

#### IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC. In particular, the Commission believes the proposal is consistent with Section 17A(b)(3)(F) of the Act,<sup>8</sup> which requires that the rules of a registered clearing agency are designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions. DTC's creation of a service to assist issuers and their agents fulfill their regulatory obligations to monitor and limit the number of beneficial shareholders of their closely held securities should provide a meaningful incentive for issuers and participants to utilize DTC's depository services, which should provide more efficient processing of such transactions by reducing the incidence of physical processing outside of DTC.

The Commission duly notes the importance of the issue of short selling that the commenter appeared to be expressing and will continue to monitor developments in this area and assert its oversight responsibilities of industry participants with the view to ensure that appropriate safeguards are in place to facilitate the prompt and accurate clearance and settlement of securities transactions and to protect investors. However, that issue is outside the scope and purpose of this proposed rule change, which is to implement a service to allow issuers of closely held securities to enhance their compliance with federal securities laws.

#### V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act<sup>9</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (File No. SR-DTC-2008-11) be and hereby is approved.<sup>11</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59097; File No. SR-FINRA-2008-057]

#### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Update Rule Cross-References and Make Other Various Non-Substantive Technical Changes to FINRA Rules00

December 12, 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 December 3, 2008, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) 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 FINRA. FINRA designated the proposed rule change as "non-controversial" under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal 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

FINRA is proposing to update rule cross-references and make other various non-substantive technical changes to FINRA rules that have been adopted in the consolidated FINRA rulebook but not yet implemented.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA is in process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook").<sup>5</sup> That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive technical changes in the Consolidated FINRA Rulebook. The proposed rule change would effectuate those amendments in certain rules that have been approved by the Commission but not yet implemented in the Consolidated FINRA Rulebook.

During the months of August and September 2008, the Commission approved nine FINRA proposed rule changes ("Phase 1 Rules").<sup>6</sup> Those rules

<sup>5</sup> The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). For more information about the rulebook consolidation process, see *FINRA Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

<sup>6</sup> See Securities Exchange Act Release No. 58421 (August 25, 2008), 73 FR 51032 (August 29, 2008) (Order Approving File No. SR-FINRA-2008-025); Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (Order Approving File No. SR-FINRA-2008-033); Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (Order Approving File No. SR-FINRA-2008-039); Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving File Nos. SR-FINRA-2008-021; SR-FINRA-2008-022; SR-FINRA-2008-026; SR-FINRA-2008-028 and SR-FINRA-2008-029); Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2,

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>9</sup> 15 U.S.C. 78q-1.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>12</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>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

will be implemented on December 15, 2008.<sup>7</sup> The proposed rule change generally would make several types of changes to those approved rules. First, it would update rule cross-references. For example, references to NASD rules would be changed to reference the new corresponding FINRA rules. In addition, the proposed rule change would update FINRA Rule 7410(g) to reference New York Stock Exchange Rule 132B, rather than Rule 80A, pursuant to a previously approved New York Stock Exchange rule filing.<sup>8</sup>

Second, the proposed rule change would adopt into the Consolidated FINRA Rulebook without material change new NASD rules that were approved after the Phase 1 Rules were submitted to the Commission: NASD Rules 12905 and 13905.<sup>9</sup> It would also update the Consolidated FINRA Rulebook to account for amendments to NASD and Incorporated NYSE Rules that were approved after the Phase I Rules were submitted to the Commission. Those affected rules are FINRA Rules 6220, 6275, 6540, 6560 (since deleted), 6622, 6730 and 9217.<sup>10</sup>

Third, the proposed rule change would delete a reference in FINRA Rule 5110 to "SEC Regulation B", which previously was rescinded.<sup>11</sup> In that same FINRA rule, the proposed rule change would add language that inadvertently was left out of the existing NASD rule when that NASD rule was

adopted without material change into the Consolidated FINRA Rulebook.<sup>12</sup> The proposed rule change also would delete in FINRA Rule 6440 references to certain subparagraphs of SEA Rule 15c2-11 that no longer exist.

Fourth, the proposed rule change would replace references to the SEC's Electronic Data Gathering and Retrieval ("EDGAR") System with its new name, the Interactive Data Electronic Applications ("IDEA") System. Finally, the proposed rule change would update FINRA Rules 4560 and 5110 to reflect a change in FINRA style convention when referencing SEC rules and regulations.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change on December 15, 2008, the date on which the previously approved rule changes will also be implemented.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>13</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 the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

### 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.

### 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 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 after the date of 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>14</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>15</sup> As required under Rule 19b-4(f)(6)(iii),<sup>16</sup> FINRA provided 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 filing of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to the 30th day after the date of filing.<sup>17</sup> However, Rule 19b-4(f)(6)(iii)<sup>18</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA requested that the Commission waive the 30-day operative delay and designate the proposed rule change to become operative upon filing so that FINRA can implement the proposed rule change on December 15, 2008, the same date on which the previously approved rule changes relating to the Consolidated FINRA Rulebook will be implemented. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. In particular, the Commission does not believe that the proposed rule change presents any novel issues. The proposed rule change makes non-substantive changes to update FINRA rules in the Consolidated FINRA Rulebook to reflect changes to FINRA rules previously published for comment by the Commission. Accordingly, the Commission designates the proposed rule change to be operative upon filing with the Commission.<sup>19</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,

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

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> See *id.*

<sup>18</sup> *Id.*

<sup>19</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).

