

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58744; File No. SR-ISE-2008-76)

October 7, 2008

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 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 3, 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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 5 Premium Products.<sup>3</sup> The text of the proposed rule change is available at the Exchange.

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.

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

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 iShares Dow Jones U.S. Oil Equipment & Services Index Fund (“IEZ”),<sup>4</sup> the Vanguard<sup>®</sup> Information Technology ETF (“VGT”),<sup>5</sup> the Vanguard<sup>®</sup> Mid-Cap ETF

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<sup>4</sup> iShares<sup>®</sup> 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. Oil Equipment & Services Index” 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 iShares Dow Jones U.S. Oil Equipment & Services Index Fund (“IEZ”) is not sponsored, endorsed, 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 promotion of options on IEZ 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 IEZ or with making disclosures concerning options on IEZ 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>5</sup> Vanguard, Vanguard ETFs and Vanguard ETF are trademarks of The Vanguard Group, Inc. (“Vanguard”). All other marks are the exclusive property of their respective owners. The Vanguard<sup>®</sup> Information Technology ETF (“VGT”) tracks the Morgan Stanley Capital International<sup>®</sup> (MSCI<sup>®</sup>) US Investable Market Information Technology Index. MSCI does not sponsor, endorse, or promote VGT and makes no representation regarding the advisability of investing in VGT. Vanguard and MSCI 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 VGT 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 VGT or with making disclosures concerning options on VGT under any applicable federal or state laws, rules or regulations. Vanguard and MSCI do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

(“VO”),<sup>6</sup> the SPDR® S&P Biotech ETF (“XBI”),<sup>7</sup> and the SPDR® S&P Oil & Gas Equipment & Services ETF (“XES”).<sup>8</sup> The Exchange represents that IEZ, VGT, VO, XBI and XES are

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<sup>6</sup> Vanguard, Vanguard ETFs and Vanguard ETF are trademarks of The Vanguard Group, Inc. (“Vanguard”). All other marks are the exclusive property of their respective owners. The Vanguard® Mid-Cap ETF (“VO”) tracks the Morgan Stanley Capital International® (MSCI®) US Mid Cap 450 Index. MSCI does not sponsor, endorse, or promote VO and makes no representation regarding the advisability of investing in VO. Vanguard and MSCI 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 VO 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 VO or with making disclosures concerning options on VO under any applicable federal or state laws, rules or regulations. Vanguard and MSCI do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

<sup>7</sup> “Standard & Poor's®,” “S&P®,” “S&P 500®,” “Standard & Poor's 500®,” “Standard & Poor's Depository Receipts®,” “SPDR®,” and “the S&P® Biotechnology Select Industry Index” are trademarks of The McGraw-Hill Companies, Inc. (“McGraw-Hill”), and have been licensed for use by State Street Bank and Trust (“State Street”) in connection with the listing and trading of SPDR® S&P Biotech ETF (“XBI”). State Street and Standard & Poor's, (“S&P”), a division of McGraw-Hill, do not sponsor, endorse or promote XBI and make no representation regarding the advisability of investing in XME. State Street, McGraw-Hill and S&P 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 XBI 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 XBI or with making disclosures concerning options on XBI under any applicable federal or state laws, rules or regulations. State Street, McGraw-Hill and S&P do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

<sup>8</sup> “Standard & Poor's®,” “S&P®,” “S&P 500®,” “Standard & Poor's 500®,” “Standard & Poor's Depository Receipts®,” “SPDR®,” and “the S&P® Oil & Gas Equipment & Services Select Industry Index” are trademarks of The McGraw-Hill Companies, Inc. (“McGraw-Hill”), and have been licensed for use by State Street Bank and Trust (“State Street”) in connection with the listing and trading of SPDR® S&P Oil & Gas Equipment & Services ETF (“XES”). State Street and Standard & Poor's, (“S&P”), a division of McGraw-Hill, do not sponsor, endorse or promote XES make no representation regarding the advisability of investing in XES. State Street, McGraw-Hill and S&P 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 XES 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 XES or with making disclosures concerning options on XES under any applicable federal or state laws, rules or regulations. State Street, McGraw-Hill and S&P do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

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 IEZ, VGT, VO, XBI and XES.<sup>9</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>10</sup> and Firm Proprietary orders.<sup>11</sup> 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>12</sup> Finally, the amount of the execution fee for all non-ISE Market Maker transactions shall be \$0.45 per contract.<sup>13</sup> Further, since options on IEZ, VGT, VO, XBI and XES 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

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<sup>9</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 \$0.24 per contract side and \$0.15 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>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 or entity that is not a broker or dealer in securities.

<sup>11</sup> The execution fee for firm proprietary orders is \$0.20 per contract, effective October 1, 2008. See Securities Exchange Act Release No. 34-58671 [sic] (September 29, 2008), 73 FR 57722 (October 3, 2008) (SR-ISE-2008-71).

<sup>12</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>13</sup> The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange’s Facilitation and Solicitation Mechanisms is \$0.19 per contract.

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 IXX from the list of Premium Products on its Schedule of fees.<sup>14</sup> The Exchange also proposes to remove IXX and IXK<sup>15</sup> from the Payment for Order Flow fee line item on its Schedule of Fees. Additionally, the Exchange recently adopted a sliding scale-based fee credit applicable to the Exchange's Electronic Access Members (SR-ISE-2008-71). The Exchange proposes to make a clarifying change to the rule text applicable to the sliding scale. Specifically, the Exchange proposes to add the word "Thereafter," at the beginning of the last bullet under the Firm Proprietary fee line item to clarify, as it was stated in the purpose section of that filing, that the credit available to member firms under this bullet applies once member firms have achieved the criteria under the first three bullets.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6(b) of the Act,<sup>16</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>17</sup> in

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<sup>14</sup> This Premium Product was recently delisted and no longer trades on the Exchange. Thus, the Exchange proposes to remove it from its fee schedule. ISE filed SR-ISE- 2008-75 on September 25, 2008 to, in part, delete IXX from its Schedule of Fees. However, in that filing the Exchange inadvertently failed to mark IXX as deleted text on its Schedule of Fees. ISE subsequently withdrew SR-ISE-2008-75 and is submitting the instant filing with the corrected rule text to replace that filing. The other fees covered by that filing, which took effect on September 25, remain unchanged.

<sup>15</sup> The Exchange had previously filed to remove IXK from its Schedule of Fees when this product ceased trading on the Exchange. See Securities Exchange Act Release No. 57831 (May 16, 2008), 73 FR 30176 (May 23, 2008) (SR-ISE-2008-39). The Exchange inadvertently failed to remove IXK from the Payment for Order Flow fee line item in that filing and thus, proposes to do so with the instant filing.

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(4).

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)(A) of the Act<sup>18</sup> and subparagraph (f)(2) of Rule 19b-4<sup>19</sup> thereunder. 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

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(2).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2008-76 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-ISE-2008-76. 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 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 available publicly. All submissions should refer to File No. SR-ISE-2008-76 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

Florence E. Harmon  
Acting Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).