

FINRA Rule 5122 (Private Placements of Securities Issued by Members). All of the proposed rule changes noted above will become effective on December 14, 2009.

Finally, the proposed rule change would update rule cross-references in FINRA Rule 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)) to reflect the incorporation of NASD Rule 2220 into the Consolidated FINRA Rulebook as FINRA Rule 2220 (Options Communications)<sup>15</sup> and the deletion of NYSE Rule 445 (Anti-Money Laundering Compliance Program)<sup>16</sup> and certain paragraphs of NYSE Rule 352 (Guarantees, Sharing in Accounts, and Loan Arrangements)<sup>17</sup> from the FINRA rulebook.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed rule changes to NASD Rule 2320 and FINRA Rules 0150, 2357, 5122, 6635 and 9551 will be December 14, 2009.<sup>18</sup> The implementation date for the proposed rule changes to FINRA Rule 9217 will be December 14, 2009, except the proposed change that would eliminate the reference to NYSE Rule 445 from FINRA Rule 9217, which will be implemented on January 1, 2010.<sup>19</sup>

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>20</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

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

FINRA does not believe that the proposed rule change will result in 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*

Written comments were neither solicited nor received.

### **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>21</sup> and Rule 19b-4(f)(6) thereunder.<sup>22</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 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-FINRA-2009-078 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-FINRA-2009-078. 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 FINRA. 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-FINRA-2009-078 and should be submitted on or before December 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61102; File No. SR-ISE-2009-102]

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the \$1 Strike Program To Allow Low-Strike LEAPS**

December 3, 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 November 24, 2009, 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

<sup>23</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>15</sup> See note 12.

<sup>16</sup> See Securities Exchange Act Release No. 60645 (September 10, 2009), 74 FR 47630 (September 16, 2009) (Order Approving File No. SR-FINRA-2009-039).

<sup>17</sup> See note 7.

<sup>18</sup> See Regulatory Notice 09-60 (October 2009).

<sup>19</sup> See note 18.

<sup>20</sup> 15 U.S.C. 78o-3(b)(6).

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 240.19b-4(f)(6).

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 amend the \$1 Strike Program. 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 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 expand the \$1 Strike Program ("Program") in a limited fashion to allow ISE to list new series in \$1 intervals up to \$5 in long-term options series ("LEAPS") in up to 200 options classes on individual stocks.<sup>5</sup> Currently, under the Program, ISE may not list LEAPS at \$1 strike price intervals for any class selected for the Program. ISE is also restricted from listing any series that would result in strike prices being \$0.50 apart, unless the series are part of the \$0.50 Strike Program.<sup>6</sup>

ISE believes that this proposed rule change is appropriate and will allow investors to establish options positions that are better tailored to meet their investment objectives, vis-à-vis credit

risk, using deep out-of-the-money put options. Deep out-of-the-money put options are viewed as a viable, liquid alternative to OTC-traded credit default swaps ("CDS"). These options do not possess the negative characteristics associated with CDS, namely, lack of transparency, insufficient collateral requirements, and inefficient trade processing. Moreover, deep out-of-the-money put options and CDS are functionally similar, as there is a high correlation between low-strike put prices and CDS spreads.

ISE notes that this proposal is limited in scope, as \$1 strikes in LEAPS may only be listed up to \$5 and in only up to 200 options classes. As is currently the case, ISE would not list series with \$1 intervals within \$0.50 of an existing \$2.50 strike price in the same series. As a result, ISE does not believe that this proposed rule change will cause a significant increase in quote traffic.

Moreover, as the SEC is aware, ISE has adopted various quote mitigation strategies on an effort to lessen the growth rate of options quotations. When ISE expanded the Program several months ago, ISE included a delisting policy that would be applicable with regard to this proposed expansion.<sup>7</sup> ISE and the other options exchanges amended the Options Listing Procedures Plan ("OLPP") in 2008 to impose a minimum volume threshold of 1,000 contracts national average daily volume per underlying class to qualify for an additional year of LEAP series.<sup>8</sup> Most recently, ISE, along with the other options exchanges, amended the OLPP to adopt objective, exercise price range limitations applicable to equity options classes, options on ETFs and options on trust issued receipts.<sup>9</sup> ISE believes that these price range limitations will have a meaningful quote mitigation impact. Additionally, pursuant to its policy to delist options with ADV of less than 50 contracts, ISE has, since January 2009, delisted 95 options classes.<sup>10</sup>

<sup>7</sup> The delisting policy includes a provision that states ISE may grant member requests to add strikes and/or maintain strikes in series of options classes traded pursuant to the Program that are eligible for delisting.

<sup>8</sup> See SEC Release No. 34-58630 (September 24, 2008), approving Amendment No. 2 to the OLPP.

<sup>9</sup> See SEC Release No. 34-60531 (August 19, 2009), approving Amendment No. 3 to the OLPP. This proposed rule change would not be subject to the exercise price range limitations contained in the OLPP.

<sup>10</sup> Members are advised of an Involuntary Delisting through an Information Alert sent via Electronic Mail by the Exchange. An Information Alert announcing the delisting of 21, 33, 28 and 13 options classes as part of the Exchange's delisting program was sent to Members on January 16, 2009, April 13, 2009, July 17, 2009 and October 30, 2009, respectively.

The margin requirements set forth in Chapter 12 of the Exchange's rules and the position and exercise requirements set forth in Rules 412 and 414 will continue to apply to these new series, and no changes are being proposed to those requirements by this proposed rule change.

ISE has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

The Exchange also proposes to make a non-substantive change to Rule 504 by relocating the provision "A stock shall remain in the \$1 Strike Program until otherwise designated by the Exchange" to the end of Supplementary Material .01 to Rule 504.

##### **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>11</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 \$1 strike prices in LEAPS series for the benefit of investors and as a competitive response to the listing of \$1 strike prices in LEAPS series by another exchange.

#### *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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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

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

<sup>5</sup> Under ISE Rule 506, LEAPS expire from 12-39 months from the time they are listed.

<sup>6</sup> See Securities Exchange Act Release No. 60696 (September 18, 2009), 74 FR 49053 (September 25, 2009) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Strike Price Intervals of \$0.50 for Options on Stocks Trading At or Below \$3.00).

the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission hereby grants that request.<sup>14</sup> The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it recently approved a proposal from CBOE which is identical to the current proposal in all material respects and on which no comments were received.<sup>15</sup> Therefore, the proposal is operative upon filing.

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 No. SR-ISE-2009-102 on the subject line.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</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, 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 has waived this requirement in this case.

<sup>14</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).

<sup>15</sup> See Exchange Act Release No. 60978 (November 10, 2009), 74 FR 59296 (November 17, 2009) (approving SR-CBOE-2009-68).

#### *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-2009-102. 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 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-2009-102 and should be submitted on or before December 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>16</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61106; File No. SR-NYSEAmex-2009-74]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Through December 31, 2010

December 3, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on October 26, 2009, NYSE Amex LLC ("NYSE Amex" or the "Exchange") 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 Exchange proposes to amend its option trading rules to (i) extend the Penny Pilot in options classes in certain issues ("Pilot Program") previously approved by the Securities and Exchange Commission ("Commission") through December 31, 2010; and (ii) expand the number of issues included in the Pilot. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office 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 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.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.