

Nat'l ranking	Symbol	Company name
81 .....	USB .....	US Bancorp
44 .....	USO .....	United States Oil Fund LP
60 .....	UYG .....	ProShares Ultra Financials
96 .....	V .....	Visa Inc
10 .....	WFC .....	Wells Fargo & Co
133 .....	WYNN .....	Wynn Resorts Ltd
52 .....	X .....	United States Steel Corp
114 .....	XHB .....	SPDR S&P Homebuilders ETF
86 .....	XLI .....	Industrial Select Sector SPDR Fund
79 .....	XLU .....	Utilities Select Sector SPDR Fund
54 .....	XRT .....	SPDR S&P Retail ETF

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by identifying the options classes to be added to the Penny Pilot in a manner consistent with prior approvals and filings.

### B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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

Written comments were neither solicited nor received.

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

Pursuant to Section 19(b)(3)(A)(i) of the Act<sup>9</sup> and Rule 19b-4(f)(1) thereunder,<sup>10</sup> NASDAQ has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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-NASDAQ-2009-097 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-NASDAQ-2009-097. 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-NASDAQ-2009-097 and should be submitted on or before December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

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

[FR Doc. E9-27499 Filed 11-16-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60969; File No. SR-NYSE-2009-96]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Permitting Affiliation With NYFIX Millennium LLC and NYFIX Securities Corporation

November 9, 2009.

## I. Introduction

On September 22, 2009, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change, 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> proposing that the Exchange be affiliated with two registered broker-dealer subsidiaries of

<sup>7</sup> 15 U.S.C. 78f(b).

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

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

<sup>10</sup> 17 C.F.R. 240.19b-4(f)(1).

<sup>11</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.

NYFIX, Inc. ("NYFIX"), NYFIX Millennium L.L.C. ("NYFIX Millennium") and NYFIX Securities Corporation ("NYFIX Securities"), for a period not to exceed six months and subject to certain limitations and obligations. The proposed rule change was published for comment in the **Federal Register** on October 5, 2009.<sup>3</sup> On November 5, 2009, NYSE filed Amendment No. 1 to the proposed rule change, and the Exchange withdrew Amendment No. 1 to the proposed rule change on November 6, 2009. On November 9, 2009, NYSE filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change as modified by Amendment No. 2.

## II. Overview

On August 26, 2009, NYSE Technologies entered into an Agreement and Plan of Merger ("Merger Agreement") with NYFIX and CBR Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of NYSE Technologies. Under the terms of the Merger Agreement, CBR Acquisition Corp. will merge with and into NYFIX, with NYFIX surviving the merger as a direct wholly owned subsidiary of NYSE Technologies ("Merger"). Following the Merger, both the Exchange and NYFIX will be indirect wholly owned subsidiaries of NYSE Euronext. Consequently, NYFIX, and its subsidiaries NYFIX Millennium and NYFIX Securities, will be affiliates of the Exchange.

As a result of the Merger, NYSE Technologies will acquire, among other things, NYFIX's Transaction Services Division. In the U.S., the Transaction Services Division is currently composed of two U.S. registered broker-dealer subsidiaries: NYFIX Millennium, which is also an alternative trading system registered under Regulation ATS under the Act;<sup>5</sup> and, NYFIX Securities. In addition to other services provided by NYFIX Millennium and NYFIX Securities, (1) NYFIX Millennium provides routing of orders that are not matched within the NYFIX Millennium matching system to marketplaces such as exchanges, electronic communication

networks, and ATSs, which are not operated by NYFIX; and (2) NYFIX Securities provides direct electronic market access and algorithmic trading products (together, "Routing Services").

The Exchange proposes to be affiliated with NYFIX Millennium and NYFIX Securities for a period not to exceed six months and subject to certain terms and conditions that the Exchange believes effectively address concerns regarding the (1) the potential for conflicts of interest where an exchange is affiliated with a broker-dealer conducting an order routing business that may interact with the Exchange itself, and (2) the potential for informational advantages that could place such an affiliated broker-dealer at a competitive advantage in comparison with other non-affiliated broker-dealers.

## III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; 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 the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest and the potential for unfair competitive advantage.<sup>8</sup> The proposed relationship

raises similar concerns in that the Exchange will be affiliated with two broker-dealers that provide Routing Services for orders that may be routed to the Exchange in competition with Exchange members. The Exchange has requested that the Commission approve its proposed affiliation with NYFIX Millennium and NYFIX Securities on a temporary basis, not to exceed six months, subject to certain conditions designed to address such concerns.

Specifically, so long as the Exchange is affiliated with NYFIX Millennium or NYFIX Securities and with respect to the Routing Services provided by each:<sup>9</sup>

(1) Neither NYFIX Millennium nor NYFIX Securities are members of the Exchange nor will they become members of the Exchange;

(2) NYFIX does not offer order routing services other than the Routing Services, and none of the Routing Services will be modified unless such modification is approved by the Commission;

(3) NYFIX will not engage in proprietary trading;

(4) NYFIX will not accept any new clients for the Routing Services after the Merger;

(5) There will continue to be independent functionality of, and full public access to, NYSE facilities; and

(6) There will be a complete separation between NYFIX, on the one hand, and the Exchange and its affiliates, on the other (e.g., no shared office space, no shared employees, no shared systems).

The Exchange may furnish to NYFIX the same information on the same terms that the Exchange makes available in the normal course of business to any other person. Specifically:

(a) NYFIX must not be provided an information advantage concerning the operation of the Exchange or any of its facilities, particularly regarding changes and improvements to the trading systems, that are not available to the industry generally.

(b) NYFIX will be prevented from having any advance knowledge of proposed changes or modifications to the operations of the Exchange or its facilities, including but not limited to advance knowledge of related filings by

<sup>3</sup> Securities Exchange Act Release No. 60737 (September 29, 2009), 74 FR 51209 ("Notice").

<sup>4</sup> In Amendment No. 2, the Exchange clarified that, with respect to the conditions on the Exchange's affiliation with NYFIX Millennium and NYFIX Securities, references to NYFIX also refer to its subsidiaries, NYFIX Millennium and NYFIX Securities. This technical amendment does not require notice and comment, as it did not materially affect the substance of the rule filing.

<sup>5</sup> 17 CFR 242.300-303.

<sup>6</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>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> See, e.g., Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order approving combination of NYSE and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-Amex-2008-62) (order approving acquisition of the American Stock Exchange by NYSE Euronext); 59135 (December 22,

2008), 73 FR 79954 (December 30, 2008) (SR-ISE-2009-85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR-NYSE-2008-120) (order approving a joint venture between NYSE and BIDS Holdings L.P.).

<sup>9</sup> For the conditions set forth below, references to NYFIX also refer to its subsidiaries NYFIX Millennium and NYFIX Securities. See Amendment No. 2, *supra* note 4.

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

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)(5).

<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>17</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,