

Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549-1090.

All submissions should refer to File Number SR-BX-2009-088. 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 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 No. SR-BX-2009-088 and should be submitted on or before February 11, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

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

[FR Doc. 2010-1015 Filed 1-20-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61343; File No. SR-NYSEAmex-2009-94]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Commentary .01 to Rule 903G

January 13, 2010.

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 December 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 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 Commentary .01 to Rule 903G in order to extend until August 31, 2010, the current pilot period regarding the minimum value size for opening a FLEX Equity Option transaction (“Pilot Program”). 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 Pilot Program provides for an initial series opening transaction size to be 150 contracts (or \$1 million in underlying value, whichever is less).<sup>4</sup> The Exchange believes that the proposed reduction of the minimum value size for opening a series provides FLEX participating members and their customers with greater flexibility in structuring the terms of FLEX Equity Options to better suit the FLEX traders' particular needs. Prior to the initiation

of the Pilot Program, the minimum opening transaction value size in the case of FLEX Equity Options series was the lesser of (i) 250 contracts or (ii) the number of contracts overlying \$1 million in the underlying series.<sup>5</sup> The Pilot Program modifies the minimum opening size formula by reducing the “250 contracts” component to “150 contracts” (the \$1 million underlying value component continues to apply unchanged).<sup>6</sup>

The Pilot Program expired on December 19, 2009. The purpose of this proposed rule change is to extend the pilot period that applies to the minimum value size for an opening Flex Equity Options transaction until August 31, 2010. This is merely an extension. The Exchange is not seeking any other changes to the Pilot Program.<sup>7</sup>

In support of the proposed rule change, the Exchange is submitting to the commission [sic] a Pilot Program report (the “Report”) detailing the Exchange's experience with the Pilot Program. Specifically, the Report contains (i) data and analysis on the open interest and trading volume in FLEX Equity Options for which series were opened with a minimum opening size of 150 to 249 contracts with less than \$1 million in underlying value; and (ii) analysis on the types of investors that initiated opening FLEX Equity Options transactions (*i.e.*, institutional, high net worth or retail, if any). The Exchange is submitting the Report under separate cover and seeking confidential treatment under the Freedom of Information Act.

The Exchange believes that maintaining the minimum opening transaction value size broadens the base of institutional investors that use FLEX Equity Options to manage their trading

<sup>5</sup> Under this formula, an opening transaction in a FLEX Equity series in a stock priced at \$40 or more would reach the \$1 million limit before it would reach the contract size limit, *i.e.*, 250 contracts times the multiplier (100) times the stock price (\$40) equals \$1 million in underlying value. For a FLEX Equity series in a stock priced at less than \$40, the 250 contract size limit applies.

<sup>6</sup> Under this proposed formula, an opening transaction in a FLEX Equity series in a stock priced at approximately \$66.67 or more would reach the \$1 million limit before it would reach the contract size limit, *i.e.*, 150 contracts times the multiplier (100) times the stock price (\$66.67) equals just over \$1 million in underlying value. For a FLEX Equity series in a stock priced at less than \$66.67, the 150 contract size limit would apply.

<sup>7</sup> The Commission notes that the Exchange has stated that it will provide the Commission with an updated report 45 days before any request to extend or make permanent the current pilot program regarding the minimum value size for opening a FLEX Equity Option transaction. See E-mail from Andrew Stevens, Chief Counsel, U.S. Equities and Derivatives, NYSE Amex, to Jennifer Colihan, Special Counsel, Division of Trading and Markets, Commission, dated January 13, 2010.

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

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

<sup>4</sup> See Securities Exchange Act Release No. 58037 (June 26, 2008), 73 FR 38008 (July 2, 2008).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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

and investment risk, including investors that currently trade in the over-the-counter market for customized options which can take on contract characteristics similar to FLEX Options but for which similar opening size restriction do not apply. The Exchange believes that market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, enhanced efficiency in initiating and closing out positions; increased market transparency; and heightened contra-party creditworthiness due to the role of The Options Clearing Corporation as issuer and guarantor of FLEX Equity Options.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system. Specifically, the Exchange believes that reducing the minimum value sizes for certain opening transactions in FLEX Equity Options series thereby providing FLEX participating members and their customers greater flexibility to trade FLEX Equity Options will benefit the marketplace and market participants.

### 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 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 prior to 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, the

proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>12</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the original pilot program was published for notice and comment and no comments were received.<sup>13</sup> In addition, extending the pilot through August 31, 2010 does not raise any new or novel regulatory issues that were not previously considered in approving the original pilot. Based on the above, the Commission designates the proposal as operative upon filing.<sup>14</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:

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 the pre-filing requirement.

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> See *supra* note 4.

<sup>14</sup> For purposes only of waiving the 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).

### 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-2009-94 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-2009-94. 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 Section, 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-2009-94 and should be submitted on or before February 11, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-1017 Filed 1-20-10; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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