

to the day trading requirements, customers are permitted to engage in day trading provided they day trade within a specific dollar limit, referred to as the day trading buying power.<sup>11</sup> Customers that day trade in excess of their day trading buying power are required to deposit additional funds and/or securities to meet a special maintenance margin deficiency, also referred to as a day trade margin call. In a strategy-based margin account, day trade margin calls are due within five business days.<sup>12</sup> In a portfolio margin account, margin deficiencies are due within three business days.<sup>13</sup> FINRA believes that day trade margin calls incurred in a portfolio margin account should also be met within three business days. The proposed rule change would amend NASD Rule 2520(g)(13) and Incorporated NYSE Rule 431(g)(13) to explicitly provide that day trade margin deficiencies are due within three business days.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date of the proposed rule change is August 1, 2008.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>14</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes it is in the public interest to codify its stated interpretation with respect to monitoring concentrated equity positions and the timing of day trading margin calls in the rule text.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>11</sup> "Day-trading buying power" is defined in NASD Rule 2520(f)(8)(B)(iii) and Incorporated NYSE Rule 431(f)(8)(B)(iii) to mean the equity in the customer's account at the close of business of the previous day, less any maintenance margin requirement as prescribed in the rule, multiplied by four for equity securities.

<sup>12</sup> See NASD Rule 2520(f)(8)(C) and Incorporated NYSE Rule 431(f)(8)(C).

<sup>13</sup> See NASD Rule 2520(g)(10)(A) and Incorporated NYSE Rule 431(g)(10)(A).

<sup>14</sup> 15 U.S.C. 78o-3(b)(6).

### *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

Because the foregoing proposed rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and paragraph (f)(1) of Rule 19b-4 thereunder.<sup>16</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:

### *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-FINRA-2008-042 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2008-042. 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

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

<sup>16</sup> 17 CFR 240.19b-4(f)(1).

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 FINRA. 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-FINRA-2008-042 and should be submitted on or before August 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-18238 Filed 8-6-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58267; File No. SR-ISE-2008-59]

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 2009 To Permit the Listing and Trading of Additional Index Options Series That Do Not Meet Current Rule 2009 Requirements, if Such Options Series Are Listed and Traded on at Least One Other National Securities Exchange**

July 30, 2008.

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 July 30, 2008, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by ISE. ISE filed the proposed rule change as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the

<sup>17</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.

Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. 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**

ISE proposes to amend Rule 2009 to permit the listing and trading of additional index options series that do not meet current Rule 2009 requirements, if such options series are listed and traded on at least one other national securities exchange. The text of the proposed rule change is available at ISE, the Commission's Public Reference Room, and <http://www.ise.com>.

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

In its filing with the Commission, ISE included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISE 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 Exchange proposes to add new Supplementary Material .03 to Rule 2009 to permit the listing and trading of additional index options series that do not meet current Rule 2009 requirements, if such options series are listed on at least one other national securities exchange in accordance with the applicable rules of such exchange for the listing and trading of index options. For each additional options series listed by the Exchange pursuant to proposed Supplementary Material .03, the Exchange would submit a proposed rule change with the Commission that is effective upon filing within the meaning of Section 19(b)(3)(A) under the Act.

Rule 2009 provides the mechanism for the Exchange to list or open options expiration month series on particular index options classes approved for listing and trading on the Exchange. In general, up to a six expiration month series may be listed at any one time. This proposal seeks to permit the

Exchange to list additional index options expiration month series if another options exchange does so, regardless of whether the additional series listing complies with the requirements of Rule 2009.

Rule 2009 permits the Exchange to open options expiration month series on approved index options classes as follows: (i) Consecutive Month Series; (ii) Cycle Month Series; (iii) Long-Term Options Series; (iv) Short-Term (1 week) Options Series; and (v) Quarterly Options Series.

##### **Consecutive Month Series**

Under Rule 2009(a)(3), Consecutive Month Series options are a series of options, within a particular class of stock index options, having up to four consecutive expiration months which can be opened for simultaneous trading. The shortest-term series permissible are series initially having no more than two months to expiration.

##### **Cycle Month Series**

Under Rule 2009(a)(3), the Exchange may designate one expiration cycle for each class of stock index options, consisting of four calendar months occurring at three-month intervals. With respect to any particular class of stock index options, Cycle Month Series options expiring in three of the four cycle months designated by the Exchange for that class may be traded simultaneously with the shortest-term series initially having approximately three months to expiration.

