settlements.[26] Because CBOE, for the most part, has not set any average pricing parameters, the Commission is unclear what the potential market impact could be on or around Expiration Friday. Therefore, it is reasonable and consistent with Section 6(b)(5) of the Act [27] for CBOE to restrict average pricing during the Blackout Period until it sets forth a specific proposal and the potential market impact can be adequately addressed.[28]

Based on the above, the Commission finds good cause for approving the CBOE's proposal, as modified by Amendments No. 1 and 2, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

## V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 1 and 2 to File No. SR–CBOE–2008–115, including whether Amendments No. 1 and 2 are 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.* Please include File Number SR–CBOE–2008–115 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, and 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–115. 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 such filing also will be available for inspection and copying at the principal office of Amex. 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–CBOE–2008–115 and should be submitted on or before March 18, 2009.

## VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–CBOE–2008–115), as modified by Amendments No. 1 and 2 thereto, be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–4036 Filed 2–24–09; 8:45 am]

**BILLING CODE 8011–01–P**

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[26] The expiration of the contracts for stock index futures, stock index options, and stock options all expire on the same days occurring on the third Friday of March, June, September, and December (which is referred to as ''triple witching''). The Exchange's proposed limitations on p.m. exercise settlement values and exercise settlement values based on a specified average would apply during triple witching expirations, as well as on all other Expiration Fridays.

[27] 15 U.S.C. 78f(b)(5).

[28] *See supra* note 21.

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59410; File No. SR–ISE–2009–06]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

February 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 11, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') 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 from interested persons.

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

The ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on 7 Premium Products.[3] 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 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 amend its Schedule of Fees to establish fees for transactions in options on the ProShares Ultra DJ–AIG Crude Oil ETF (''UCO''), the ProShares UltraShort DJ–AIG Crude Oil ETF (''SCO''),[4] the ProShares

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Premium Products is defined in the Schedule of Fees as the products enumerated therein.

[4] ''Dow Jones,'' AIG''®'', ''The Dow Jones–AIG Crude Oil Sub-Index SM'' and ''DJ–AIGCL SM'' are service marks of Dow Jones & Company, Inc. and American International Group, Inc. (''American International Group''), as the case may be, and have been licensed for use by ProShares Capital Management. The ProShares UltraShort DJ–AIG Crude Oil ETF (''SCO'') and the ProShares Ultra DJ–AIG Crude Oil ETF (''UCO'') are based on the Dow Jones-AIG Crude Oil Index SM and are not sponsored, endorsed, sold or promoted by Dow Jones, AIG Financial Products Corp. (''AIG–FP''), American International Group, or any of their respective subsidiaries or affiliates. Dow Jones,

UltraShort MidCap 400 ETF (''MZZ''),[5] the ProShares UltraShort 7–10 Year Treasury ETF (''PST''),[6] the iShares GSCI Commodity Indexed Trust ETF (''GSG''),[7] the ProShares Ultra Gold ETF (''UGL'') and the ProShares UltraShort Gold ETF (''GLL''). The Exchange represents that UCO, SCO, MZZ, PST, GSG, UGL and GLL are eligible for options trading because they constitute ''Exchange-Traded Fund Shares,'' as defined by ISE Rule 502(h).

All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is proposing to adopt an execution fee for all transactions in options on UCO, SCO, MZZ, PST, GSG, UGL and GLL.[8] The amount of the execution fee for products covered by this filing shall be $0.18 per contract for all Public Customer Orders [9] and $0.20 per contract for all Firm Proprietary orders. The amount of the execution fee for all ISE Market Maker transactions shall be equal to the execution fee currently charged by the Exchange for ISE Market Maker transactions in equity options.[10] Finally, the amount of the execution fee for all non-ISE Market Maker transactions shall be $0.45 per contract.[11] Further, since options on UCO, SCO, MZZ, PST, GSG, UGL and GLL are multiply-listed, the Exchange's Payment for Order Flow fee shall apply to all these products. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

*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

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [14] and Rule 19b–4(f)(2) [15] thereunder. 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 proposal 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*. Please include File No. SR–ISE–2009–06 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 No. SR–ISE–2009–06. This file number

AIG–FP, and American International Group have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on SCO and UCO or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on SCO and UCO or with making disclosures concerning options on SCO and UCO under any applicable federal or state laws, rules or regulations. Dow Jones, AIG–FP, and American International Group do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

