebate for Displayed Orders that add liquidity in AutoEx<sup>3</sup>.

An ETP Holder's liquidity adding average daily volume ("Liquidity Adding ADV") is used, among other things, to determine the amount of an ETP Holder's liquidity adding Displayed Order rebate in AutoEx ("AutoEx Displayed Order Liquidity Adding Rebate"). Explanatory Endnote 3 of the Fee Schedule currently defines "Liquidity Adding ADV" as, "with respect to an ETP Holder<sup>11</sup>, the number of shares such ETP Holder has executed as a liquidity provider on average per trading day (excluding partial trading days) across all tapes on NSX for the calendar month (or partial month, as applicable) in which the executions occurred." The instant rule filing proposes to modify this definition to exclude from such calculation, solely for purposes of calculating the AutoEx Displayed Order Liquidity Adding Rebate, an ETP Holder's lowest full trading day's liquidity adding volume during each measurement period. Thus, solely for purposes of calculating the AutoEx Displayed Order Liquidity Adding Rebate, the ratio used to determine an ETP Holder's Liquidity Adding ADV during each measurement period would be adjusted by (x) excluding from the numerator the ETP Holder's lowest full trading day's volume of shares executed as a liquidity provider, and (y) reducing the denominator by one day.

The proposed rule change would not modify other calculations of average daily volume, volume tiers, or associated fees that are included in the Fee Schedule.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

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

<sup>11</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).