##### **Long-Term Option Series**

Under Rule 2009(b), the Exchange may list series of options having up to sixty months to expiration for any particular class of stock index options. These Long-term Options Series may be traded simultaneously with Consecutive Month Series options as well as Cycle Month Series options.

##### **Short Term (1 week) Option Series**

Under Rule 2009(.01), the Exchange may open for trading, on any business Friday, series of options that expire at the close of business on the following Friday. The Exchange may select up to five currently listed option classes on which Short Term Option Series may be opened. Additionally, the Exchange may list Short Term Option Series on any option classes that are selected by other options exchanges.

##### **Quarterly Options Series**

Under Rule 2009(.02), the Exchange may list and trade options series that expire at the close of business on the last business day of a calendar quarter.

Quarterly Options Series for up to five currently listed stock index options classes or options classes for options on ETFs may be listed. The Exchange may also list Quarterly Options Series on any options classes that are selected by other options exchanges.

Consistent with this proposal, the index options class must either be specifically reviewed and approved by the Commission under Section 19(b)(2) of the Act and rules thereunder, or comply with Rule 2009(c), for the Exchange to be able to list the additional series.

The ability of the Exchange to list and trade additional series of an index options class that may not meet the requirements of Rule 2009 if another options exchange lists such expiration month series, is appropriate and necessary in order to remain competitive and provide customers with the full offering of index option products. Although the proposal may result in an incremental increase in message and quote traffic for systems of the Exchange and the Options Price Reporting Authority (OPRA), the Exchange expects the operational impact of such increase in quote traffic to be minimal.

In order for the Exchange to list any additional expiration month series of an index option class pursuant to new Supplementary Material .03 to Rule 2009: (1) Such series must be already listed on another options exchange; (2) such series must belong to an index options class that has been specifically reviewed and approved by the Commission under Section 19(b)(2) of the Act or that complies with Rule 2009(c); and (3) the Exchange must submit a proposed rule change with the Commission that is effective upon filing within the meaning of Section 19(b)(3)(A) of the Act.<sup>5</sup> In addition, the proposal would allow the Exchange the ability to quickly list and trade additional expiration month series of an index options class based on the listing of the series by another options exchange.

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

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>6</sup> Specifically, the Exchange

<sup>5</sup> Rule 2009(c) provides the requirements that must be met before those specific options groups may be traded on the Exchange pursuant to Rule 19b-4(e) under the Act.

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

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

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

believes the proposed rule change is consistent with the requirement of Section 6(b)(5) of the Act<sup>7</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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

ISE 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*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### **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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed under Rule 19b-4(f)(6) under the Act normally may not become operative prior to 30 days after the date of filing.<sup>10</sup> However, Rule 19b-4(f)(6)(iii)<sup>11</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. The Exchange asserts that this is appropriate and necessary in order to remain competitive and provide customers with the full offering of index option products. Additionally, this

proposed rule change is based on an American Stock Exchange rule change previously approved by the Commission.<sup>12</sup> 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 another self-regulatory organization recently adopted a substantially similar rule change and that this filing raising no new regulatory issues.<sup>13</sup> The Commission hereby grants the Exchange's request and 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:

#### *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-ISE-2008-59 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-ISE-2008-59. 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, 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 ISE. 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-ISE-2008-59 and should be submitted on or before August 28, 2008.

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

**Florence E. Harmon,**

*Acting Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58269; File No. SR-NYSE-2008-65]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the Portfolio Margin Program**

July 30, 2008.

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 July 29, 2008, New York Stock Exchange LLC ("NYSE" or the "Exchange") 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 substantially prepared by the self-regulatory organization. The Commission is publishing this notice to

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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> In addition, Rule 19b-4(f)(6)(iii) under the Act 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. ISE has complied with this requirement.

<sup>11</sup> *Id.*

<sup>12</sup> See Securities Exchange Act Release No. 57916 (June 4, 2008), 73 FR 33125 (June 11, 2008) (Order, and Amendment No. 1 Thereto, to Amend Rule 903C to Permit the Listing and Trading of Additional Index Options Series) (SR-AMEX-2008-14).

<sup>13</sup> See *supra* note 12.

<sup>14</sup> For purposes only of waiving the 30-day operative delay of this proposal, 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).

<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.