

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-BX-2009-037 and should be submitted on or before August 7, 2009.

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

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60275; File No. SR-ISE-2009-50]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permanently Establish the Quarterly Options Series Pilot Program

July 9, 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 July 8, 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 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 is proposing to make permanent its quarterly options series pilot program and make minor changes to conform the program to that of other exchanges. The text of the proposed rule change is available on the Exchange's Web site <http://www.ise.com>, at the Exchange's Office of the Secretary, and at the Commission.

#### 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 make permanent an ISE pilot program to list options series that would expire at the close of business on the last business day of a calendar quarter ("Quarterly Options Series Program"). On May 2, 2006, the Exchange filed with the Securities and Exchange Commission ("Commission") SR-ISE-2006-24 to establish the Quarterly Options Series Program that was subsequently approved by the Commission on July 7, 2006.<sup>3</sup> Under the Quarterly Options Series Pilot Program, the Exchange is allowed to open up to five (5) currently listed options classes that are either index options or options on exchange traded funds ("ETFs"). The Exchange is also allowed to list Quarterly Options Series on any options class that is selected by other securities exchanges that employ a similar pilot program under their respective rules.

The Exchange may list series that expire at the end of the next consecutive four (4) calendar quarters, as well as the fourth quarter of the next calendar year. For example, if the Exchange is trading Quarterly Options Series in the month of May 2009, it may list series that expire at the end of the second, third, and fourth quarters of 2009, as well as the first and fourth quarters of 2010. Following the second quarter 2009 expiration, the Exchange could add series that expire at the end of the second quarter of 2010.

<sup>3</sup> See Securities Exchange Act Release No. 54113 (July 7, 2006); 71 FR 39694 (July 13, 2006) (SR-ISE-2006-24) (the "Quarterly Options Series Pilot Program Approval Order"). The Quarterly Options Series Program has since been extended and is currently scheduled to expire on July 10, 2009. See Securities Exchange Act Release Nos. 56031 (July 9, 2007), 72 FR 38637 (July 13, 2007) (SR-ISE-2007-53); 58019 (June 25, 2008), 73 FR 38014 (July 2, 2008) (SR-ISE-2008-49).

#### Quarterly Option Series in ETF Options

If an ETF option is selected for participation in the Quarterly Options Series Program, the strike price of each Quarterly Option Series is fixed at a price per share, with at least two strike prices above and two strike prices below the approximate value of the underlying security at about the time the Quarterly Options Series is opened for trading on the Exchange. ISE shall list strikes prices for a Quarterly Option series that are within \$5 from the closing price of the underlying on the preceding day.

The Exchange may open for trading additional Quarterly Options Series of the same class when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices shall be within thirty percent (30%) above or below the closing price of the underlying ETF (or "Exchange-Traded Fund Shares") as defined in Rule 502(h) on the preceding day.<sup>4</sup> The Exchange may also open additional strike prices of Quarterly Option Series in ETF options that are more than 30% above or below the current price of the underlying ETF provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision. The opening of the new Quarterly Options Series shall not affect the series of options of the same class previously opened. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each Quarterly Options Series in ETF options.

The interval between strike prices on Quarterly Options Series shall be the same as the interval for strike prices for series in that same options class that expire in accordance with the normal monthly expiration cycle.

The Exchange has adopted a delisting policy with respect to Quarterly Options Series in ETF options.<sup>5</sup> On a monthly basis, the Exchange reviews series that are outside a range of five (5) strikes above and five (5) strikes below the current price of the underlying ETF, and delists series with no open interest in both the put and the call series having

<sup>4</sup> See Securities Exchange Act Release No. 57425 (March 4, 2008), 73 FR 12783 (March 10, 2008) (SR-ISE-2008-19).

<sup>5</sup> *Id.*

<sup>15</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.

a: (i) strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding the delisting policy, customer requests to add strikes and/or maintain strikes in Quarterly Options Series in ETF options in series eligible for delisting shall be granted.

Further, in connection with the delisting policy, if the Exchange identifies series for delisting, the Exchange shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed options classes.

During the last quarter of 2008 (and for the new expiration month added after December Quarterly Option Series expiration), the Exchange was permitted to list up to one hundred (100) additional series per expiration month for each Quarterly Options Series in ETF options.<sup>6</sup>

#### *Quarterly Option Series in Index Options*

If an index option is selected for participation in the Quarterly Options Series Program, the strike price of each Quarterly Option Series will be fixed at a price per share, with at least two, but no more than five, strike prices above and at least two, but no more than five, strike prices below the value of the underlying index at about the time that a Quarterly Options Series is opened for trading on the Exchange. The Exchange shall list strike prices for Quarterly Options Series that are reasonably related to the current index value of the underlying index to which such series relates at about the time such series of options is first opened for trading on the Exchange. The term "reasonably related to the current index value of the underlying index" means that the exercise price is within thirty percent (30%) of the current index value.

