

Traders (“RSQTs”);<sup>7</sup> (ii) customers;<sup>8</sup> (iii) specialists, SQTs and RSQTs that receive Directed Orders (“Directed Participants”<sup>9</sup> or “Directed Specialists, RSQTs, or SQTs”<sup>10</sup>); (iv) Firms; (v) broker-dealers; and (vi) Professionals.<sup>11</sup> The current per-contract transaction charge depends on the category of market participant submitting an order or quote to the Exchange that removes liquidity.

The Exchange also currently assesses a per-contract rebate of transaction charges for orders or quotations that add liquidity in the select Symbols. The amount of the rebate depends on the category of participant whose order or quote was executed as part of the Phlx Best Bid and Offer.

The Exchange proposes to add the five additional options to the list of select Symbols and apply the applicable fees and rebates to these options.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions settling on or after May 3, 2010.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>13</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the addition of the options to the rebates for adding and

fees for removing liquidity is reasonable and equitable in that it will apply to all categories of participants in the same manner.

### 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 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 either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>14</sup> and paragraph (f)(2) of Rule 19b-4<sup>15</sup> thereunder. 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-Phlx-2010-64 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-Phlx-2010-64. 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 Web site viewing and printing 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 publicly available. All submissions should refer to File Number SR-Phlx-2010-64 and should be submitted on or before June 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62023; File No. SR-CBOE-2010-039]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Trade Options on S&P 500 Annual Dividend Index With an Applied Scaling Factor of 1

May 3, 2010.

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> notice is hereby given that on April 28, 2010, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>7</sup> An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

<sup>8</sup> This applies to all customer orders, directed and non-directed.

<sup>9</sup> For purposes of the fees and rebates related to adding and removing liquidity, a Directed Participant is a Specialist, SQT, or RSQT that executes a customer order that is directed to them by an Order Flow Provider and is executed electronically on PHLX XL II.

<sup>10</sup> See Exchange Rule 1080(l), “\* \* \* The term ‘Directed Specialist, RSQT, or SQT’ means a specialist, RSQT, or SQT that receives a Directed Order.” A Directed Participant has a higher quoting requirement as compared with a specialist, SQT or RSQT who is not acting as a Directed Participant. See Exchange Rule 1014.

<sup>11</sup> The Exchange defines a “professional” as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter “Professional”).

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

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

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 the Substance of the Proposed Rule Change**

CBOE proposes to trade options on the S&P 500 Annual Dividend Index with an applied scaling factor of 1. The Exchange is not proposing any rule text changes. The rule proposal is available on the Exchange’s Web site (<http://www.cboe.org/legal>), at the Exchange’s Office of the Secretary 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 aspects of such statements.

#### *A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The Securities and Exchange Commission previously approved CBOE’s proposed rule change, as modified Amendment No. 1, to list and trade cash-settled options that overlie the S&P 500 Dividend Index.<sup>5</sup> In the

filing, the Exchange stated that the S&P 500 Dividend Index is reported in absolute numbers (*e.g.*, 3, 5, 7) and that the Exchange would apply a scaling factor of 10 to the underlying index. The Exchange proposed the use of the scaling factor in the original filing because it was premised on the S&P 500 Dividend Index representing the accumulated ex-dividend amounts of all S&P 500 Index components over a specified *quarterly* accrual period. The use of a scaling factor was intended to increase the size of the underlying index value because it was expected to be a relatively low value.

In Amendment No. 1, the Exchange proposed to permit varying terms for the accrual period (*e.g.*, quarterly, semi-annually, annually). To date, the Exchange has only designated a quarterly accrual period for S&P 500 Dividend Index options. Beginning May 25, 2010, the Exchange plans to list options on the S&P 500 Annual Dividend Index, an index with a designated annual accrual period.<sup>6</sup> The Exchange plans to list options with a single expiration for each year (*e.g.*, Dec. 2010, Dec. 2011).<sup>7</sup> In the recent past, the final index value (at expiration) has ranged from the low 20s up to the upper 20s. The final value on December 18, 2009 was 22.81. Because the duration of an annual accrual period results in the underlying index value being higher than for lesser duration accrual periods, the Exchange proposes to apply a scaling factor of 1 to the underlying annual index. During each business day, CBOE will disseminate the underlying S&P 500 Annual Dividend Index value with the applied scaling factor of 1 through the Options Price Reporting Authority (“OPRA”) and/or one or more major market data vendors.

