

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.*

[FR Doc. E9-29388 Filed 12-8-09; 8:45 am]

**BILLING CODE 8011-01-P**

## 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.

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

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

1. Purpose

The Exchange hereby proposes to extend the time period of the Pilot Program<sup>4</sup> which is currently scheduled to expire on October 31, 2009, through December 31, 2010. Moreover, the Exchange proposes the following changes to its Penny Pilot Program which are consistent with recent changes to the NYSE Arca Penny Pilot Program.<sup>5</sup>

*Top 300:*

The Exchange also proposes to expand the number of issues included in the Pilot Program. Specifically, NYSE Amex proposes to add the top 300 most actively traded multiply listed options classes that are not yet included in the Pilot Program ("Top 300"). The Exchange proposes to determine the identity of the Top 300 based on national average daily volume over a six month period preceding their addition to the Pilot Program, as set forth below.<sup>6</sup> In determining the identity of the Top 300, the Exchange will exclude options classes with high premiums. Pursuant to Commentary .02 to NYSE Amex Rule 960NY, the Pilot Program issues will be announced to the Exchange's membership via Regulatory Bulletin and published by the Exchange on its Web site.<sup>7</sup> This will bring the total number of options classes traded pursuant to the Pilot Program to 363. NYSE Amex represents that the Exchange has the necessary system capacity to support any additional series listed as part of the Pilot Program.

NYSE Amex believes that it is appropriate to exclude high priced underlying securities, as the benefit to

the public from including such issues is minimal because of the high price of at-the-money options.<sup>8</sup> The Exchange believes an appropriate threshold for designation as "high priced" at the time of selection of new issues to be included in the Pilot is \$200 per share or a calculated index value of 200. At \$200 per share or a calculated index value of 200, strike prices are in \$10 increments, so the "at the money" strike is more likely to carry an intrinsic value of \$3 or more, and thus not trade in a penny increment. With a greater distance between strikes, there are fewer series that are actively traded. The determination of whether a security is trading above \$200 or above a calculated index value of 200 shall be based on the price at the close of trading on the Expiration Friday prior to being added to the Pilot. This approach is consistent with the approach NYSE Amex has taken for high-priced issues when selecting Pilot issues in the past.

*Phased Implementation:*

The Exchange proposes to phase-in the additional classes to the Pilot Program over four successive quarters. Specifically, the Exchange proposes to add 75 classes on November 2, 2009; February 1, 2010; May 3, 2010; and August 2, 2010. The issues to be added on November 2, 2009 will be based on the most actively traded multiply listed issues for the six month period from April 1, 2009 through September 30, 2009. The issues to be added on February 1, 2010 will be based on the most actively traded multiply listed issues for the six month period from July 1, 2009 through December 31, 2009. The issues to be added on May 3, 2010 will be based on the most actively traded multiply listed issues for the six month period from October 1, 2009 through March 31, 2010. The issues to be added on August 2, 2010 will be based on the most actively traded multiply listed issues for the six month period from January 1, 2010 through June 30, 2010.

*Delistings:*

Additionally, the Exchange proposes that any Pilot Program issues that have been delisted may be replaced on a semi-annual basis by the next most actively traded multiply listed options classes that are not yet included in the Pilot, based on trading activity in the previous six months. The replacement issues would be added to the Pilot Program on the second trading day

following January 1, 2010 and July 1, 2010.<sup>9</sup>

*Report:*

The Exchange agrees to submit semi-annual reports to the Commission that will include sample data and analysis of information collected from April 1 through September 30, and from October 1 through March 31, for each year, for the ten most active and twenty least active options classes added to the Pilot Program, in addition to continuing to provide data concerning the existing Pilot Program classes. As the Pilot Program matures and expands, the Exchange believes that this proposed sampling approach provides an appropriate means by which to monitor and assess the Pilot Program's impact. The Exchange will also identify, for comparison purposes, a control group consisting of the ten least active options classes from the existing Pilot Program classes. This report will include, but is not limited to: (1) Data and analysis on the number of quotations generated for options included in the report; (2) an assessment of the quotation spreads for the options included in the report; (3) an assessment of the impact of the Pilot Program on the capacity of the Exchange's automated systems; (4) data reflecting the size and depth of markets, and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to 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.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>4</sup> See Securities Exchange Act Release No. 34-55162 (January 24, 2007), 72 FR 4738 (February 1, 2007); Securities Exchange Act Release No. 34-56567 (September 27, 2007), 72 FR 56396 (October 3, 2007).

<sup>5</sup> See Securities Exchange Act Release No. 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009) (Order Granting Partial Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 3 Thereto, Amending NYSE Arca Rule 6.72 and Expanding the Penny Pilot Program); see also Securities Exchange Act Release No. 60833 (October 16, 2009), 74 FR 54617 (October 22, 2009) (notice of filing and immediate effectiveness of SR-NYSEArca-2009-91).

<sup>6</sup> The Exchange will not include options classes in which the issuer of the underlying security is subject to an announced merger or is in the process of being acquired by another company, or if the issuer is in bankruptcy. For purposes of assessing national average daily volume, the Exchange will use data compiled and disseminated by the Options Clearing Corporation.

<sup>7</sup> The Exchange shall also identify the classes to be added to the Pilot Program, per each phase, in a filing with the Commission.

<sup>8</sup> For instance, as of August 12, 2009, the near term at the money call in GOOG (August 460 Calls) was trading at \$6.50 with the underlying at \$459.84. The lowest strike price September call trading below \$3 (with the underlying at the same price) was the September 500 Call.

<sup>9</sup> The replacement issues will be announced to the Exchange's membership via Regulatory Bulletin and published by the Exchange on its Web site.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**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>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</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 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>13</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>14</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing.<sup>15</sup> However, pursuant to Rule 19b-4(f)(6)(iii),<sup>16</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Exchange to extend the Penny Pilot Program without interruption and expand the Penny Pilot Program on the same schedule as the other exchanges. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.<sup>17</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-NYSEAmex-2009-74 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-NYSEAmex-2009-74. 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-NYSEAmex-2009-74 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>18</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-29302 Filed 12-8-09; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61101; File No. SR-ISE-2009-99]

**Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amending the Direct Edge ECN Fee Schedule**

December 2, 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 30, 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, 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 Exchange proposes to amend Direct Edge ECN's ("DECN") fee schedule for ISE Members<sup>3</sup> to (i) amend its fee schedule to reflect pass through charges of other market centers and (ii) make technical changes to the fee schedule. All of the changes described herein are applicable to ISE Members.

All of the changes described herein are applicable to ISE Members. The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.ise.com>.

<sup>18</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>3</sup> References to ISE Members in this filing refer to DECEN Subscribers who are ISE Members.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the 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 satisfied this pre-filing requirement.

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</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).