The Exchange may open for trading additional Quarterly Options Series of the same class when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the initial exercise price or prices. The Exchange may also open for trading

additional Quarterly Options Series that are more than thirty percent (30%) of the current index value, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision.

The Exchange may open additional strike prices of a Quarterly Option Series that are above the value of the underlying index provided that the total number of strike prices above the value of the underlying index is no greater than five. The Exchange may open additional strike prices of a Quarterly Option Series that are below the value of the underlying index provided that the total number of strike prices below the value of the underlying index is no greater than five. The opening of any new Quarterly Option Series shall not affect the series of options of the same class previously opened.

By definition, Quarterly Option Series on an option class can never expire in the same week in which monthly option series on the same class expires. The same, however, is not the case with regards to Short Term Option Series. Quarterly Option Series and Short Term Option Series on the same options class may expire concurrently. However, to avoid any confusion in the market place, the Exchange will not list a Short Term Option Series on an options class whose expiration coincides with that of a Quarterly Option Series on the same options class. In other words, the Exchange will not list a Short Term Options Series on an ETF or an index if a Quarterly Option Series on that ETF or index were to expire on a Friday, the only day of the week during which both Quarterly Option Series and a P.M.-settled Short Term Option Series can potentially expire concurrently.

There being one exception to this rule. The Exchange may list a P.M.-settled Quarterly Option Series on an options class concurrent with an A.M.-settled Short Term Options Series on that same options class, both of which may expire on a Friday. In other words, the Exchange may list a P.M.-settled Quarterly Option Series on an ETF on an index concurrent with an A.M.-settled Short Term Option Series on that ETF or index and both of which expire on a Friday. The Exchange believes that the concurrent listing of an A.M.-settled Short Term Option Series and a P.M.-settled Quarterly Option Series on the same underlying ETF or index will provide investors with yet another hedging mechanism. Finally, the

interval between strike prices on Quarterly Option Series shall be the same as the interval for strike prices for series in the same options class that expires in accordance with the normal monthly expiration cycles.

The Exchange has selected the following five options classes to participate in the Quarterly Options Series Pilot Program: The Standard & Poor's Depositary Receipts® (SPY), Nasdaq-100® Shares (QQQQ), Diamonds® Trust Series 1 (DIA), iShares Russell 2000® Index Fund (IWM), and Select Sector SPDR®—Energy (XLE). ISE believes the Quarterly Options Series Program has been successful and well received by its members and the investing public for the nearly three years that it has been in operation as a pilot.

ISE is now proposing to make the Quarterly Options Series Program permanent. In support of this proposed rule change, and as required by the Quarterly Options Series Pilot Program Approval Order, the Exchange has submitted to the Commission a report (the "Quarterly Options Series Program Report") detailing the Exchange's experience with the Quarterly Options Series Program. Specifically, the Quarterly Options Series Pilot Program Report contains data and written analysis regarding the five options classes included in the Quarterly Options Series Program. The Report was submitted under separate cover and seeks confidential treatment under the Freedom of Information Act.

The Exchange believes there is sufficient investor interest and demand in the Quarterly Options Series Program to warrant its permanent approval. The Exchange further believes that the Quarterly Options Series Program has provided investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. Furthermore, the Exchange notes that it has not detected any material proliferation of illiquid options series resulting from the introduction of the Quarterly Options Series Program nor has it experienced any capacity-related problems with respect to Quarterly Options Series. The Exchange also represents that it has the necessary systems capacity to continue to support the options series listed under Quarterly Options Series Program.

#### 2. Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the

<sup>6</sup> See Securities Exchange Act Release No. 58926 (November 10, 2008), 73 FR 69701 (November 19, 2008) (SR-ISE-2008-82).

“Act”) and the rules and regulations thereunder and, in particular, the requirements of section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that permanent approval of the Quarterly Options Series Program will result in a continuing benefit to investors, by allowing them to more closely tailor their investment decisions.

#### *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 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 the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

The Exchange requests that the Commission waive the 30-day operative delay so that the Exchange can permanently establish a Quarterly Options Series Program that is consistent with those of other options

exchanges.<sup>9</sup> In addition, the Commission notes that the Exchange's QOS Program currently is scheduled to expire on July 10, 2009. The Commission therefore 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 the Exchange to permanently establish the QOS program without disruption.<sup>10</sup> Therefore, the Commission designates the proposal operative upon filing.

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-ISE-2009-50 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-2009-50. 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-ISE-2009-50 and should be submitted on or before August 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60281; File No. SR-ISE-2009-49]

#### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Program for Short Term Options Series**

July 10, 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 July 8, 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 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.

<sup>11</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>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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 satisfied this requirement.

<sup>9</sup> See Securities Exchange Act Release No. 60164 (June 23, 2009), 74 FR 31333 (June 30, 2009) (SR-CBOE-2009-029) (approving the quarterly options series program on a permanent basis).

<sup>10</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).