

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-52330; File No. SR-ISE-2005-38)**

**August 24, 2005**

**Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto 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 August 1, 2005, the International Securities Exchange, Inc. (“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 ISE. On August 22, 2005, ISE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act,<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</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, as amended, from interested persons.

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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> Amendment No. 1 made changes to the filing, including Exhibit 5 (ISE’s Schedule of Fees), to correct the names of the indexes: iShares Russell 2000® Index is the iShares Russell 2000® Index Fund and the full and proper name of the Lehman Brothers 20+ year Treasury Bond Index is the iShares Lehman Brothers 20+ year Treasury Bond Index ETF, and to remove references to the ISE Integrated Gas and Services Index (PMP).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

**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 five products: the iShares Russell 2000® Index Fund, the Semiconductor HOLDRs Trust, the Oil Service HOLDRs Trust, the Energy Select Sector SPDR® Fund, and the iShares Lehman Brothers 20+ year Treasury Bond Index ETF. The text of the proposed rule change, as amended, is available on the ISE’s Web site ([http://www.iseoptions.com/legal/proposed\\_rule\\_changes.asp](http://www.iseoptions.com/legal/proposed_rule_changes.asp)), at the principal office of the ISE, 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 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 five products: the iShares Russell 2000 Index Fund (“IWM”), the Semiconductor HOLDRs Trust (“SMH”), the Oil Service HOLDRs Trust (“OIH”), the Energy Select Sector SPDR Fund (“XLE”), and the iShares Lehman Brothers 20+ year Treasury Bond

Index ETF (“TLT”).<sup>6</sup> Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for transactions by Public Customers<sup>7</sup> in options on IWM, SMH, OIH, XLE, and TLT.<sup>8</sup> The Exchange currently charges an execution fee and a comparison fee only for transactions by Non-Customers<sup>9</sup> in options on IWM, SMH, OIH, XLE, and TLT. The amount of the execution fee and comparison fee for the products covered by this filing shall be the same for all order types on the Exchange – that is, orders for Public Customers and Non-Customers (which include Market Makers and Firm Proprietary) – and shall be equal to the execution fee and comparison fee, respectively, that are currently charged by the Exchange for transactions by Non-Customers in equity options.<sup>10</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act,<sup>11</sup> which requires that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

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<sup>6</sup> The ISE represents that all five products are “Fund Shares,” as defined by ISE Rule 502(h).

<sup>7</sup> ISE Rule 100(32) defines “Public Customer” as a person that is not a broker or dealer in securities.

<sup>8</sup> The ISE represents that these fees will be charged only to Exchange members.

<sup>9</sup> ISE Rule 100(22) defines “Non-Customer” as a person or entity that is broker or dealer in securities.

<sup>10</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 per side.

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

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

The Exchange believes that the proposed rule change, as amended, 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**

Because the foregoing rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) 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 amended 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>14</sup>

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

<sup>13</sup> 17 CFR 19b-4(f)(2).

<sup>14</sup> The effective date of the original proposed rule is August 1, 2005. The effective date of Amendment No. 1 is August 22, 2005. 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 August 22, 2005, the date on which the ISE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2005-38 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-ISE-2005-38. 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-2005-38 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>15</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).