

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60810; File No. SR-ISE-2009-80]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Market Maker Incentive Plan for Foreign Currency Options

October 9, 2009.

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 October 6, 2009, International Securities Exchange, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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 extend an incentive plan for market makers in three recently listed foreign currency options (“FX Options”) and make clarifying changes regarding fees for transactions in these FX Options. 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 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 Exchange 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

On August 3, 2009, the Exchange began trading options on the New Zealand dollar (“NZD”), the Mexican peso (“PZO”) and the Swedish krona (“SKA”)<sup>3</sup> and adopted an incentive plan applicable to market makers in NZD, PZO and SKA.<sup>4</sup> The purpose of this proposed rule change is to extend the date by which market makers may join the incentive plan. The Exchange also proposes to make clarifying changes regarding fees for transactions in these products.

In order to promote trading in these FX Options, the Exchange has an incentive plan pursuant to which the Exchange waives the transaction fees for the Early Adopter<sup>5</sup> FXPMM<sup>6</sup> and all Early Adopter FXCMMs<sup>7</sup> that make a market in NZD, PZO and SKA for as long as the incentive plan is in effect. Further, pursuant to a revenue sharing agreement entered into between an Early Adopter Market Maker and ISE, the Exchange pays the Early Adopter FXPMM forty percent (40%) of the transaction fees collected on any customer trade in NZD, PZO and SKA and pays up to ten (10) Early Adopter FXCMMs that participate in the incentive plan twenty percent (20%) of the transaction fees collected for trades between a customer and that FXCMM. Market makers that do not participate in the incentive plan are charged regular transaction fees for trades in these products. In order to participate in the incentive plan, market makers were required to enter into the incentive plan no later than October 5, 2009. The Exchange now proposes to extend the date by which market makers may enter into the incentive plan to December 31, 2009.

<sup>3</sup> The Commission previously approved the trading of options on NZD, PZO and SKA. See Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (Order approving the listing and trading of FX Options).

<sup>4</sup> See Securities Exchange Act Release No. 34-60536 [sic] (August 19, 2009), 74 FR 43204 (August 26, 2009) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes and an Incentive Plan for Three Foreign Currency Options).

<sup>5</sup> Participants in the incentive plan are known on the Exchange’s Schedule of Fees as Early Adopter Market Makers.

<sup>6</sup> A FXPMM is a primary market maker selected by the Exchange that trades and quotes in FX Options only. See ISE Rule 2213.

<sup>7</sup> A FXCMM is a competitive market maker selected by the Exchange that trades and quotes in FX Options only. See ISE Rule 2213.

Further, the Exchange proposes to make clarifying changes to its Schedule of Fees. In the filing that adopted the incentive plan, the Exchange inadvertently excluded two fee discounts applicable to trading in options on NZD, PZO and SKA. First, for Complex Orders in NZD, PZO and SKA, the Exchange charges a fee only for the leg of the trade consisting of the most contracts. Second, pursuant to a pilot program, transaction fees in all FX Options traded on the Exchange are waived entirely on incremental volume above 5,000 contracts for single-sided orders of at least 5,000 contracts. The Exchange has applied these two fee discounts to trades in NZD, PZO and SKA since these products began trading on the Exchange on August 3, 2009 and now proposes to reflect the applicability of these fee discounts on its Schedule of Fees.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>9</sup> 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. The Exchange believes the proposed rule change will permit additional market makers to join the incentive plan which in turn will generate additional order flow to the Exchange by creating incentives to trade these FX Options as well as defray operational costs for Early Adopter Market Makers.

#### 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

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

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

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

the Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> 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 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-2009-80 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-2009-80. 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 official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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-2009-80 and should be submitted on or before November 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60819; File No. SR-NYSEArca-2009-89]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Replacement Indexes for PowerShares DB Commodity Index Tracking Fund and PowerShares DB Agriculture Fund

October 13, 2009.

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 October 8, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

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

Pursuant to the provisions of Section 19(b)(1) of the Act,<sup>3</sup> the Exchange, through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), proposes to describe a replacement to the indexes underlying the PowerShares DB Commodity Index Tracking Fund and the PowerShares DB Agriculture Fund, which are listed on the Exchange under Commentary .02 to NYSE Arca Equities Rule 8.200.

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

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

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

<sup>35</sup> 15 U.S.C. 78s(b)(1).

#### 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

###### 1. Purpose

The PowerShares DB Commodity Index Tracking Fund ("DBC") and the PowerShares DB Agriculture Fund ("DBA" and together with DBC, the "Funds")<sup>4</sup> are currently listed on the Exchange under Commentary .02 to NYSE Arca Equities Rule 8.200 ("Trust Issued Receipts").<sup>5</sup> Deutsche Bank AG

<sup>4</sup> See Registration Statement on Form S-3 for PowerShares DB Commodity Index Tracking Fund (No. 333-158733, dated April 23, 2009) ("DBC Registration Statement") and the Post-Effective Amendment No. 1 to Form S-1 for PowerShares DB Agriculture Fund (No. 333-150501, dated April 15, 2009) ("DBA Registration Statement"). In addition, the issuer has filed Current Reports on Forms 8-K with respect to DBC (No. 001-32726, filed Sept. 30, 2009) ("DBC Current Report") and DBA (No. 001-33238, filed Sept. 30, 2009) ("DBA Current Report") regarding replacement of the indexes underlying the Funds.

<sup>5</sup> See Securities Exchange Act Release No. 58993 (November 21, 2008), 73 FR 72548 (November 28, 2008) (SR-NYSEArca-2008-128) (order approving listing on the Exchange of the Funds) ("NYSE Arca Order"). The Funds were previously traded on the Exchange pursuant to unlisted trading privileges ("UTP"). See Securities Exchange Act Release Nos. 53736 (April 27, 2006), 71 FR 26582 (May 5, 2006) (SR-PCX-2006-22) (order approving UTP trading of DB Commodity Index Tracking Fund); 55453 (March 13, 2007), 72 FR 13333 (March 21, 2007) (SR-NYSEArca-2006-62) (order approving UTP trading of PowerShares DB Agriculture Fund and other PowerShares commodity-based funds). The Funds were originally approved for listing on the American Stock Exchange LLC (the "Amex", now known as NYSE Amex LLC). See Securities Exchange Act Release Nos. 53105 (January 11, 2006), 71 FR 3129 (January 19, 2006) (SR-Amex-2005-59) (approving listing of DB Commodity Index Tracking Fund (now known as PowerShares DB Commodity Index Tracking Fund)) ("Amex DBC Order"); 55029 (December 29, 2006), 72 FR 806 (January 8, 2007) (SR-Amex-2006-76) (approving listing of PowerShares DB Agriculture Fund and other PowerShares commodity-based funds) ("Amex DBA Order"). See also, Securities Exchange Act Release No. 53858 (May 24, 2006), 71 FR 31232 (June 1, 2006) (SR-Amex-2006-53) ("Supplemental Amex DBC Filing", in which the Amex clarified the manner in which the index underlying DBC is maintained by providing that the replacement of expiring futures contracts would be based on

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A) [sic].

<sup>11</sup> 17 CFR 240.19b-4(f)(2).