

Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

7. The Advisor or any Subadvisor, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Security for the Fund through a transaction in which the Fund could not engage directly.

8. The requested order will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively managed exchange-traded funds.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61470; File No. SR-ISE-2010-09]

### 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

February 2, 2010.

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 January 29, 2010, 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 proposes to designate an additional 75 options classes to be added to the pilot program to quote and to trade certain options in pennies (the "Penny Pilot") on February 1, 2010.

#### 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

ISE proposes to identify the next 75 options classes to be added to the Penny Pilot effective February 1, 2010. The Exchange recently filed to extend and expand the Penny Pilot through December 31, 2010.<sup>3</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>4</sup>

ISE proposes to add the following 75 options classes to the Penny Pilot on February 1, 2010, based on national average daily volume for the six months ending December 31, 2009:

Symbol	Company name
ABT .....	Abbott Laboratories.
AEM .....	Agnico-Eagle Mines Ltd.
AET .....	Aetna Inc.
AFL .....	Aflac Inc.
AKAM .....	Akamai Technologies Inc.
AMAT .....	Applied Materials Inc.
AMR .....	AMR Corp.
ANF .....	Abercrombie & Fitch Co.
APC .....	Anadarko Petroleum Corp.
ATVI .....	Activision Blizzard Inc.
BBD .....	Banco Bradesco SA.
BCRX .....	BioCryst Pharmaceuticals Inc.
BK .....	Bank of New York Mellon Corp.
BRCM .....	Broadcom Corp.
BTU .....	Peabody Energy Corp.
BX .....	Blackstone Group LP.

<sup>3</sup> See Securities Exchange Act Release No. 60865 (October 22, 2009), 74 FR 55880 (October 29, 2009) (SR-ISE-2009-82).

<sup>4</sup> Index products would be included in the expansion if the underlying index level was under 200.

Symbol	Company name
CAL .....	Continental Airlines Inc.
CF .....	CF Industries Holdings Inc.
CMCSA .....	Comcast Corp.
CSX .....	CSX Corp.
CVS .....	CVS Caremark Corp.
CX .....	Cemex SAB de CV.
DD .....	El du Pont de Nemours & Co.
ERTS .....	Electronic Arts Inc.
EWJ .....	iShares MSCI Japan Inde Fund.
FDX .....	FedEx Corp.
FNM .....	Federal National Mortgage Association.
FRE .....	Federal Home Loan Mortgage Corp.
GILD .....	Gilead Sciences Inc.
GLW .....	Corning Inc.
HBC .....	HSBC Holdings PLC.
HES .....	Hess Corp.
HL .....	Hecla Mining Co.
HOG .....	Harley-Davidson Inc.
HON .....	Honeywell International Inc.
JOYG .....	Joy Global Inc.
JWN .....	Nordstrom Inc.
KFT .....	Kraft Foods Inc.
LEAP .....	Leap Wireless International Inc.
LLY .....	Eli Lilly & Co.
LO .....	Lorillard Inc.
LOW .....	Lowe's Cos Inc.
M .....	Macy's Inc.
MCO .....	Moody's Corp.
MET .....	MetLife Inc.
MMM .....	3M Co.
MU .....	Micron Technology Inc.
NUE .....	Nucor Corp.
OXY .....	Occidental Petroleum Corp.
PARD .....	Ponard Pharmaceuticals Inc.
PEP .....	PepsiCo Inc/NC.
PM .....	Philip Morris International Inc.
PNC .....	PNC Financial Services Group Inc.
QID .....	ProShares UltraShort QQQ.
SHLD .....	Sears Holdings Corp.
SLM .....	SLM Corp.
SLW .....	Silver Wheaton Corp.
SQNM .....	Sequenom Inc.
STEC .....	STEC Inc.
STX .....	Seagate Technology Inc.
SU .....	Suncor Energy Inc.
TCK .....	Teck Resources Ltd.
TEVA .....	Teva Pharmaceutical Industries Ltd.
TLT .....	iShares Barclays 20+ Year Treasury Bond Fund.
TZA .....	Direxion Daily Small Cap Bear 3X Shares.
UAUA .....	UAL Corp.
URE .....	ProShares Ultra Real Estate.
UTX .....	United Technologies Corp.
WFR .....	MEMC Electronic Materials Inc.
WFT .....	Weatherford International Ltd.
WLP .....	WellPoint Inc.
XLB .....	Materials Select Sector SPDR Fund.
XRX .....	Xerox Corp.
XTO .....	XTO Energy Inc.
YRCW .....	YRC Worldwide Inc.

###### 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Exchange Act") for this proposed rule change is

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

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

found in Section 6(b)(5) of the Act,<sup>5</sup> 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 identifies the options classes to be added to the Penny Pilot in a manner consistent with prior rule changes.

#### *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) of the Exchange Act<sup>6</sup> and Rule 19b-4(f)(1) thereunder,<sup>7</sup> 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 the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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-ISE-2010-09 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-ISE-2010-09. 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 Web site viewing and printing 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-ISE-2010-09 and should be submitted on or before March 2, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-2733 Filed 2-8-10; 8:45 am]

**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61473; File No. SR-FINRA-2009-087]

#### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Repeal NASD Rules 2760 and 2780, Incorporated NYSE Rules 2B and 411, and the Interpretation to Incorporated NYSE Rule 411(a)(ii)(5) as Part of the Process of Developing the Consolidated FINRA Rulebook**

February 2, 2010.

On December 4, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) 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 repeal NASD Rule 2760 (Offerings "At the Market"), NASD Rule 2780 (Solicitation of Purchases on an Exchange to Facilitate a Distribution of Securities), Incorporated NYSE Rule 2B (No Affiliation between Exchange and any Member Organization), Incorporated NYSE Rule 411 (Erroneous Reports) and the Interpretation to Incorporated NYSE Rule 411(a)(ii)(5) as part of the process of developing a consolidated FINRA rulebook. The proposed rule change was published for comment in the **Federal Register** on December 29, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

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 association.<sup>4</sup> In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>5</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in

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

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

<sup>3</sup> See Securities Exchange Act Release No. 61211 (December 18, 2009), 74 FR 68889. ("Notice").

<sup>4</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

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

<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).