

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61430; File No. SR-ISE-2010-08]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Allow All SPY and IWM Options Series To Quote in Penny Increments

January 27, 2010.

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 January 21, 2010, the International Securities Exchange, LLC (the "Exchange" or "ISE") filed with the Securities and Exchange 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 ISE proposes to quote all series of options on the SPDR S&P 500 Exchange Traded Fund and options on the iShares Russell 2000 Index Fund in penny increments pursuant to the pilot program to quote and to trade certain options in pennies ("Penny Pilot").

#### 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

On January 24, 2007, the SEC approved ISE's rule filing, SR-ISE-2006-62, which initiated the Penny

Pilot.<sup>3</sup> Under the Penny Pilot, the minimum price variation for all participating options classes, except for the PowerShares QQQ ("QQQQ")<sup>4</sup> (formerly known as the Nasdaq-100 Index Tracking Stock), is \$0.01 for all quotations in options series that are quoted at less than \$3 per contract and \$0.05 for all quotations in options series that are quoted at \$3 per contract or greater. Thus, the current minimum quoting increment for bids and offers in options on the SPDR S&P 500 Exchange Traded Fund ("SPY") and in options on the iShares Russell 2000 Index Fund ("IWM") is \$0.01 for all options series below \$3.00 and \$0.05 for all options series \$3.00 and above.

The Exchange now proposes to eliminate the \$3.00 breakpoint that exists for SPY and IWM and designate all options series in SPY and IWM as eligible to quote in \$0.01 increments, regardless of premium value. The Exchange will communicate the proposed change to its membership via a Regulatory Information Circular ("RIC") which shall also be posted on the Exchange's Web site.

The Exchange notes that although the Penny Pilot has contributed to some increase in quote message traffic, it has been manageable by the Exchange and the Options Price Reporting Authority ("OPRA"), with no significant disruption in the dissemination of pricing information. The Exchange believes that the benefits to public customers and other market participants who are able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic. Moreover, the Exchange's rule change proposal is sufficiently limited such that it is unlikely to increase quotation message traffic beyond the capacity of the Exchange's or OPRA's systems, or to disrupt the timely dissemination of information.

The Exchange believes that its proposal to eliminate the breakpoint for penny quoting of all SPY and IWM option series should facilitate the continuing narrowing of spreads,

<sup>3</sup> See Securities Exchange Act Release No. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007). The Penny Pilot was subsequently extended a number of times and is currently scheduled to expire on December 31, 2010. See Securities Exchange Act Release Nos. 56151 (July 26, 2007), 72 FR 42452 (August 2, 2007) (SR-ISE-2007-68); 56564 (September 27, 2007), 72 FR 56412 (October 3, 2007) (SR-ISE-2007-74); 57508 (March 17, 2008), 73 FR 15243 (March 21, 2008) (SR-ISE-2008-27); 59633 (March 26, 2009), 74 FR 15018 (April 2, 2009) (SR-ISE-2009-14); 60222 (July 1, 2009), 74 FR 32994 (July 9, 2009) (SR-ISE-2009-37); 60865 (October 22, 2009), 74 FR 55880 (October 29, 2009) (SR-ISE-2009-82).

<sup>4</sup> Options on QQQQ are quoted in \$0.01 increments for all series.

thereby lowering costs to the benefit of investors.

This proposal is based on a recent Commission-approved proposal of the NYSEArca exchange.<sup>5</sup> The Exchange proposes to designate SPY and IWM as eligible to quote and trade all options contracts in one cent increments as of February 1, 2010. This date corresponds with the second phase-in date for additional classes in the Penny Pilot.

###### 2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Exchange Act")<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act<sup>7</sup> in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, by allowing all SPY and IWM options series to quote in penny intervals.

##### 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 written comments from members or other interested parties.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent

<sup>5</sup> See Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR-NYSEArca-2009-44).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

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

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

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>10</sup> and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.<sup>11</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>12</sup> which would make the rule change effective and operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal is based on a recent Commission-approved proposal submitted by another options exchange<sup>13</sup> and therefore does not raise any novel regulatory issues. Further, waiving the operative delay will allow the Exchange to commence quoting all series of IWM and SPY in increments of \$0.01 effective February 1, 2010, contemporaneously with other options exchanges. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.<sup>14</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-ISE-2010-08 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-2010-08. 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 the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. 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-2010-08 and should be submitted on or before February 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

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

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**BILLING CODE 8011-01-P**

<sup>15</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61425; File No. SR-OCC-2009-18]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Allow Members To Deposit Customer Fully Paid or Excess Margin Securities to the Extent Permitted by No-Action Relief or Interpretive Guidance From the Commission or Interpretive Guidance From a Self-Regulatory Organization

January 26, 2010.

#### I. Introduction

On October 23, 2009, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2009-18 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The proposed rule change was published for comment in the Federal Register on December 7, 2009.<sup>2</sup> No comment letters were received on the proposal. This order approves the proposal.

#### II. Description

The proposed rule change allows members to deposit customer fully paid or excess margin securities to the extent that activity is consistent with Rule 15c3-3<sup>3</sup> under the Act and is permitted by no-action relief or interpretive guidance from the Commission or interpretive guidance from a Self-Regulatory Organization ("SRO").

OCC rules currently prohibit members from depositing with OCC fully paid or excess margin securities that are carried for the account of a customer. This prohibition is intended to conform OCC's treatment of customer fully paid and excess margin securities to the requirements of Rule 15c3-3.

Currently, a Commission no-action letter and related interpretive guidance from the New York Stock Exchange permit fully paid or excess margin securities carried in a customer account to be deposited with OCC in two circumstances. First, if a customer makes a specific deposit of fully paid or excess margin securities with a member to secure its obligations as an option writer<sup>4</sup> then the member may in turn deposit the customer's securities with

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

<sup>2</sup> Securities Exchange Act Release No. 61078 (November 30, 2009), 74 FR 64116.

<sup>3</sup> 17 CFR 240.15c3-3.

<sup>4</sup> OCC Rule 610(e)-(f).

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. ISE has satisfied this requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> See *supra* note 5.

<sup>14</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).