

is not publishing the amendment for comment.

*Section IV.C is revised to read:*

In its response to comments, FINRA stated that it intended to implement the proposed rule change *at least* 180 days from the date of this approval order.<sup>1</sup> For purposes of clarity, in Amendment No. 2, FINRA requested that the proposed rule change be implemented at least six (6) months from the date of SEC approval, but no later than nine (9) months from SEC approval. The Commission believes that this is an appropriate time frame for members to prepare to comply with the proposed rules.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>2</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58926; File No. SR-ISE-2008-82]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Temporarily Increase the Number of Additional Quarterly Options Series

November 10, 2008.

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 November 6, 2008, the International Securities Exchange, LLC ("Exchange" or "ISE") 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 ISE proposes to amend Supplementary Material .03 to Rule 504, *Quarterly Options Series Pilot Program*, to temporarily increase the number of

additional Quarterly Options Series ("QOS") in exchange-traded fund ("ETF") options from sixty (60) to one hundred (100) that may be added by the Exchange. The text of the proposed rule change is as follows, with deletions in [brackets] and additions in *italics*.

#### Rule 504. Series of Options Contracts Open for Trading

\* \* \* \* \*

##### Supplementary Material to Rule 504

.01-.02 No change.

.03 Quarterly Options Series Pilot Program: 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"). The Exchange may list Quarterly Options Series for up to five (5) currently listed options classes that are either index options or options on exchange traded funds ("ETF"). In addition, the Exchange may also list Quarterly Options Series on any options classes that are selected by other securities exchanges that employ a similar pilot program under their respective rules.

(a)-(g) No change.

(h) *During the last quarter of 2008 (and for the new expiration month being added after December Quarterly Options Series expiration), the Exchange may list up to one hundred (100) additional series per expiration month for each Quarterly Options Series in ETF options.*

\* \* \* \* \*

#### 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 self-regulatory organization 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 purpose of this proposed rule change is to temporarily increase the

number of additional QOS in ETF options from sixty (60) to one hundred (100) that may be added by the Exchange. To effect this change, the Exchange is proposing to add new subparagraph (h) to Supplementary Material .03 to Rule 504.

Because of the current, unprecedented market conditions, the Exchange has received requests from market participants to add lower priced strikes for QOS in the Energy Select Sector SPDR ("XLE"), the DIAMONDS Trust, Series 1 ("DIA") and the Standard and Poor's Depositary Receipts/SPDRs ("SPY"). For example, for December 2008 expiration, there is demand for strikes (a) ranging from \$20 up through and including \$40 for XLE, (b) ranging from \$60 up through and including \$75 for DIA, and (c) ranging from \$74 up through and including \$85 for SPY. These strikes are much lower than those currently listed for which there is open interest.

However, under current Rule 504, the Exchange cannot honor these requests because the maximum number of additional series, sixty (60), has already been listed. The Exchange is therefore seeking to temporarily increase the number of additional QOS that may be added to one hundred (100). The increase of additional series would be permitted immediately for expiration months currently listed and for expiration months added throughout the last quarter of 2008, including the new expiration month added after December 2008 expiration.

The Exchange believes that this proposal is reasonable and will allow for more efficient risk management. The Exchange believes this proposal will facilitate the functioning of the Exchange's market and will not harm investors or the public interest. The Exchange believes that user demand and the recent downward price movements in the underlying ETFs warrants a temporary increase in the number of strikes for all QOS in ETF options. Currently, the Exchange list QOS in five ETF options: (1) Nasdaq-100 Index Tracking Stock ("QQQQ"); (2) iShares Russell 2000 Index Fund ("IWM"); (3) DIA; (4) SPY; and (5) XLE. The below chart provides the historical closing prices of these ETFs over the past couple of months:

<sup>1</sup> See FINRA Letter, *supra* note 10.

<sup>2</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.

| ETF       | 10/27/08 | 10/13/08 | 10/6/08 | 9/30/08 | 8/29/08 | 7/31/08 |
|-----------|----------|----------|---------|---------|---------|---------|
| QQQ ..... | 28.69    | 35.13    | 34.86   | 38.91   | 46.12   | 45.46   |
| IWM ..... | 44.86    | 56.98    | 59.72   | 68.00   | 73.87   | 71.32   |
| DIA ..... | 80.26    | 95.03    | 99.90   | 108.36  | 115.45  | 113.70  |
| SPY ..... | 83.95    | 101.35   | 104.72  | 115.99  | 128.79  | 126.83  |
| XLE ..... | 40.86    | 50.55    | 54.89   | 63.30   | 74.65   | 74.40   |

The additional series will enable the Exchange to list in-demand, lower priced strikes.

The Exchange represents that it has the necessary systems capacity to support the new options series that will result from this proposal. Further, as proposed, the Exchange notes that these series would temporarily become part of the pilot program and will be considered by the Commission when the Exchange seeks to renew or make permanent the pilot program in the future. In addition, the Exchange states that in the event that current market volatility continues, it may seek to continue (through a rule filing) the time period during which the additional series proposed by this filing may be added.