[5] ''Standard & Poor's'', ''S&P'', ''S&P 400'', and ''Standard & Poor's 400'' are trademarks of The McGraw-Hill Companies, Inc. (''McGraw-Hill'') and have been licensed for use for certain purposes by ProShares Trust. All other trademarks and service marks are the property of their respective owners. The ProShares UltraShort MidCap 400 ETF (''MZZ'') is not sponsored, endorsed, sold or promoted by Standard & Poor's, (''S&P''), a division of McGraw-Hill. S&P has not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on MZZ or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on MZZ or with making disclosures concerning options on MZZ under any applicable federal or state laws, rules or regulations. S&P does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

[6] ''Barclays Capital'' and ''Barclays Capital Inc.'' are trademarks of Barclays Capital Inc. (''Barclays'') and have been licensed for use for certain purposes by ProShares Trust. All other trademarks and service marks are the property of their respective owners. The ProShares UltraShort 7–10 Treasury ETF (''PST'') is not sponsored, endorsed, sold or promoted by Barclays. Barclays has not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on PST or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on PST or with making disclosures concerning options on PST under any applicable federal or state laws, rules or regulations. Barclays does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

[7] iShares ® is a registered trademark of Barclays Global Investors, N.A. (''BGI''), a wholly owned subsidiary of Barclays Bank PLC. ''GSCI ®'' is a registered trademark of Goldman, Sachs & Co. (''Goldman'') and has been licensed for use for certain purposes by BGI. All other trademarks and service marks are the property of their respective owners. The iShares GSCI Commodity Indexed Trust (''GSG'') is not sponsored, sold, endorsed or promoted by Goldman. Goldman and BGI have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on GSG or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on GSG or with making disclosures concerning options on GSG under any applicable federal or state laws, rules or regulations. Goldman and BGI do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

[8] These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2009, these fees will also be charged to Linkage Principal Orders (''Linkage P Orders'') and Linkage Principal Acting as Agent Orders (''Linkage P/A Orders''). The amount of the execution fee charged by the Exchange for Linkage P Orders and Linkage P/A Orders is $0.24 [sic] per contract side and $0.15 [sic] per contract side, respectively. *See* Securities Exchange Act Release No. 58143 (July 11, 2008), 73 FR 41388 (July 18, 2008) (SR–ISE–2008–52). The Commission notes that the Exchange failed to accurately reflect the increased execution fees for linkage orders, which are now $0.27 for Linkage P orders and $0.18 for Linkage P/A orders. *See* Securities Exchange Act Release No. 58139 (July 10, 2008), 73 FR 41142 (July 17, 2008) (SR–ISE–2008–54).

[9] Public Customer Order is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(38) as a person or entity that is not a broker or dealer in securities.

[10] The Exchange applies a sliding scale, between $0.01 and $0.18 per contract side, based on the number of contracts an ISE market maker trades in a month.

[11] The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is $0.19 per contract.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

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 such filing also will be available for inspection and copying at the principal office of the ISE. 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–2009–06 and should be submitted on or before March 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–3979 Filed 2–24–09; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59419; File No. SR–BX–2009–011]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate the $3 Underlying Price Requirement for Continued Listing and Listing of Additional Series on the Boston Options Exchange Facility

February 19, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 18, 2009, NASDAQ OMX BX, Inc. (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 the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

The Exchange proposes to amend Chapter IV, Section 4 (Withdrawal of Approval of Underlying Securities) of the Rules of the Boston Options Exchange Group, LLC (''BOX'') to eliminate the $3 market price per share requirement from the requirements for continued approval of an underlying security and 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 available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

### 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 requirements for continued approval for an underlying security from Chapter IV, Section 4(b)(iv) of the BOX Rules. This proposed rule change also amends Chapter IV, Section 4(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 Section 4 to eliminate references to Section 4(b)(iv).

The BOX 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, BOX 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 Chapter IV, Section 4 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, BOX is currently unable to list new series on underlying securities trading below $3. If there is market demand for series below $3, BOX would be unable to accommodate such requests and investors would be unable to hedge their positions with options series with strikes below $3.

2. Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[5] in general, and Section 6(b)(5) of the Act,[6] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 BOX to make options on underlying securities available even if the price of the underlying security is less than $3,

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).