

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59377; File No. SR-ISE-2009-04)

February 10, 2009

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to the \$1 Strike Program.

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 21, 2009, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, on February 9, 2009, filed Amendment No.1 to the proposed rule change, and on February 10, 2009 filed partial Amendment No. 2 to 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, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to expand the \$1 Strike Program. 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

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

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

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 the proposed rule change is to expand the \$1 Strike Program (the “Program”).<sup>3</sup> The Program currently allows ISE to select a total of 10 individual stocks on which option series may be listed at \$1 strike price intervals. In order to be eligible for selection into the Program, the underlying stock must close below \$50 in its primary market on the previous trading day. If selected for the Program, the Exchange may list strike prices at \$1 intervals from \$3 to \$50, but no \$1 strike price may be listed that is greater than \$5 from the underlying stock’s closing price in its primary market on the previous day. The Exchange may also list \$1 strikes on any other option class designated by another securities exchange that employs a similar Program under their respective rules. The Exchange may not list long-term option series (“LEAPS”) at \$1 strike price

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<sup>3</sup> The Commission approved the Program as a pilot on June 16, 2003. See Exchange Act Release No. 48033 (June 16, 2003), 68 FR 37036 (June 20, 2003). The pilot was subsequently extended through June 5, 2008. See Exchange Act Release Nos. 49827 (June 8, 2004), 69 FR 33966 (June 17, 2004) (Extending the pilot until August 5, 2004); 50060 (July 22, 2004), 69 FR 45864 (July 30, 2004) (Extending the pilot for 10 months until June 5, 2005); 51769 (May 31, 2005), 70 FR 33232 (June 7, 2005) (Extending the pilot until June 5, 2006); 53806 (May 15, 2006), 71 FR 29694 (Extending the pilot until June 5, 2007); and 55715 (May 7, 2007), 72 FR 26854 (May 11, 2007) (Extending the pilot until June 5, 2008). The pilot was subsequently expanded and made permanent in 2008. See Exchange Act Release No. 57169 (January 14, 2008), 73 FR 4654 (January 25, 2008) (Approving SR-ISE-2007-110).

intervals for any class selected for the Program. The Exchange also is restricted from listing any series that would result in strike prices being \$0.50 apart.

The Exchange now proposes to expand the Program to allow ISE to select a total of 55 individual stocks on which option series may be listed at \$1 strike price intervals, and to expand slightly the price range on which the Exchange may list \$1 strikes, i.e., from \$1 to \$50. The existing restrictions on listing \$1 strikes would continue, i.e., no \$1 strike price may be listed that is greater than \$5 from the underlying stock's closing price in its primary market on the previous day, and ISE is restricted from listing any series that would result in strike prices being \$0.50 apart.

As stated in the Commission order that initially approved ISE's Program and in subsequent extensions and expansions of the Program, ISE believes that \$1 strike price intervals provide investors with greater flexibility in the trading of equity options that overlie lower price stocks by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. Indeed, member firms representing customers have repeatedly requested that ISE seek to expand the Program in terms of the number of classes on which option series may be listed at \$1 strike price intervals. The Exchange notes that current market conditions, in which the number of securities trading below \$50 has increased dramatically, further warrant the expansion of the Program.

The Exchange is also proposing to set forth a delisting policy. Specifically, the Exchange would, on a monthly basis, review series that were originally listed under the \$1 Strike Program with strike prices that are more than \$5 from the current values of the options classes in the Program. The Exchange would delist series with no open interest in

both the put and the call series having 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 proposed delisting policy, member requests to add strikes and/or maintain strikes in certain options classes in series eligible for delisting may be granted.

Further, in connection with the proposed 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. ISE expects that the proposed delisting policy will be adopted by other options exchanges that amend their rules to employ a similar expansion of the Program.

With regard to the impact on system capacity, ISE has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

The Exchange believes that the Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. Furthermore, the Exchange has not detected any material proliferation of illiquid options series resulting

from the narrower strike price intervals. For these reasons, ISE requests an expansion of the current Program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>4</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5)<sup>5</sup> 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 expanding the current Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions in greater number of securities.

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.

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<sup>4</sup> 15 U.S.C 78f.

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

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 such 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-ISE-04 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-2009-04. 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, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE, Washington, DC 20549. 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 Number SR–ISE–2009-04 and should be submitted on or before [date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(12).