The use of a scaling factor of 10 was described in the purpose section of the filing and in the contract specifications that were submitted as Exhibit 3; therefore, the Exchange is not proposing any new or revised rule text to affect this change. Exhibit 3 presents revised contract specifications for S&P 500 Annual Dividend Index options.

##### **2. Statutory Basis**

The Exchange believes this rule proposal is consistent with the Act and the rules and regulations under the Act

constituents of the S&P 500 Index that are trading “ex-dividend” on that day.

<sup>6</sup> The Exchange will assign separate trading symbols to options overlying an index with a designated annual accrual period to distinguish them from options overlying an index with a designated quarterly accrual period.

<sup>7</sup> Standard & Poor’s has created and now calculates the S&P 500 Annual Dividend Index.

applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act<sup>9</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In particular, the proposed rule change seeks to permit the Exchange to apply a scaling factor of 1 to options on the S&P 500 Annual Dividend Index, an index with a designated annual accrual period, since the duration of an annual accrual period results in the underlying index value being higher than for lesser duration accrual periods.

#### *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.

#### *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 proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the

<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). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its 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 this requirement.

<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> See Securities Exchange Act Release No. 61136 (December 10, 2009), 74 FR 66711 (December 16, 2009) (SR-CBOE-2009-022). The S&P 500 Dividend Index represents the accumulated ex-dividend amounts of all S&P 500 Index component securities over a specified accrual period. Each day Standard & Poor’s calculates the aggregate daily dividend totals for the S&P 500 Index component securities, which are summed over any given calendar quarter and are the basis of the S&P 500 Dividend index. On any given day, the index dividend is calculated as the total dividend value for all constituents of the S&P 500 Index divided by the S&P 500 Index divisor. The total dividend value is calculated as the sum of dividends per share multiplied by the shares outstanding for all

Act<sup>12</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay to allow the Exchange to begin listing options overlying the S&P 500 Annual Dividend Index beginning on Tuesday, May 25, 2010.

The Commission believes that acceleration of the operative date is consistent with the protection of investors and the public interest because the Commission has previously considered and approved the listing of options on the S&P 500 Annual Dividend Index and the current proposal raises no new regulatory issues. Acceleration of the operative date will allow the Exchange to list options on the S&P 500 Annual Dividend Index on May 25, 2010, thereby providing investors with an additional investment tool and greater flexibility in meeting their investment objectives without delay. For these reasons, the Commission designates that the proposed rule change become operative on May 25, 2010.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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 No. SR-CBOE-2010-039 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-CBOE-2010-039. 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 Web site viewing and printing 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 CBOE. 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-CBOE-2010-039 and should be submitted on or before June 1, 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. 2010-10956 Filed 5-7-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62014; File No. SR-NYSEAMEX-2010-26]

### Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a Proposed Rule Change Deleting Rule 446—NYSE Amex Equities and Adopting New Rule 4370—NYSE Amex Equities To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

April 30, 2010.

#### I. Introduction

On March 11, 2010, NYSE Amex LLC ("NYSE Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") 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> a proposed rule change to delete Rule 446—NYSE Amex Equities and adopt new Rule 4370—NYSE Amex Equities to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission.<sup>4</sup> The proposed rule change was published for comment in the **Federal Register** on March 26, 2009.<sup>5</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to delete Rule 446—NYSE Amex Equities and adopt new Rule 4370—NYSE Amex Equities to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission.<sup>6</sup>

#### III. Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. ("NASD"), and NYSE Regulation, Inc. ("NYSER") consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d-2 under the Act, the New York Stock Exchange LLC ("NYSE"), NYSE and FINRA entered into an agreement ("Agreement") to reduce regulatory duplication for their members by

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

<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. 60534 (August 19, 2009), 74 FR 44410 (August 28, 2009) (order approving SR-FINRA-2009-036) ("Release No. 34-60534").

<sup>5</sup> See Securities Exchange Act Release No. 61744 (March 19, 2010), 75 FR 14648.

<sup>6</sup> See Release No. 34-60534, *supra* note 4.

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

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</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. 15 U.S.C. 78c(f).

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