2008) (Order Approving File No. SR-FINRA-2008-027); Securities Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (Order Approving File No. SR-FINRA-2008-030).

<sup>7</sup> See FINRA Regulatory Notice 08-57 (October 2008) (FINRA Announces SEC Approval and Effective Date for New Consolidated FINRA Rules).

<sup>8</sup> See Securities Exchange Act Release No. 56726 (October 31, 2007), 72 FR 62719 (November 6, 2007) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSE-2007-96).

<sup>9</sup> See Securities Exchange Act Release No. 58739 (October 6, 2008), 73 FR 60738 (October 14, 2008) (Order Approving File No. SR-FINRA-2008-005).

<sup>10</sup> See Securities Exchange Act Release No. 55351 (February 26, 2007), 72 FR 9810 (March 5, 2007) (Order Approving File No. SR-NASD-2005-146); Securities Exchange Act Release No. 58532 (September 12, 2008), 73 FR 54649 (September 22, 2008) (Order Approving File No. SR-NASD-2007-041); Securities Exchange Act Release No. 58331 (August 8, 2008), 73 FR 47990 (August 15, 2008) (Order Approving File No. SR-FINRA-2008-016); Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (Order Approving File No. SR-FINRA-2008-039); Securities Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) (Order Approving File No. SR-FINRA-2008-036); Securities Exchange Act Release No. 58520 (September 11, 2008), 73 FR 54193 (September 18, 2008) (Order Approving File No. SR-FINRA-2008-040).

<sup>11</sup> See Securities Exchange Act Release No. 37262 (May 31, 1996), 61 FR 30397 (June 14, 1996) (File No. S7-6-96).

<sup>12</sup> See Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (Order Approving File No. SR-FINRA-2008-039, which failed to include language adopted in SR-NASD-2001-046).

<sup>13</sup> 15 U.S.C. 78o-3(b)(6).

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-2008-057 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-2008-057. 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 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-2008-057 and should be submitted on or before January 12, 2009.

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

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59092; File No. SR-ISE-2008-93]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

December 12, 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 December 8, 2008, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III 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 is proposing to amend its Schedule of Fees to establish fees for transactions in options on 2 Premium Products.<sup>3</sup> The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the principal office of the Exchange, 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 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 Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the iShares Silver Trust ("SLV")<sup>4</sup> and the iShares® COMEX Gold Trust ("IAU").<sup>5</sup> The Exchange represents that SLV and IAU are eligible for options trading because they constitute "Exchange-Traded Fund Shares," as defined by ISE Rule 502(h).

All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is proposing to adopt an execution fee for all transactions in options on SLV and IAU.<sup>6</sup> The amount of the execution fee

<sup>4</sup> iShares® is a registered trademark of Barclays Global Investors, N.A. All other trademarks, service marks or registered trademarks are the property of their respective owners. The iShares Silver Trust's ("SLV") sponsor is Barclays Global Investors International, Inc. ("BGII"), a subsidiary of Barclays Bank PLC. SLV is not sponsored, endorsed, sold or promoted by BGII, and BGII makes no representation regarding the advisability of investing in SLV. BGII has not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on SLV or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on SLV or with making disclosures concerning options on SLV under any applicable federal or state laws, rules or regulations. BGII does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

<sup>5</sup> iShares® is a registered trademark of Barclays Global Investors, N.A., "Commodity Exchange, Inc." and "COMEX" are trademarks of Commodity Exchange, Inc., and have been licensed for use for certain purposes to Barclays Global Investors and the iShares® COMEX Gold Trust ("IAU"). All other trademarks, service marks or registered trademarks are the property of their respective owners. IAU's sponsor is Barclays Global Investors International, Inc., ("BGII"), a Delaware corporation and a subsidiary of Barclays Bank PLC. IAU is not sponsored, endorsed, sold or promoted by BGII or by Commodity Exchange, Inc., nor do BGII and Commodity Exchange, Inc., make any representation regarding the advisability of investing in IAU. BGII and Commodity Exchange, Inc., have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on IAU or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on IAU or with making disclosures concerning options on IAU under any applicable federal or state laws, rules or regulations. BGII and Commodity Exchange, Inc., do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

<sup>6</sup> These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2009, these fees will also be charged to Linkage Principal Orders ("Linkage P Orders") and Linkage Principal Acting as Agent Orders ("Linkage

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

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

<sup>3</sup> Premium Products is defined in the Schedule of Fees as the products enumerated therein.

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