

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53329; File No. SR-ISE-2006-05)

February 16, 2006

Self-Regulatory Organizations; International Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a 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 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 20, 2006, 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 ISE. On February 9, 2006, ISE submitted Amendment No. 1 to the proposed rule change.³ ISE has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange revised its Schedule of Fees to clarify ambiguities and correct misstatements therein, and discussed those changes in the purpose section of the proposal. Specifically, in Amendment No. 1, the Exchange removed the misstatement that a \$0.10 surcharge is applied to all Premium Products (as defined herein) and instead provided a list of the specific Premium Products that are subject to the surcharge. Amendment No. 1 also clarified that the fee pilot program expiring on July 31, 2006 applies exclusively to Linkage orders.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

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

ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on 11 Premium Products.⁶ The proposed rule change, as amended, also seeks to make certain technical and clarifying changes to the original filing as well as to clean up the Schedule of Fees to eliminate confusion regarding fees charged by the Exchange.

The text of the proposed rule change is available on ISE’s Web site at <http://www.iseoptions.com>, at the Office of the Secretary at 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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 Premium Products: iShares Dow Jones U.S. Real Estate Index Fund (“IYR”),⁷ iShares MSCI Japan Index Fund (“EWJ”),⁸ Biotech HOLDRS (“BBH”),

⁶ “Premium Products” are defined in the Schedule of Fees as the products enumerated therein.

⁷ 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. Real Estate

Internet HOLDERS (“HHH”), Pharmaceutical HOLDERS (“PPH”), Regional Bank HOLDERS (“RKH”), Retail HOLDERS (“RTH”), Software HOLDERS (“SWH”), Enterra Energy Trust (“EENC”), Fording Canadian Coal Trust (“FDG”), and Enerplus Resources Fund (“ERF”).

Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on IYR, EWJ, BBH, HHH, PPH, RKH, RTH, SWH, EENC, FDG, and ERF.⁹ The amount of the execution fee and comparison fee for products covered by this filing would be \$0.15 and \$0.03 per contract, respectively, for all Public Customer Orders¹⁰ and Firm

Index Fund” are servicemarks of Dow Jones & Company, Inc. (“Dow Jones”) and have been licensed for use for certain purposes by BGI. All other trademarks and servicemarks are the property of their respective owners. The Dow Jones U.S. Real Estate Index Fund (“IYR”) is not sponsored, endorsed, issued, sold or promoted by Dow Jones. No company has licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on IYR or (ii) to use and refer to any trademark of BGI or Dow Jones in connection with the listing, provision of a market for trading, marketing, and promotion of options on IYR or with making disclosures concerning options on IYR under any applicable federal or state laws, rules or regulations, and do not sponsor, endorse, or promote such activity by ISE. ISE is not affiliated in any manner with any of the companies above.

⁸ iShares® is a registered trademark of Barclays Global Investors, N.A. (“BGI”), a wholly owned subsidiary of Barclays Bank PLC. “MSCI Japan Index” is a servicemark of Morgan Stanley Capital International (“MSCI”) and has been licensed for use for certain purposes by BGI. All other trademarks and servicemarks are the property of their respective owners. The MSCI Japan Index Fund (“EWJ”) is not sponsored, endorsed, issued, sold or promoted by MSCI. No company has licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on EWJ or (ii) to use and refer to any trademark of BGI or MSCI in connection with the listing, provision of a market for trading, marketing, and promotion of options on EWJ or with making disclosures concerning options on EWJ under any applicable federal or state laws, rules or regulations, and do not sponsor, endorse, or promote such activity by ISE. ISE is not affiliated in any manner with any of the companies above.

⁹ These fees will be charged to Exchange members. Under a pilot program that is set to expire on July 31, 2006, these fees will also be charged to Linkage Orders (as defined in ISE Rule 1900).

¹⁰ Public Customer Order is defined in ISE Rule 100(a)(33) as an order for the account of a Public Customer. Public Customer is defined in ISE Rule 100(a)(32) as a person that is not a broker or dealer in securities.

Proprietary orders. The amount of the execution fee and comparison fee for all Market Maker transactions would be equal to the execution fee and comparison fee currently charged by the Exchange for Market Maker transactions in equity options.¹¹ 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 proposes to remove NYC, NY and XLU from the list of Premium Products on the Schedule of Fees. These products have been delisted and no longer trade on the Exchange.

Furthermore, the proposed rule change makes certain technical and clarifying changes to ISE's Schedule of Fees. Specifically, under the Execution Fees section of the Schedule of Fees, the Exchange seeks to replace the general reference to a surcharge for options on Premium Products with a list of the specific Premium Products for which there is a surcharge charged by the Exchange.¹² Also, under the Execution Fees section of the Schedule of Fees, for purposes of eliminating ambiguity and confusion, the Exchange proposes to move the parenthetical regarding the Linkage pilot program under "Firm Proprietary" to the Notes section.

2. Statutory Basis

The Exchange believes that the statutory basis for the proposal is the requirement under Section 6(b)(4) of the Act¹³ 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

ISE does not believe that the proposed rule change, as amended, does not impose any

¹¹ The execution fee is currently between \$0.21 and \$0.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently \$0.03 per contract side.

¹² Prior to this proposed rule change, the Exchange's Schedule of Fees improperly reflected that all Premium Products were subject to a surcharge of \$0.10 per contract/side.

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, as amended. 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, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁴ and subparagraph (f)(2) of Rule 19b-4 thereunder¹⁵ because it establishes or changes a due, fee, or other charge. 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.¹⁶

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:

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ The effective date of the original proposed rule change is January 20, 2006, the date of the original filing, and the effective date of Amendment No.1 is February 9, 2006, the filing date of the amendment. For purposes of calculating the 60-day abrogation period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on February 9, 2006, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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. Please include File Number SR-ISE-2006-05 on the subject line.

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-2006-05. 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 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-2006-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated

authority.¹⁷

Nancy M. Morris
Secretary

¹⁷ 17 CFR 200.30-3(a)(12).