

proposed rule change meets these requirements in that it promotes uniformity across markets concerning which securities are included in the trading pause pilot.

#### *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**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.<sup>8</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning all aspects of the foregoing, including whether the proposed rule change is consistent with the Act.

The Commission notes that ETF trades constituted a substantial majority of the trades that were cancelled on May 6, and the proposed amendments would bring certain ETFs within the scope of the trading pause pilot for the first time. The Commission solicits comment regarding the inclusion of ETFs within the trading pause pilot. The Commission requests comment in particular on the implications of including in the trading pause pilot ETFs on broad-based indices that also underlie options and futures products. What are the potential benefits and risks of including those ETFs in the pilot under circumstances where other products based on the same index may not be subject to any trading pause, or

may be subject to a different type of trading pause? Are existing mechanisms available in the markets for those other products sufficient to address any cross-market linkage concerns? What are the potential effects on price discovery and trading behavior in the different markets?

Similarly, the Commission solicits comments on the potential benefits and risks of excluding such ETFs from the pilot, particularly under circumstances where the securities underlying the ETF are included in the pilot. If there are trading pauses for the component securities of an index but not for an ETF based on that index, what consequences might that have for the ETF or for other products based on that index? If there are trading pauses in an ETF but not in the stocks that underlie that ETF, what consequences might that have for the underlying stocks or other products? What are the potential effects on price discovery for the ETF, the underlying stocks and other products?

Are there other market-based characteristics or metrics that should be considered for purposes of determining which ETFs should be included in the trading pause pilot, or for re-calibrating particular features of the trading pause? In addition, the Commission solicits comments regarding the operation of the trading pause pilot to date with respect to stocks in the S&P 500.

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-2010-033 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-FINRA-2010-033. 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 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 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-2010-033 and should be submitted on or before July 19, 2010.<sup>9</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-16411 Filed 7-6-10; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62419; File No. SR-ISE-2010-66]

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To Amend ISE Rule 2102 To Add Additional Securities to the Pilot Rule**

June 30, 2010.

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 June 30, 2010, International Securities Exchange, LLC (the "Exchange" or "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 Exchange. The Commission is publishing this notice to solicit comments on the

<sup>9</sup> The Commission believes that a 10-day comment period is reasonable, given the urgency of the matter. It will provide adequate time for comment.

<sup>10</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>8</sup> The Commission notes that FINRA has requested accelerated approval of the filing.

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 Rule 2102 (Hours of Business) to add additional securities to the pilot rule. The text of the proposed rule change is below. [sic]

The text of the proposed rule change is available on the Exchange's Internet Web site at <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 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 Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The Exchange proposes to amend ISE Rule 2102 to add securities included in the Russell 1000<sup>®</sup> Index ("Russell 1000") and specified Exchange Traded Products ("ETP") to the pilot rule. For purposes of this filing, ETPs include Exchange Traded Funds ("ETF"),<sup>3</sup> Exchange Traded Vehicles ("ETV"),<sup>4</sup> and Exchange Traded Notes ("ETN").<sup>5</sup>

<sup>3</sup> An ETF is an open-ended registered investment company under the Investment Company Act of 1940 that has received certain exemptive relief from the SEC to allow secondary market trading in the ETF shares. ETFs are generally index-based products, in that each ETF holds a portfolio of securities that is intended to provide investment results that, before fees and expenses, generally correspond to the price and yield performance of the underlying benchmark index.

<sup>4</sup> An ETV tracks the underlying performance of an asset or index, allowing investors exposure to underlying assets such as futures contracts, commodities, and currency without actually trading futures or taking physical delivery of the underlying asset. An ETV is traded intraday like an ETF. An ETV is an open-ended trust or partnership unit that is registered under the Securities Act of 1933.

<sup>5</sup> An ETN is a senior unsecured debt obligation designed to track the total return of an underlying index, benchmark or strategy, minus investor fees. ETNs are registered under the Securities Act of 1933 and are redeemable to the issuer.

Amendments to ISE Rule 2102 were approved by the Commission on June 10, 2010 on a pilot basis to end on December 10, 2010.<sup>6</sup> As the Exchange noted in its filing to amend ISE Rule 2102, during the pilot period, the Exchange would continue to assess whether additional securities need to be added and whether the parameters of the rule would need to be modified to accommodate trading characteristics of different securities.

Currently, the pilot list of securities is all securities included in the S&P 500<sup>®</sup> Index ("S&P 500"). As noted in comment letters to the original filing to amend ISE Rule 2102, concerns were raised that including only securities in the S&P 500 in the pilot rule was too narrow. In particular, commenters noted that securities that experienced volatility on May 6, 2010, including ETFs, should be included in the pilot.

In response to these concerns, various exchanges and national securities associations have collectively determined to expand the list of pilot securities. As part of a coordinated filing with the other markets, the Exchange proposes to add the securities included in the Russell 1000 and specified ETPs to the pilot beginning in July 2010, subject to Commission approval. The Exchange believes that adding these securities would address concerns that the scope of the pilot may be too narrow, while at the same time recognizing that during the pilot period, the markets will continue to review whether and when to add additional securities to the pilot and whether the parameters of the rule should be adjusted for different securities.