## 2. Statutory Basis

Because the current rule proposal is responsive to the current, unprecedented market conditions, is limited in scope as to QOS in ETF options and as to time, and because the additional new series can be added without presenting capacity problems, the Exchange believes the rule proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>3</sup> Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act.<sup>4</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.

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

The proposed rule change does not 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 rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 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>5</sup> and Rule 19b-4(f)(6) thereunder.<sup>6</sup>

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will enable ISE to better meet customer demand in light of recent increased volatility in the marketplace.<sup>7</sup> Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 Commission deems this requirement to be met.

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

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-2008-82 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-ISE-2008-82. 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

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

<sup>4</sup> 15 U.S.C. 78f(b)(5).

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-ISE-2008-82 and should be submitted on or before December 10, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**  
Acting Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58935; File No. SR-ndash;NSX-2008-19]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rule 16 and the NSX Fee Schedule for Order Delivery Mode Transactions

November 13, 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 November 5, 2008, National Stock Exchange, Inc. (“NSX” or the “Exchange”) 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 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 is proposing to amend Exchange Rule 16.2(b) and the NSX Fee and Rebate Schedule (the “Fee Schedule”) issued pursuant to Exchange Rule 16.1(c) in order to (i) eliminate the rebate for adding liquidity in Order Delivery mode of order interaction for all securities and (ii) eliminate the trade and quote market data revenue credit in Order Delivery mode for all securities.

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.

<sup>8</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.

### 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 eliminate all liquidity adding rebates and market data revenue credits in Order Delivery mode of order interaction (“Order Delivery Mode”).<sup>3</sup> In particular, for securities in Order Delivery Mode, this rule change proposes to reduce the rebate for adding liquidity to zero across all Tapes and regardless of the price at which the securities are trading.<sup>4</sup>

In addition, with respect to Tape B and C securities in Order Delivery Mode, the instant filing proposes to eliminate the market data revenue credit in both trades and quotes. Currently in Order Delivery Mode, ETP Holders receive a credit of 50% of both trade and quote market data revenues for Tape B and C securities, regardless of price. This credit is proposed to be eliminated for all Tape B and C securities executed in Order Delivery Mode, regardless of price, which effectively eliminates tape revenue sharing in Order Delivery Mode.<sup>5</sup>

Because as a result of the proposed rule change there would be no tape credit sharing program under either

<sup>3</sup> This rule change proposes no changes to the fees and rebates applicable to securities executed in the Automatic Execution (“Auto Ex”) mode of order interaction under current NSX Rule 11.13(b)(1).

<sup>4</sup> In particular, for securities trading at or above one dollar in Order Delivery Mode, this rule change proposes to reduce to zero the rebate for adding liquidity from \$0.0023 per share executed for Tape A, and from \$0.0025 per share executed for Tapes B and C. For securities which trade under one dollar in Order Delivery Mode, this rule change proposes to reduce to zero the rebate for adding liquidity from 0.10% of the trade value, where “trade value” means a dollar amount equal to the price per share multiplied by the number of shares executed.

<sup>5</sup> Pursuant to SR-NSX-2008-17, the Exchange previously eliminated the tape revenue sharing credit program for all Tape A securities in Order Delivery Mode.

Order Delivery Mode or Automatic Execution mode of order interaction (“AutoEx”), the instant rule filing proposes to simplify Rule 16.2 by eliminating the text of Rule 16.2(b) (“Tape Credits”) in its entirety. To the extent that the Consolidated Tape Association or the Nasdaq Securities Information Processor subsequently adjusts any Tape A, Tape B or Tape C revenue earned by the Exchange for any period(s) during which the tape revenue credit program was in effect, credits paid to ETP Holders would be adjusted, as necessary, in accordance with the rules in effect during such period, including the “De Minimis Credits” rule under current Rule 16.2(b)(5) which establishes an eligibility threshold of \$250 per calendar quarter for participation in the tape credit program.

#### No Changes to Automatic Execution Mode

For purposes of clarity, the proposed rule change proposes no modifications to the fees and rebates relating to any trades in AutoEx.

#### Rationale

The Exchange has determined that these changes are necessary to increase the revenue of the Exchange and to adequately fund its regulatory and general business functions. The proposed modification is reasonable and equitably allocated to those ETP Holders that opt to provide liquidity in Order Delivery Mode, and is not discriminatory because ETP Holders are free to elect whether to send orders in all tapes through the Order Delivery Mode, through AutoEx, and as liquidity providing trades and quotes. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

#### Operative Date and Notice

The Exchange intends to make the proposed credit and rebate structure effective on filing of this proposed rule for trading on November 6, 2008. Pursuant to Exchange Rule 16.1(c), the Exchange will “provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange” through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange’s Web site ([www.nsx.com](http://www.nsx.com)).

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the