

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58997; File No. SR-ISE-2008-88)

November 21, 2008

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List Options on the Mini-Nasdaq-100 Index at \$1 Strike Price Intervals.

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 November 18, 2008, the International Securities Exchange, LLC (“Exchange” or “ISE”) filed with the Securities and Exchange Commission (the “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 proposes to amend certain of its rules to allow the Exchange to list options on the Mini-Nasdaq-100 Index (“MNX”), which is based on 1/10th the value of the Nasdaq-100 Index, at \$1 strike price intervals. The text of the proposed rule change is as follows, with additions underlined:

**Rule 504. Series of Options Contracts Open for Trading**

(a) – (g) no change.

**Supplementary Material To Rule 504**

.01 - .03 no change

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

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

.04 Notwithstanding Supplementary Material .01 above, the intervals between strike prices for Mini-Nasdaq-100 Index ("MNX" or "Mini-NDX") options series shall be determined in accordance with Rule 2009(c)(5).

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### **Rule 2009. Terms of Index Options Contracts**

(a) – (b) no change.

(c) *Procedures for Adding and Deleting Strike Prices.* The procedures for adding and deleting strike prices for index options are provided in Rule 504, as amended by the following:

(1) - (4) no change.

(5) Notwithstanding Rule 2009(c)(1), the interval between strike prices of series of Mini-Nasdaq-100 Index ("MNX" or "Mini-NDX") options will be \$1 or greater, subject to following conditions:

(i) Initial Series. The Exchange may list series at \$1 or greater strike price intervals for Mini-NDX options, and will list at least two strike prices above and two strike prices below the current value of MNX at about the time a series is opened for trading on the Exchange. The Exchange shall list strike prices for Mini-NDX options that are within 5 points from the closing value of MNX on the preceding day.

(ii) Additional Series. Additional series of the same class of Mini-NDX options may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the underlying MNX 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 value of MNX. The Exchange may also open additional strike prices that are more than 30% above or below the current MNX 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. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each series in Mini-NDX options.

(iii) The Exchange shall not list LEAPS on Mini-NDX options at intervals less than \$5.

(iv)(A) Delisting Policy. With respect to Mini-NDX

options added pursuant to the above paragraphs, the Exchange will, on a monthly basis, review series that are outside a range of five (5) strikes above and five (5) strikes below the current value of MNX, and 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.

(B) Notwithstanding the above referenced delisting policy, Customer requests to add strikes and/or maintain strikes in Mini-NDX option series eligible for delisting shall be granted.

(C) In connection with the above referenced delisting policy, if the Exchange identifies series for delisting, the Exchange shall notify other options exchanges with similar delisting policies regarding eligible series for delisting, 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 Mini-NDX options.

(d) - (e) no change.

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## 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 purpose of the proposed rule change is to amend ISE Rule 2009, Terms of Index Option Contracts, to allow the Exchange to list options on the Mini-Nasdaq-100 Index ("MNX" or "Mini-NDX"), which is based on 1/10th the value of the Nasdaq-100 Index, at \$1 or greater

strike price intervals.<sup>3</sup> Specifically, the Exchange proposes that the minimum strike price interval Mini- NDX options will be 0.01 point (\$1.00). The Exchange believes that \$1 strike price intervals in Mini-NDX option series will provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives.

For initial series, the Exchange would list at least two strike prices above and two strike prices below the current value of MNX at or about the time a series is opened for trading on the Exchange. As part of this initial listing, the Exchange would list strike prices that are within 5 points from the closing value of MNX on the preceding day. As for additional series, the Exchange would be permitted to add additional series when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the underlying MNX 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 value of MNX. The Exchange would also be permitted to open additional strike prices that are more than 30% above or below the current MNX 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 would not be considered when determining customer interest. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each series in Mini-NDX options. In addition, the Exchange proposes that it shall not list LEAPS on Mini-NDX options at intervals less than \$5.

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<sup>3</sup> Currently, under ISE Rule 2009(c)(1)(vii), the Exchange has authority to list Mini-NDX options at \$2.50 strike price intervals.

The Exchange is also proposing to set forth a delisting policy with respect to Mini-NDX options. Specifically, the Exchange would, on a monthly basis, review series that are outside a range of five (5) strikes above and five (5) strikes below the current value of the MNX and 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, customer requests to add strikes and/or maintain strikes in Mini-NDX options in series eligible for delisting shall 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 Mini-NDX options.

It is expected that the proposed delisting policy for Mini-NDX options will be adopted by other options exchanges that list and trade Mini-NDX options.

The Exchange also proposes to add new Supplementary Material .04 to Rule 504, Series of Option Contracts Open for Trading, which would be an internal cross reference stating that the intervals between strike prices for Mini-NDX option series would be determined in accordance with proposed new paragraph (5) to Rule 2009(c).

ISE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of \$1 strikes or greater for Mini-NDX options.

## 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (“Exchange Act”) for this proposed rule change is the requirement under Section 6(b)(5) of the Exchange Act<sup>4</sup> that an exchange have rules that are designed to promote just and equitable principles of trade, and 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. In particular, the proposed rule change will allow the Exchange to list options on MNX options at \$1 strike intervals for the benefit of investors and as a competitive response to the listing of MNX options at \$1 strike price intervals by other exchanges.

### 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 rule does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate

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<sup>4</sup> 15 U.S.C. 78f(b)(5).

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>5</sup> and Rule 19b-4(f)(6) thereunder.<sup>6</sup>

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission 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 permit the Exchange to respond promptly to demand by market participants to list options on MNX at \$1 strike price intervals, and compete with other exchanges listing options on MNX at \$1 strike price intervals.<sup>7</sup> Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of such 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:

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<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide 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 date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to be met.

<sup>7</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).

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 No. SR-ISE-2008-88 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-ISE-2008-88. 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 10:00 a.m. and 3:00 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-2008-88 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

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

Florence E. Harmon  
Acting Secretary

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