In particular, the Exchange proposes to add securities included in the Russell 1000 because the Exchange believes that the securities included in that index have similar trading characteristics to securities included in the S&P 500 (many of which are the same securities) and therefore the existing 10% price movement applicable before invoking a trading pause may be appropriate for the Russell 1000 securities.

In addition, the Exchange, in consultation with other markets, proposes to add to the pilot a selected list of ETPs. The proposed pilot list of ETPs was developed by first identifying all ETPs across multiple asset classes and issuers, including domestic equity, international equity, fixed income, currency, and commodities and futures. Next, leveraged ETPs were excluded and sorted by notional consolidated

average daily volume ("CADV") using year-to-date CADV ending May 5, 2010, multiplied by the closing price on May 5, 2010. Then, those symbols, including inverse ETPs, that trade over \$2,000,000 CADV year to date through May 5, 2010, were selected. To ensure that ETPs that track similar benchmarks but that do not meet this volume criterion do not become subject to pricing volatility when a component security is the subject of a trading pause, the Exchange proposes to include certain non-leveraged ETPs that have traded below this volume criterion, but that track the same benchmark as an ETP that does meet the volume criterion.

The proposed list of ETPs identify those ETPs that have component securities that largely track the securities included in the S&P 500 and Russell 1000. Accordingly, if an S&P 500 or Russell 1000 security experiences a trading pause, any resulting price volatility in a related ETP, regardless of the CADV of the ETP, would also be subject to a trading pause trigger. As with the proposal to add the Russell 1000 securities, the proposed ETPs were selected because they were consistent with the existing 10% price movement before invoking a trading pause for ETPs with these characteristics. The Exchange does not believe that the 10% price movement is an appropriate threshold for leveraged ETPs because by definition, leveraged ETPs are based on multiples of price movements in the underlying index. Accordingly, a 10% price movement in a leveraged ETP may not signify extraordinary volatility. Because the Exchange is not proposing to adopt revised price movement thresholds at this time, the Exchange is therefore not proposing to include leveraged ETPs for now.

As noted above, during the pilot, the Exchange will continue to re-assess, in consultation with other markets, whether specific ETPs should be added or removed from the pilot list. The Exchange will also assess whether the parameters for invoking a trading pause continue to be the appropriate standard and whether the parameters should be modified.

To effect this change, the Exchange proposes to amend ISE Rule 2102(4) to provide that the pilot applies to all securities in the S&P 500, securities in the Russell 1000, as well as specified ETPs. The pilot list of ETPs is identified in Exhibit 3.

##### **2. Statutory Basis**

The statutory basis for the proposed rule change is Section 6(b)(5) of the

<sup>6</sup> See Securities Exchange Act Release No. 62271 (June 10, 2010), 75 FR 34493 (June 17, 2010) (SR-ISE-2010-58).

Act,<sup>7</sup> which requires the rules of an exchange to promote just and equitable principles of trade, to 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>8</sup> of the Exchange Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

#### *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**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.<sup>9</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning all aspects of the foregoing, including whether the proposed rule change is consistent with the Act.

The Commission notes that ETF trades constituted a substantial majority of the trades that were cancelled on May 6, and the proposed amendments would bring certain ETFs within the scope of the trading pause pilot for the first time. The Commission solicits comment regarding the inclusion of ETFs within the trading pause pilot. The Commission requests comment in particular on the implications of including in the trading pause pilot ETFs on broad-based indices that also underlie options and futures products. What are the potential benefits and risks of including those ETFs in the pilot under circumstances where other products based on the same index may not be subject to any trading pause, or may be subject to a different type of trading pause? Are existing mechanisms available in the markets for those other products sufficient to address any cross-market linkage concerns? What are the potential effects on price discovery and trading behavior in the different markets?

Similarly, the Commission solicits comments on the potential benefits and risks of excluding such ETFs from the pilot, particularly under circumstances where the securities underlying the ETF are included in the pilot. If there are trading pauses for the component securities of an index but not for an ETF based on that index, what consequences might that have for the ETF or for other products based on that index? If there are trading pauses in an ETF but not in the stocks that underlie that ETF, what consequences might that have for the underlying stocks or other products? What are the potential effects on price discovery for the ETF, the underlying stocks and other products?

Are there other market-based characteristics or metrics that should be considered for purposes of determining which ETFs should be included in the trading pause pilot, or for re-calibrating particular features of the trading pause?

In addition, the Commission solicits comments regarding the operation of the trading pause pilot to date with respect to stocks in the S&P 500.

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-2010-66 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2010-66. 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 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 a.m. and 3 p.m. Copies of such 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 publicly available. All submissions should refer to File Number SR-ISE-2010-66 and should be submitted on or before July 19, 2010.<sup>10</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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

<sup>8</sup> 15 U.S.C. 78k-1(a)(1).

<sup>9</sup> The Commission notes that the Exchange has requested accelerated approval of the filing.

<sup>10</sup> The Commission believes that a 10-day comment period is reasonable, given the urgency of the matter. It will provide adequate time for comment.

<sup>11</sup> 17 CFR 200.30-3(a)(12).