

safeguarding of funds or securities in DTC's custody and control or for which it is responsible because it allows for a more efficient processing of P&I withdrawals and SPP returns.

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

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

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

DTC has not solicited or received written comments relating to the proposed rule change. DTC will notify the Commission of any written comments it receives.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>13</sup> and Rule 19b-4(f)(4)<sup>14</sup> thereunder because it effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. 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-comment@sec.gov](mailto:rule-comment@sec.gov). Please include File No. SR-DTC-2009-08 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 No. SR-DTC-2009-08. 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. to 3 p.m. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at <http://www.dtc.org/impNtc/mor/index.html>. 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-DTC-2009-08 and should be submitted on or before May 13, 2009.

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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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59777; File No. SR-ISE-2009-20]

**Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes**

April 16, 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 April 14, 2009, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "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 ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on 3 Premium Products.<sup>3</sup> 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 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.

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

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

<sup>3</sup> Premium Products is defined in the Schedule of Fees as the products enumerated therein.

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

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

<sup>15</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 is proposing to amend its Schedule of Fees to establish fees for transactions in options on the ProShares Ultra Silver ETF ("AGQ"), the Direxion Emerging Markets Bull 3x Shares ("EDC") and the Direxion Emerging Markets Bear 3x Shares ("EDZ").<sup>4</sup> The Exchange represents that AGQ, EDC and EDZ are eligible for options trading because they constitute "Exchange-Traded Fund Shares," as defined by ISE Rule 502(h).

All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is proposing to adopt an execution fee for all transactions in options on AGQ, EDC and EDZ.<sup>5</sup> The amount of the execution fee for products covered by this filing shall be \$0.18 per contract for all Public Customer Orders<sup>6</sup> and \$0.20 per contract for all Firm Proprietary orders. The amount of the execution fee for all ISE Market Maker transactions shall be equal to the execution fee currently charged by the Exchange for ISE Market

Maker transactions in equity options.<sup>7</sup> Finally, the amount of the execution fee for all non-ISE Market Maker transactions shall be \$0.45 per contract.<sup>8</sup> Further, since options on AGQ, EDC and EDZ are multiply-listed, the Exchange's Payment for Order Flow fee shall apply to all these products. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

Further, as a matter of housekeeping, the Exchange proposes to remove FTZ from the surcharge fee line item on its Schedule of fees.<sup>9</sup>

**2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>11</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

*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**

The foregoing rule change has become effective pursuant to Section 19(b)(3) of

the Act<sup>12</sup> and Rule 19b-4(f)(2)<sup>13</sup> thereunder. At any time within 60 days of the filing of such 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 proposal 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-2009-20 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 No. SR-ISE-2009-20. 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 changes 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

<sup>4</sup> The MSCI Emerging Markets Index<sup>SM</sup> is a service mark of Morgan Stanley Capital International Inc. ("MSCI") and has been licensed for use by Direxion Shares ETF Trust. All other trademarks and service marks are the property of their respective owners. The Direxion Emerging Markets Bull 3x Shares ("EDC") and the Direxion Emerging Markets Bear 3x Shares ("EDZ") are not sponsored, endorsed, issued, sold or promoted by MSCI, any of its affiliates, any of its information providers or any other third party involved in, or related to, compiling, computing or creating the MSCI Emerging Markets Index. MSCI has not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on EDC and EDZ or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on EDC and EDZ or with making disclosures concerning options on EDC and EDZ under any applicable Federal or State laws, rules or regulations. MSCI does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

<sup>5</sup> These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2009, these fees will also be charged to Linkage Principal Orders ("Linkage P Orders") and Linkage Principal Acting as Agent Orders ("Linkage P/A Orders"). The amount of the execution fee charged by the Exchange for Linkage P Orders and Linkage P/A Orders is \$0.27 per contract side and \$0.18 per contract side, respectively. See Securities Exchange Act Release No. 58143 (July 11, 2008), 73 FR 41388 (July 18, 2008) (SR-ISE-2008-52).

<sup>6</sup> Public Customer Order is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(38) as a person or entity that is not a broker or dealer in securities.

<sup>7</sup> The Exchange applies a sliding scale, between \$0.01 and \$0.18 per contract side, based on the number of contracts an ISE market maker trades in a month.

<sup>8</sup> The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is \$0.20 per contract.

<sup>9</sup> FTZ was previously delisted and no longer trades on the Exchange. Pursuant to SR-ISE-2008-07, filed on January 14, 2008, the Exchange removed FTZ from its Customer (Premium Products) line item and from its Payment for Order Flow line item on its fee schedule. In that filing, the Exchange, however, inadvertently failed to remove FTZ from its surcharge fee line item on its fee schedule.

