

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59347; File No. SR-ISE-2009-05)

February 3, 2009

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate \$3 Underlying Price Requirement for Continued Listing and Listing of Additional Series

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> notice is hereby given that on February 2, 2009, the International Securities Exchange, LLC (“ISE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by ISE. ISE has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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 Rule 503(b) to eliminate the \$3 market price per share requirement from the Exchange’s requirements for continued approval for an underlying security. The Exchange also proposes to amend Rule 503(c) by eliminating the prohibition against listing additional series of options on an underlying security at any time when the price per share of such underlying security is less than \$3. The text of the proposed rule change is as follows, with deletions in [brackets] and additions underlined:

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

**Rule 503. Withdrawal of Approval of Underlying Securities**

(a) No Change.

(b) Absent exceptional circumstances, an underlying security will not be deemed to meet the Exchange's requirements for continued approval whenever any of the following occur:

(1) There are fewer than 6,300,000 shares of the underlying security held by persons other than those who are required to report their security holdings under Section 16(a) of the Exchange Act.

(2) There are fewer than 1,600 holders of the underlying security.

(3) The trading volume (in all markets in which the underlying security is traded) has been less than 1,800,000 shares in the preceding twelve (12) months.

(4) [The market price per share of the underlying security closed below \$3 on the previous trading day as measured by the closing price reported by the primary market in which the underlying security is traded.] Reserved.

(5) The underlying security ceases to be an "NMS stock" as defined in Rule 600 of Regulation NMS under the Exchange Act.

(6) If an underlying security is approved for options listing and trading under the provisions of Rule 502(c), the trading volume [and price history] of the Original Security (as therein defined) prior to but not after the commencement of trading in the Restructure Security (as therein defined), including "when-issued" trading, may be taken into account in determining whether the trading volume [and market price] requirement[s] of (3) [and (4)] of this paragraph (b) [are] is satisfied.

(c) [In connection with paragraph (b)(4) of this Rule, the Exchange shall not open for trading any additional series of options contracts of the class covering an underlying security at any time (including on a next-day, expiration or intra-day basis) when the market price per share of such underlying security closed less than \$3 on the last trading day preceding the day on which such series are added, as measured by the closing price reported by the primary market in which the underlying security trades. In addition to closing at or above \$3 on the last trading day preceding the day series are added, the Exchange shall not open for trading any additional series of options contracts on an intra-day basis unless the last reported trade in the primary market in which the underlying security trades is at least \$3 at the time the Exchange determines to add the series. Notwithstanding the above, the Exchange may add a series if the additional series is traded on at least one other registered national securities exchange and, at the time the additional series was listed by such other registered national securities exchange, it met the \$3 market price requirement.] Reserved.

(d) - (k) 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 this proposed rule change is to eliminate the \$3 market price per share requirement from the Exchange's requirements for continued approval for an underlying security from Rule 503(b)(4). This proposed rule change also amends Rule 503(c) by eliminating the prohibition against listing additional series or options on an underlying security at any time when the price per share of such underlying security is less than \$3. The Exchange also proposes to make technical changes throughout Rule 503 to eliminate references to paragraph (4) of Rule 503.

ISE's rules require that the market price for a security be at least \$3 on the previous trading day for the continued listing of options on that underlying security. If the price of an underlying security falls below \$3, the Exchange can continue to trade then-listed series on that underlying security, but is unable to list new series of options. The Exchange believes that the \$3 market price per share requirement is no longer necessary or appropriate, and that only those underlying securities meeting the remaining continued listing criteria set forth in Rule 503 will be eligible for continued listing and the listing of additional options series. The Exchange believes that the current \$3 market price per share requirement could have a negative effect on investors. For example, in the current volatile market environment in which the market price for a large number of securities has fallen below \$3, the Exchange is currently unable to list new series on underlying securities trading below \$3. If there is market demand for series below \$3, the Exchange would be unable to accommodate such requests and investors would be unable to hedge their positions with options series with strikes below \$3.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) 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 permit the Exchange to make options on underlying securities available even if the price of the underlying security is less than \$3 thus providing investors additional opportunities to hedge their positions.

### 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 from the date on which it was filed, or such shorter time

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder.<sup>5</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>6</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>7</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. ISE requests that the Commission waive the 30-day operative delay. The Commission notes that this proposed rule change is substantially identical to a proposed rule change that was approved by the Commission after an opportunity for public comment,<sup>8</sup> and does not raise any new substantive issues. The Exchange believes that waiving the 30-day operative delay will allow the Exchange to respond promptly to demand by market participants to list the options series that CBOE is expected to list upon receiving Commission approval of CBOE's proposed rule change. For these reasons, the Commission believes that waiving the 30-day operative delay<sup>9</sup> is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

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<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</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>6</sup> 17 CFR 240.19b-4(f)(6).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> ISE's proposed rule change is substantially identical to a proposed rule change by the Chicago Board Options Exchange ("CBOE") recently approved by the Commission. See Securities Exchange Act Release No. 59336 (February 2, 2009) (SR-CBOE-2008-127).

<sup>9</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).

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-2009-05 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-2009-05. 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 publicly available. All submissions should refer to File Number SR-ISE-2009-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).