

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52934; File No. SR-ISE-2005-53)

December 9, 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 November 22, 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.<sup>3</sup> On November 29, 2005, ISE filed Amendment No. 1 to the proposed rule change.<sup>4</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>5</sup> and Rule 19b-4(f)(2) thereunder,<sup>6</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> The Commission notes that the proposed rule filing submitted by ISE on November 22, 2005 contained a typo in the file number included in Exhibit 1. This notice reflects the correct file number.

<sup>4</sup> Amendment No. 1 made a technical change to the text of Exhibit 5 (ISE’s Schedule of Fees). The correction to Exhibit 5 does not affect the fees for transactions in options on the QQQQ but only corrects the order of the excerpted items appearing in Exhibit 5.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</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 extend, for one year, until November 30, 2006, a pilot program that (i) caps and waives execution and comparison fees for transactions in options on the Nasdaq 100 Tracking Stock ("QQQQ") when a member transacts a certain number of QQQQ option contracts, and (ii) reduces and waives the facilitation execution and comparison fees when a member transacts a certain number of contracts through the Exchange's Facilitation Mechanism. 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 purpose of this proposed rule change is to amend the ISE Schedule of Fees to extend, for one year, until November 30, 2006, a pilot program that (i) caps and waives execution and comparison fees for transactions in options on the QQQQ when a member transacts a certain number of QQQQ option contracts, and (ii) reduces and waives the facilitation execution and

comparison fees when a member transacts a certain number of contracts through the Exchange's Facilitation Mechanism (when firms provide liquidity for the customers' block-sized orders).<sup>7</sup>

#### Discount on QQQQ Execution and Comparison Fees

Under the QQQQ pilot program, when a member's monthly average daily volume ("A.D.V.") in QQQQ options reaches 8,000 contracts, the member's execution fee for the next 2,000 QQQQ option contracts is reduced by \$.10 per contract.<sup>8</sup> Further, when a member's monthly A.D.V. in QQQQ options reaches 10,000 contracts, the Exchange waives the entire execution fee and the comparison fee for each QQQQ option contract traded thereafter. The Exchange instituted this pilot program in November 2003 for a six month period, expiring in May 2004.<sup>9</sup> The Exchange extended the pilot program in May 2004 for an additional six month period, expiring in November 2004.<sup>10</sup> In November 2004, the Exchange extended the pilot program, this time for a one year period, which is set to expire on November 30, 2005.<sup>11</sup> The Exchange now proposes to further extend the pilot program for a one-year period, expiring on November 30, 2006. The Exchange seeks to extend this pilot program for competitive reasons.

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<sup>7</sup> Telephone conversation between Samir Patel, Assistant General Counsel, ISE, Richard Holley III, Special Counsel, and Jan Woo, Attorney, Division of Market Regulation, Commission, on November 29, 2005

<sup>8</sup> Telephone conversation between Samir Patel, Assistant General Counsel, ISE, Richard Holley III, Special Counsel, and Jan Woo, Attorney, Division of Market Regulation, Commission, on November 29, 2005 (clarifying that the A.D.V. threshold is calculated on a monthly basis).

<sup>9</sup> See Securities and Exchange Commission Release No. 49147 (January 29, 2004), 69 FR 5629 (February 5, 2004) (SR-ISE-2003-32).

<sup>10</sup> See Securities and Exchange Commission Release No. 49853 (June 14, 2004), 69 FR 35087 (June 23, 2004) (SR-ISE-2004-15).

<sup>11</sup> See Securities and Exchange Commission Release No. 50900 (December 21, 2004), 69 FR 78075 (December 29, 2004) (SR-ISE-2004-36).

This pilot program was initiated and extended in an attempt to increase the Exchange's market share in the QQQQ option product.

#### Discount on Facilitation Mechanism Fees

Under the Facilitation Mechanism pilot program, the structure of the reduction and waiver of the facilitation execution fee and the comparison fee is based on the structure of the reduction and waiver of the QQQQ execution fee and comparison fee noted above. That is, when a member's monthly A.D.V. in the Facilitation Mechanism reaches 8,000 contracts, the member's facilitation execution fee for the next 2,000 contracts transacted in the Facilitation Mechanism would be reduced by \$.10 per contract. Further, when a member's monthly A.D.V. in the Facilitation Mechanism reaches 10,000 contracts, the Exchange would waive the entire facilitation execution fee and the comparison fee for each contract transacted in the Facilitation Mechanism thereafter. As with the QQQQ incentives, the Exchange is proposing to extend this pilot program for a one-year period to encourage members to use the Facilitation Mechanism.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act,<sup>12</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. In particular, the fee changes proposed hereby will enable the Exchange to continue offering competitively priced products and services.

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<sup>12</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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(2)<sup>14</sup> thereunder because it changes a fee imposed by the Exchange. 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>15</sup>

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 19b-4(f)(2).

<sup>15</sup> The effective date of the original proposed rule is November 22, 2005. The effective date of Amendment No. 1 is November 29, 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 November 29, 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-2005-53 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-2005-53. 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-2005-53 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>16</sup>

Jonathan G. Katz  
Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).