

(3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Units. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Units; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Units; (c) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; (d) the possibility that trading spreads and the resulting premium or discount on the Units may widen as a result of reduced liquidity of platinum and palladium trading during the Core and Late Trading Sessions after the close of the major world platinum and palladium markets; and (e) trading information.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act<sup>22</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-NYSEArca-2012-111), as modified by Amendment No. 1, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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is a member. Further, NYSE Arca states that it may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members of the ISG, including the Commodity Exchange, Inc. ("COMEX"). The Exchange also states that The Investment Industry Regulatory Organization of Canada and the New York Mercantile Exchange, of which COMEX is a division, are ISG members. The Investment Industry Regulatory Organization of Canada oversees Canadian broker-dealers and trading activity on the TSX. See Securities Exchange Act Release No. 63043 (October 5, 2010), 75 FR 62615, 62619 n.26 (October 12, 2010).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68424; File No. SR-ISE-2012-95]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

December 13, 2012.

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 December 7, 2012, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "SEC" or "Commission") the proposed rule change as described in Items I and II 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 proposes to amend its rules relating to a pilot program to quote and to trade certain options in pennies ("Penny Pilot Program"). The text of the proposed rule change is as follows, with deletions in [brackets] and additions are *italicized*:

#### Rule 710. Minimum Trading Increments

\* \* \* \* \*

#### *Supplementary Material to Rule 710*

.01 Notwithstanding any other provision of this Rule 710, the Exchange will operate a pilot program, scheduled to expire on [December 31, 2012] *June 30, 2013*, to permit options classes to be quoted and traded in increments as low as \$.01. The Exchange will specify which options trade in such pilot, and in what increments, in Regulatory Information Circulars filed with the Commission pursuant to Rule 19b-4 under the Exchange Act and distributed to Members.

The Exchange may replace any penny pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the penny pilot, based on trading activity in the previous six months. The replacement issues may be

<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.

added to the penny pilot on the second trading day following [July 1, 2012] *January 1, 2013*.

.02 No Change.

\* \* \* \* \*

The text of the proposed rule change is available on the Exchange's Web site at [www.ise.com](http://www.ise.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 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 the Statutory Basis for, the Proposed Rule Change*

##### 1. Purpose

Under the Penny Pilot Program, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock ("QQQQ"), the SPDR S&P 500 Exchange Traded Fund ("SPY") and the iShares Russell 2000 Index Fund ("IWM"), 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. QQQQ, SPY and IWM are quoted in \$0.01 increments for all options series. The Penny Pilot Program is currently scheduled to expire on December 31, 2012.<sup>4</sup> The Exchange proposes to extend the time period of the Penny Pilot Program through June 30, 2013, and to provide revised dates for adding replacement issues to the Penny Pilot program. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following January 1, 2013. The replacement issues will be selected based on trading activity for the six month period beginning June 1, 2012, and ending November 30, 2012. This filing does not propose any substantive changes to the Penny Pilot Program: all classes currently participating will

<sup>4</sup> See Exchange Act Release No. 67323 (June 29, 2012), 77 FR 40121 (July 6, 2012) (SR-ISE-2012-57).

remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

## 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Exchange Act") for this proposed rule change is found in Section 6(b)(5),<sup>5</sup> in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of 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, which extends the Penny Pilot Program for an additional six months, will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants.

### 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>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</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>8</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>9</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>10</sup> However, pursuant to Rule 19b-4(f)(6)(iii),<sup>11</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 Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.<sup>12</sup> Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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:

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

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

<sup>10</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>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> See Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR-NYSEArca-2009-44). See also *supra* note 4.

<sup>13</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).

## Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2012-95 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-2012-95. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will 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 Number SR-ISE-2012-95 and should be submitted on or before January 9, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).