

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62101; File No. SR-ISE-2010-40)

May 13, 2010

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend ISE Rule 502(k)

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 May 3, 2010, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) 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 the Exchange. The Exchange has filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 Exchange proposes to revise ISE Rule 502(k) to amend the definition of Futures-Linked Securities for the trading of options on Index-Linked Securities. The text of the proposed rule change is available on the Exchange’s Web site [www.ise.com](http://www.ise.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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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> 15 U.S.C. 78s(b)(3)(A)(iii).

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

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 Exchange 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 Rule 502(k) designates the listing and trading of options on equity index-linked securities ("Equity Index-Linked Securities"), commodity-linked securities ("Commodity-Linked Securities"), currency-linked securities ("Currency-Linked Securities"), fixed income index-linked securities ("Fixed Income Index-Linked Securities"), futures-linked securities ("Futures-Linked Securities") and multifactor index-linked securities ("Multifactor Index-Linked Securities"), collectively known as "Index-Linked Securities" that are principally traded on a national securities exchange and an "NMS Stock" (as defined in Rule 600 of Regulation NMS under the Securities and Exchange Act of 1934). The Exchange proposes to amend the definition of Futures-Linked Securities for the trading of options on Index-Linked Securities to include products linked to CBOE Volatility Index ("VIX") Futures. Specifically, the Exchange proposes to add the VIX Futures to the definition of a Futures Reference Asset in ISE Rule 502(k)(1)(v).

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing ("Underlying

Index" or "Underlying Indexes"). Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options apply to Index-Linked Securities.

Currently, the Exchange will consider listing and trading options on Index-Linked Securities provided the Index-Linked Securities meet the criteria for underlying securities set forth in ISE Rule 502(a)-(b) or the criteria set forth in ISE Rule 502(k)(3)(ii).

Index-Linked Securities must meet the criteria and guidelines for underlying securities set forth in ISE Rule 502(b); or the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the issuer at a price related to the applicable underlying Reference Asset.<sup>5</sup> In addition, the issuing company is obligated to issue or repurchase the securities in aggregation units for cash or cash equivalents satisfactory to the issuer of Index-Linked Securities which underlie the option as described in the Index-Linked Securities prospectus.

Options on Index-Linked Securities will continue to be subject to all Exchange rules governing the trading of equity options. The current continuing or maintenance listing standards for options traded on ISE will continue to apply.

### The VIX

The information in this filing relating to the VIX was taken from the Web site of the Chicago Board Options Exchange (the "CBOE").

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<sup>5</sup> For the purposes of Rule 502(k), Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, Futures Reference Assets and Multifactor Reference Assets, will be collectively referred to as "Reference Assets." See Rule 502(k)(2).

The VIX was originally developed by the CBOE in 1993 and was calculated using S&P 100® Index options. The current methodology for the VIX was introduced by the CBOE in September 2003 and it is now an index that uses the quotes of certain S&P 500® Index (“SPX”) option series to derive a measure of the volatility of the U.S. equity market. The VIX measures market expectations of near term volatility conveyed by the prices of options on the SPX. It provides investors with up-to-the-minute market estimates of expected stock market volatility over the next 30 calendar days by extracting implied volatilities from real-time index option bid/ask quotes.

### VIX Futures

Information regarding VIX Futures can be found on the Web site of the CBOE Futures Exchange (the “CFE”).

The CFE began listing and trading VIX Futures since March 26, 2004 under the ticker symbol VX. VIX Futures trade between the hours of 8:30 a.m. - 3:15 p.m. Central Time (Chicago Time).

## 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) 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 Exchange believes that the proposed rules applicable to trading pursuant to generic listing and trading criteria, together with the Exchange’s surveillance procedures applicable to trading in the securities covered by the proposed rules, serve to foster investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does 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 filing (or such shorter time as the Commission may designate 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>6</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>7</sup>

The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change as operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change is substantially similar to those of other options exchanges

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</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 Exchange has fulfilled this requirement.

that have been previously approved by the Commission<sup>8</sup> and does not appear to present any novel regulatory issues. Therefore, the Commission designates the proposal operative upon filing to enable the Exchange to list and trade options on index-linked securities without delay.<sup>9</sup>

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 the 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-2010-40 on the subject line.

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<sup>8</sup> See Securities Exchange Act Release Nos. 60822 (October 14, 2009), 74 FR 54114 (October 21, 2009) (SR-NYSEArca-2009-77); 60823 (October 14, 2009), 74 FR 54112 (October 21, 2009) (SR-NYSEAmex-2009-59); and 60857 (October 21, 2009), 74 FR 55611 (October 28, 2009) (SR-CBOE-2009-74).

<sup>9</sup> For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2010-40. 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 10:00 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 Number SR-ISE-2010-40 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).