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(4).

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

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

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-2009-20 and should be submitted on or before May 13, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59773; File Nos. SR-BX-2009-019, SR-NASDAQ-2009-032, SR-Phlx-2009-31]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; the NASDAQ Stock Market LLC; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes To Amend the Certificate of Incorporation of the NASDAQ OMX Group, Inc.

April 15, 2009.

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 April 2, 2009, NASDAQ OMX BX, Inc. ("BX"), the NASDAQ Stock Market LLC ("NASDAQ Exchange") and NASDAQ OMX PHLX, Inc. ("Phlx") (collectively, the "NASDAQ OMX Exchange Subsidiaries")<sup>3</sup> filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been substantially prepared by the NASDAQ OMX Exchange Subsidiaries. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

#### I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The NASDAQ OMX Exchange Subsidiaries are filing the proposed rule changes with regard to proposed

changes to the Restated Certificate of Incorporation (the "Certificate") of their parent corporation, NASDAQ OMX. The proposed rule changes will be implemented as soon as practicable following filing with the Commission. The text of the proposed rule changes is available at <http://www.cchwallstreet.com/nasdaqomx/>, <http://www.nasdaqtrader.com/Trader.aspx?id=BSEIERules2009>, and <http://www.nasdaqtrader.com/Micro.aspx?id=PhlxApprovedRulefilings>, respectively, and at the respective NASDAQ OMX Exchange Subsidiary's principal office, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, each of the NASDAQ OMX Exchange Subsidiaries included statements concerning the purpose of and basis for its proposed rule change and discussed any comments it received on its proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Each of the NASDAQ OMX Exchange Subsidiaries has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

###### 1. Purpose

NASDAQ OMX is proposing to make amendments to its Certificate. As provided in Articles XI and XII of the NASDAQ OMX By-Laws, proposed amendments to the Certificate are to be reviewed by the Board of Directors of each self-regulatory subsidiary of NASDAQ OMX, and if any such proposed amendment must, under Section 19 of the Act and the rules promulgated thereunder, be filed with, or filed with and approved by, the Commission before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be. The governing boards of BX, the NASDAQ Exchange, Phlx, BSECC, and SCCP have each reviewed the proposed change and determined that it should be filed with the Commission.<sup>4</sup> The changes to the

Certificate are limited in scope, and under Delaware law, they do not require approval by the stockholders of NASDAQ OMX.

Specifically, NASDAQ OMX is proposing to restate, without amendment, its Certificate. The Certificate is composed of a previous Restated Certificate of Incorporation adopted in 2003, and numerous subsequent amendments, which, under Delaware law, are adopted as freestanding documents. However, Delaware law allows the various documents comprising a certificate of incorporation to be consolidated into a single restated certificate upon approval of a corporation's board of directors. The change will assist interested persons, including NASDAQ OMX stockholders and Commission staff, in reading the Certificate without having to review multiple documents. The restated Certificate reflects the deletion of both the Certificate of Designations, Preferences and Rights of Series D Preferred Stock and the Certificate of Elimination that was recently filed with respect to it.<sup>5</sup> Since the latter component of the Certificate cancels the former, they are both deleted from the restated Certificate.

###### 2. Statutory Basis

The NASDAQ OMX Exchange Subsidiaries believe that their respective proposed rule changes are consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Sections 6(b)(1) and (b)(5) of the Act,<sup>7</sup> in particular, in that the proposal enables the NASDAQ OMX Exchange Subsidiaries to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and self-regulatory organization rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the

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

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

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

<sup>3</sup> The Commission notes that on April 2, 2009, substantially similar filings also were submitted by Boston Stock Exchange Clearing Corporation ("BSECC") (SR-BSECC-2009-003) and Stock Clearing Corporation of Philadelphia ("SCCP") (SR-SCCP-2009-02), the clearing corporation subsidiaries of NASDAQ OMX Group, Inc. ("NASDAQ OMX").

<sup>4</sup> BX, the NASDAQ Exchange, Phlx, BSECC, and SCCP have each submitted its respective filing pursuant to Section 19(b)(3)(A)(iii) of the Act, 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> Securities Exchange Act Release No. 59460 (February 26, 2009), 74 FR 9841 (March 6, 2009) (SR-NASDAQ-2009-010, SR-BX-2009-009, SR-Phlx-2009-14); Securities Exchange Act Release No. 59496 (March 3, 2009), 74 FR 10626 (March 11, 2009) (SR-BSECC-2009-01); Securities Exchange Act Release No. 59494 (March 3, 2009), 74 FR 10642 (March 11, 2009) (SR-SCCP-2009-01).

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

<sup>7</sup> 15 U.S.C. 78f(b)(1), (b)(5).