

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56005; File No. SR-ISE-2007-49)

July 3, 2007

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to Fee Changes on a Retroactive Basis

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 June 15, 2007, the International Securities Exchange, LLC (“ISE” or “Exchange”) 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 substantially prepared by ISE. 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

ISE is proposing to amend its Schedule of Fees to: (1) increase the per contract surcharge from \$0.10 per contract to \$0.15 per contract for options on the Russell 1000® Index (“RUI”), the Russell 2000® Index (“RUT”), and the Mini Russell 2000® Index (“RMN”); and (2) refund surcharge fees collected for transactions in options on the iShares Russell 2000® Index Fund (“IWM”), the iShares Russell 2000® Value Index Fund (“IWN”), the iShares Russell 2000® Growth Index Fund (“IWO”), the iShares Russell 1000® Value Index Fund (“IWD”) and the iShares Russell 1000® Index Fund (“IWB”), in both cases for the period commencing January 1, 2007 and ending June 15, 2007 (the “Retroactive Period”). The Exchange proposes the surcharge increase to become effective retroactively, as of January 1, 2007.<sup>3</sup> The text of the

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

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

<sup>3</sup> On June 15, 2007, the Exchange filed a proposed rule change as immediately effective

proposed rule change is available at ISE, [www.iseoptions.com](http://www.iseoptions.com), and 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 Exchange 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to: (1) increase the per contract surcharge from \$0.10 per contract to \$0.15 per contract in connection with the listing and trading of options on RUI, RUT, and RMN; and (2) refund surcharge fees collected for transactions in connection with the listing and trading in options on IWM, IWN, IWO, IWD and IWB during the Retroactive Period. The Exchange proposes the surcharge increase to become effective retroactively, as of January 1, 2007.

The Exchange's Schedule of Fees currently has in place a surcharge fee item that calls for a \$0.10 per contract fee in connection with the listing and trading of options on RUI, RUT and

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under Section 19(b)(3)(A) of the Exchange Act that: (1) removes the surcharge fee for IWM, IWN, IWO, IWD and IWB from its Schedule of Fees and (2) raises the surcharge fee from \$.10 per contract to \$.15 per contract for options on RUI, RUT and RMN. See Securities Exchange Act Release No. 55975 (June 28, 2007) (SR-ISE-2007-48). Because ISE seeks to apply changes to its Schedule of Fees on a retroactive basis, the Exchange is submitting this proposal for notice and comment.

RMN.<sup>4</sup> The Exchange revised its license agreement with the Frank Russell Company (“Russell”), effective January 1, 2007. Pursuant to the revised agreement, the Exchange pays Russell \$0.15 per contract to trade options on RUI, RUT and RMN. The Exchange thus proposes to increase the surcharge fee for options on RUI, RUT and RMN from \$0.10 per contract to \$0.15 per contract retroactive to January 1, 2007 and collect from members the applicable fees due to the Exchange for the Retroactive Period. The Exchange believes that charging the participants that trade these instruments is the most equitable means of recovering the increased costs of the license. However, because competitive pressures in the industry have resulted in the waiver of transaction fees for Public Customers, the Exchange proposes to exclude Public Customer Orders<sup>5</sup> from this surcharge fee. Accordingly, this surcharge fee will only be charged to Exchange members with respect to non-Public Customer Orders (e.g., ISE Market Maker, non-ISE Market Maker, and Firm Proprietary orders) and shall apply to certain Linkage Orders under a pilot program that is set to expire on July 31, 2007.<sup>6</sup>

Additionally, the Exchange had previously adopted a \$0.10 per contract surcharge in connection with the listing and trading of options on IWM, IWN, IWO, IWD,<sup>7</sup> and IWB.<sup>8</sup>

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<sup>4</sup> See Securities Exchange Act Release No. 51858 (June 16, 2005), 70 FR 36218 (June 22, 2005) (SR-ISE-2005-26).

<sup>5</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 that is not a broker or dealer in securities.

<sup>6</sup> Linkage Orders are defined in ISE Rule 1900(10). Under a pilot program that is set to expire on July 31, 2007, these fees will also be charged to Principal Acting as Agent Orders and Principal Orders (as defined in ISE Rule 1900(10)(i)-(ii)). See Securities Exchange Act Release No. 54204 (July 25, 2006), 71 FR 43548 (August 1, 2006) (SR-ISE-2006-38).

<sup>7</sup> See Securities Exchange Act Release No. 47075 (December 20, 2002), 67 FR 79673 (December 30, 2002) (SR-ISE-2002-29).

<sup>8</sup> See Securities Exchange Act Release No. 47564 (March 24, 2003), 68 FR 15256 (March 28, 2003) (SR-ISE-2003-13).

However, pursuant to the revised license agreement with Russell, the Exchange, as of January 1, 2007, no longer pays a license fee to Russell in connection with the listing and trading of options on IWM, IWN, IWO, IWD and IWB. As a result, the Exchange now proposes to refund to members the surcharge fee it has collected during the Retroactive Period.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)<sup>9</sup> that an exchange 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

ISE 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

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 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

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<sup>9</sup> 15 U.S.C. 78f(b)(4).

disapproved.

#### 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-2007-49 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2007-49. 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 10:00 am and 3:00 pm. 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 Number SR-ISE-2007-49 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).