

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55407; File No. SR-ISE-2007-13)

March 6, 2007

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

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 February 7, 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 the ISE. The ISE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member 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. 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 three Premium Products.<sup>5</sup> The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and at [www.iseoptions.com](http://www.iseoptions.com).

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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> Premium Products is defined in the Schedule of Fees as the products enumerated therein.

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 ISE 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 ISE 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 establish fees for transactions in options on the following three Premium Products: ISE-Revere Wal-Mart Supplier Index (“WMX”),<sup>6</sup> iShares Dow Jones U.S. Energy Sector Index Fund (“IYE”),<sup>7</sup> and

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<sup>6</sup> The ISE-Revere Wal-Mart Supplier Index was jointly developed by ISE and Revere Data, LLC (“Revere”). Revere, an independent and privately owned provider of research data and investment analytics, provides specific research and support for the Wal-Mart Supplier Index. Wal-Mart® is a trademark of Wal-Mart Stores, Inc. The Wal-Mart Supplier Index is not sponsored, endorsed, sold or promoted by Wal-Mart Stores, Inc., and Wal-Mart Stores, Inc. makes no representation regarding the advisability of investing in WMX. Wal-Mart Stores, Inc. 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 WMX or (ii) to use any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on WMX or with making disclosures concerning options on WMX under any applicable federal or state laws, rules or regulations. Wal-Mart Stores, Inc. does not sponsor, endorse, or promote such activity by ISE, and is not affiliated in any manner with ISE.

<sup>7</sup> iShares® is a registered trademark of Barclays Global Investors, N.A. (“BGI”), a wholly owned subsidiary of Barclays Bank PLC. “Dow Jones” and “Dow Jones U.S. Energy Sector Index Fund” are trademarks and service marks of Dow Jones & Company, Inc. (“Dow Jones”) and have been licensed for use for certain purposes by BGI. All other trademarks and service marks are the property of their respective owners. The Dow Jones U.S. Energy Sector Index Fund is not sponsored, endorsed, issued, sold or promoted by Dow Jones. BGI and Dow Jones have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and

First Trust Dow Jones Select MicroCap Index Fund (“FDM”).<sup>8</sup> Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on WMX, IYE, and FDM.<sup>9</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>10</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

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promotion of options on IYE 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 IYE or with making disclosures concerning options on IYE under any applicable federal or state laws, rules or regulations. BGI and Dow Jones do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

<sup>8</sup> The First Trust Dow Jones Select MicroCap Index<sup>SM</sup> Fund is distributed by First Trust Portfolios, L.P. “Dow Jones,” and “Dow Jones Select MicroCap Index,” are trademarks of Dow Jones & Company, Inc. and have been licensed for use for certain purposes by First Trust. All other trademarks and service marks are the property of their respective owners. The First Trust Dow Jones Select MicroCap Index Fund is not sponsored, endorsed, issued, sold or promoted by Dow Jones. First Trust and Dow Jones have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on FDM 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 FDM or with making disclosures concerning options on FDM under any applicable federal or state laws, rules or regulations. First Trust and Dow Jones do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

The Exchange represents that IYE and FDM constitute “Fund Shares,” as defined by ISE Rule 502(h). The Exchange further represents that WMX meets the standards of ISE Rule 2002(b), which allows the ISE to begin trading this product by filing Form 19b-4(e) at least five business days after commencement of trading this new product pursuant to Rule 19b-4(e) of the Act. Accordingly, ISE filed Form 19b-4(e) with the Commission on February 9, 2007.

<sup>9</sup> The Exchange represents that these fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2007, these fees will also be charged to Linkage Orders (as defined in ISE Rule 1900). See Securities Exchange Act Release No. 54204 (July 25, 2006), 71 FR 43548 (August 1, 2006) (SR-ISE-2006-38).

<sup>10</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.

currently charged by the Exchange for ISE Market Maker transactions in equity options.<sup>11</sup> Finally, the amount of the execution fee and comparison fee for all non-ISE Market Maker transactions shall be \$0.16 and \$0.03 per contract, respectively. All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium 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.

Additionally, the Exchange has entered into a license agreement with Revere Data, LLC in connection with the listing and trading of options on WMX. As with certain other licensed options, to defray the licensing costs, the Exchange is adopting a surcharge fee of five (5) cents per contract for trading in options on WMX. The Exchange believes charging the participants that trade this instrument is the most equitable means of recovering the costs of the license. However, because of competitive pressures in the industry, the Exchange proposes to exclude Public Customer Orders 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 Linkage Orders<sup>12</sup> under a pilot program that is set to expire on July 31, 2007.<sup>13</sup> Further, the Exchange's Payment for Order Flow fee shall only apply to the trading in options on IYE and FDM as these products are multiply-listed.

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<sup>11</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.

<sup>12</sup> See ISE Rule 1900.

<sup>13</sup> See Securities Exchange Act Release No. 54204 (July 25, 2006), 71 FR 43548 (August 1, 2006) (SR-ISE-2006-38).

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)<sup>14</sup> that an exchange have an 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)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(2)<sup>16</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.

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<sup>14</sup> 15 U.S.C. 78f(b)(4).

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

<sup>16</sup> 17 CFR 19b-4(f)(2).

#### 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 No. SR-ISE-2007-13 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-ISE-2007-13. 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. 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-2007-13 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Florence E. Harmon  
Deputy Secretary

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