

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57643; File No. SR-ISE-2008-31)

April 10, 2008

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Fee Changes

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 7, 2008, 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 prepared by the Exchange. The Exchange designated this proposal as one establishing or changing a due, fee, or other charge imposed by ISE under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. On April 9, 2008, ISE filed Amendment No. 1 to the proposed rule change.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

ISE proposes to amend its Schedule of Fees to establish fees for transactions in options

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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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> In Amendment No. 1, ISE corrected the ticker symbol for the PowerShares DB Gold Fund from DBL to DGL in the purpose section of the Form 19b-4 and in Exhibit 1. ISE also made corresponding changes to the Schedule of Fees in Exhibit 5.

on 5 Premium Products.<sup>6</sup> The text of the proposed rule change is available at the Exchange, on the Exchange's Web site at [www.ise.com](http://www.ise.com), and in 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. ISE has substantially 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 establish fees for transactions in options on the PowerShares DB Oil Fund ("DBO"), PowerShares DB Silver Fund

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<sup>6</sup> Premium Products is defined in the Schedule of Fees as the products enumerated therein.

(“DBS”), PowerShares DB Gold Fund (“DGL”),<sup>7</sup> Ultra Dow30 ProShares (“DDM”),<sup>8</sup> and Ultra Financials ProShares (“UYG”).<sup>9</sup> The Exchange represents that DBO, DBS, DGL, DDM, and UYG are eligible for options trading because they constitute “Exchange-Traded Fund Shares,” as defined by ISE Rule 502(h).

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<sup>7</sup> The PowerShares DB Oil Fund (“DBO”) is based on the Deutsche Bank Liquid Commodity Index - Optimum Yield Oil Excess Return™. The PowerShares DB Silver Fund (“DBS”) is based on the Deutsche Bank Liquid Commodity Index - Optimum Yield Silver Excess Return™. The PowerShares DB Gold Fund (“DGL”) is based on the Deutsche Bank Liquid Commodity Index - Optimum Yield Gold Excess Return™. DBO, DBS and DGL are managed by DB Commodity Services LLC. DGLCI™ and Deutsche Bank Liquid Commodity Index™ are trademarks of Deutsche Bank AG, London (“DB AG”). PowerShares® is a registered service mark of PowerShares Capital Management LLC (“PowerShares”). DBO, DBS and DGL are not sponsored, endorsed, sold, or promoted by DB AG, and DB AG makes no representation regarding the advisability of investing in DBO, DBS and DGL. Neither DB AG nor PowerShares has licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on DBO, DBS, and DGL 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 DBO, DBS and DGL or with making disclosures concerning options on DBO, DBS, and DGL under any applicable federal or state laws, rules or regulations. DB AG and PowerShares do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

<sup>8</sup> “The Dow 30<sup>SM</sup>,” “Dow Jones,” “Dow Jones Industrial Average,” and “DJIA,” are service marks of Dow Jones & Company, Inc. (“Dow Jones”) and have been licensed for use for certain purposes by ProFunds Trust (“ProShares”). All other trademarks and service marks are the property of their respective owners. The Ultra Dow30 ProShares (“DDM”) is not sponsored, endorsed, issued, sold, or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in DDM. Neither Dow Jones nor ProShares has licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on DDM 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 DDM or with making disclosures concerning options on DDM under any applicable federal or state laws, rules or regulations. Dow Jones and ProShares do not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

<sup>9</sup> “Dow Jones U.S. Financials<sup>SM</sup>,” is a service mark of Dow Jones and has been licensed for use for certain purposes by ProFunds Trust (“ProShares”). All other trademarks and service marks are the property of their respective owners. The Ultra Financials ProShares

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 and a comparison fee for all transactions in options on DBO, DBS, DGL, DDM, and UYG.<sup>10</sup> The amount of the execution fee and comparison fee for products covered by this filing shall be \$0.15 and \$0.03 per contract, respectively, for all Public Customer Orders<sup>11</sup> and Firm Proprietary orders. The amount of the execution fee and comparison fee for all ISE Market Maker transactions shall be equal to the execution fee and comparison fee currently charged by the Exchange for ISE Market Maker transactions in equity options.<sup>12</sup> Finally, the amount of the execution fee and comparison fee for all non-ISE Market Maker transactions shall be \$0.37 and

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(“UYG”) is not sponsored, endorsed, issued, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in UYG. Neither Dow Jones nor ProShares has licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on UYG 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 UYG or with making disclosures concerning options on UYG under any applicable federal or state laws, rules or regulations. Dow Jones and ProShares do not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

<sup>10</sup> These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2008, 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 \$0.24 per contract side and \$0.15 per contract side, respectively. See Securities Exchange Act Release No. 56128 (July 24, 2007), 72 FR 42161 (August 1, 2007) (SR-ISE-2007-55).

<sup>11</sup> Public Customer Order is defined in ISE Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in ISE Rule 100(a)(38) as a person that is not a broker or dealer in securities.

<sup>12</sup> The execution fee is currently between \$.21 and \$.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently \$.03 per contract side.

\$0.03 per contract, respectively.<sup>13</sup> Further, since options on DBO, DBS, DGL, DDM, and UYG 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.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>14</sup> in general, and Section 6(b)(4) of the Act<sup>15</sup> in particular, because 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.

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<sup>13</sup> The amount of the execution and comparison fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is \$0.16 and \$0.03 per contract, respectively.

<sup>14</sup> 15 U.S.C. 78f(b).

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

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>16</sup> and Rule 19b-4(f)(2)<sup>17</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal took effect upon filing with the Commission. 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.<sup>18</sup>

### 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-2008-31 on the subject line.

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>18</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on April 9, 2008, the date on which the ISE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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-2008-31. 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 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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-2008-31 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).