

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

### 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-NYSEArca-2009-95 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-NYSEArca-2009-95. 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 the 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 Number SR-NYSEArca-2009-95 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>31</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60962; File No. SR-ISE-2009-86]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add 75 Options Classes to the Penny Pilot Program as Modified by Amendment No. 1

November 6, 2009.

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 October 27, 2009, 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. On November 6, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice, as amended, 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 designate 75 options classes to be added to the pilot program to quote and to trade certain options in pennies (the "Penny Pilot") on November 2, 2009.

<sup>31</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> In Amendment No. 1, ISE proposed to correct a technical error in Section III. The change does not effect the substance of the proposed rule change.

### 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

*Purpose*—ISE proposes to identify the next 75 options classes to be added to the Penny Pilot effective November 2, 2009. The Exchange recently filed to extend and expand the Penny Pilot through December 31, 2010.<sup>4</sup> In that filing, the Exchange had proposed expanding the Penny Pilot on a quarterly basis to add the next 75 most actively traded multiply listed options classes based on national average daily volume for the six months prior to selection, closing under \$200 per share on the Expiration Friday prior to expansion, except that the month immediately preceding their addition to the Penny Pilot will not be used for the purpose of the six-month analysis.<sup>5</sup>

ISE proposes adding the following 75 options classes to the Penny Pilot on November 2, 2009, based on national average daily volume from April 1, 2009 through September 30, 2009:

Symbol	Company name
ABX .....	Barrick Gold Corp
AUY .....	Yamana Gold Inc
AXP .....	American Express Co
BA .....	Boeing Co/The
BBT .....	BB&T Corp
BBY .....	Best Buy Co Inc
BP .....	BP PLC
CHK .....	Chesapeake Energy Corp
CIT .....	CIT Group Inc
COF .....	Capital One Financial Corp
CVX .....	Chevron Corp
DE .....	Deere & Co
DOW .....	Dow Chemical Co/The
DRYS .....	DryShips Inc
EFA .....	iShares MSCI EAFE Index Fund
ETFC .....	E*Trade Financial Corp

<sup>4</sup> See Securities Exchange Act Release No. 60865 (October 22, 2009) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Expand the Penny Pilot Program).

<sup>5</sup> Index products would be included in the expansion if the underlying index level was under 200.

Symbol	Company name
EWZ .....	iShares MSCI Brazil Index Fund
FAS .....	Direxion Daily Financial Bull 3X Shares
FAZ .....	Direxion Daily Financial Bear 3X Shares
FITB .....	Fifth Third Bancorp
FSLR ....	First Solar Inc
FXI .....	iShares FTSE/Xinhua China 25 Index Fund
GDX .....	Market Vectors—Gold Miners ETF
GG .....	Goldcorp Inc
GLD .....	SPDR Gold Trust
HGSI ....	Human Genome Sciences Inc
HIG .....	Hartford Financial Services Group Inc
HPQ .....	Hewlett-Packard Co
IBM .....	International Business Machines Corp
IYR .....	iShares Dow Jones US Real Estate Index Fund
JNJ .....	Johnson & Johnson
JNPR ....	Juniper Networks Inc
KO .....	Coca-Cola Co/The
LVS .....	Las Vegas Sands Corp
MCD .....	McDonald's Corp
MGM ....	MGM Mirage
MON .....	Monsanto Co
MOS .....	Mosaic Co/The
MRK .....	Merck & Co Inc/NJ
MS .....	Morgan Stanley
NLY .....	Annaly Capital Management Inc
NOK .....	Nokia OYJ
NVDA ...	Nvidia Corp
ORCL ...	Oracle Corp
PALM ...	Palm Inc
PBR .....	Petroleo Brasileiro SA
PG .....	Procter & Gamble Co/The
POT .....	Potash Corp of Saskatchewan Inc
RF .....	Regions Financial Corp
RIG .....	Transocean Ltd
RMBS ...	Rambus Inc
S .....	Sprint Nextel Corp
SDS .....	ProShares UltraShort S&P500
SKF .....	ProShares UltraShort Financials
SLB .....	Schlumberger Ltd
SLV .....	iShares Silver Trust
SRS .....	ProShares UltraShort Real Estate
SSO .....	ProShares Ultra S&P500
STI .....	SunTrust Banks Inc
SVNT ...	Savient Pharmaceuticals Inc
TBT .....	ProShares UltraShort 20+ Year Treasury
UNG .....	United States Natural Gas Fund LP
UNH .....	UnitedHealth Group Inc
UPS .....	United Parcel Service Inc
USB .....	US Bancorp
USO .....	United States Oil Fund LP
UYG .....	ProShares Ultra Financials
V .....	Visa Inc
WFC .....	Wells Fargo & Co
WYNN ..	Wynn Resorts Ltd
X .....	United States Steel Corp
XHB .....	SPDR S&P Homebuilders ETF
XLI .....	Industrial Select Sector SPDR Fund
XLU .....	Utilities Select Sector SPDR Fund
XRT .....	SPDR S&P Retail ETF

(b) *Basis*—The basis under the Securities Exchange Act of 1934 (the “Exchange Act”) for this proposed rule change is found in Section 6(b)(5), in

that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change allows for a measured expansion of the Penny Pilot Program for the benefit of market participants.

#### *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 written comments from members or other interested parties.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(i)<sup>6</sup> of the Exchange Act and Rule 19b-4(f)(1)<sup>7</sup> thereunder, in that it constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule of the Exchange. 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.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>7</sup> 17 CFR 240.19b-4(f)(1).

<sup>8</sup> 17 CFR 200.30-3(a)(12).