

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-54315; File No. SR-ISE-2006-43)**

**August 14, 2006**

**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 July 25, 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 the ISE. On August 10, 2006, 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 revised the rule text contained in Exhibit 5 to conform it to the discussion contained in the Purpose section, which explains that a ten (10) cent per contract surcharge applies only to IWB, IWD, XLV, XLU, and XLK and not to all of the Premium Products that are the subject of this filing.

<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 nine Premium Products.<sup>6</sup> 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 the following nine Premium Products: PowerShares Water Resources Portfolio (“PHO”),<sup>7</sup> SPDR Homebuilders ETF (“XHB”),<sup>8</sup> iShares FTSE/Xinhua China 25 Index

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<sup>6</sup> “Premium Products” is defined in the ISE’s Schedule of Fees as the products enumerated therein.

<sup>7</sup> PowerShares<sup>TM</sup> and PHO<sup>TM</sup> are trademarks of PowerShares Capital Management LLC (“PowerShares”). The Palisades Water Index is a trademark of Hydrogen Ventures and has been licensed for use for certain purposes by PowerShares. All other trademarks and service marks are the property of their respective owners. The PHO is not sponsored, endorsed, sold or promoted by Hydrogen Ventures, and Hydrogen Ventures makes no representation regarding the advisability of investing in PHO. Hydrogen Ventures and PowerShares 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 PHO; or (ii) 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 PHO or with making disclosures concerning options on PHO under any applicable

Fund (“FXI”), iShares Dow Jones Select Dividend Index Fund (“DVY”),<sup>9</sup> iShares Russell 1000 Index Fund (“IWB”), iShares Russell 1000 Value Index Fund (“IWD”), Health Care Select Sector SPDR Fund (“XLV”), Utilities Select Sector SPDR Fund (“XLU”), and Technology Select Sector SPDR Fund (“XLK”).<sup>10</sup> Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on PHO, XHB, FXI, DVY, IWB, IWD, XLV, XLU, and XLK.<sup>11</sup> The amount of the execution fee and comparison fee for

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federal or state laws, rules or regulations. Hydrogen Ventures and PowerShares 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®,” are trademarks of The McGraw-Hill Companies, Inc. (“McGraw-Hill”), and have been licensed for use by State Street Bank and Trust in connection with the listing and trading of XHB on the American Stock Exchange. XHB is not sponsored, sold or endorsed by Standard & Poor’s, (“S&P”), a division of McGraw-Hill, and S&P makes no representation regarding the advisability of investing in XHB. 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 XHB; or (ii) 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 XHB or with making disclosures concerning options on XHB under any applicable federal or state laws, rules or regulations. 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>9</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. Select Dividend 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. “FTSE” is a trademark jointly owned by the London Stock Exchange PLC and The Financial Times Limited. “Xinhua” is a service mark and trademark of Xinhua Financial News Network Limited. All marks are licensed for use by FTSE/Xinhua Index Limited. All other trademarks and service marks are the property of their respective owners. Neither DVY nor FXI are sponsored, endorsed, issued, sold or promoted by Dow Jones or FTSE/Xinhua Index Limited. BGI, Dow Jones, and FTSE/Xinhua Index Limited 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 DVY and FXI; or (ii) 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 DVY and FXI or with making disclosures concerning options on DVY and FXI under any applicable federal or state laws, rules or regulations. BGI, Dow Jones, and FTSE/Xinhua Index Limited do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

<sup>10</sup> PHO, XHB, FXI, DVY, IWB, IWD, XLV, XLU, and XLK constitute “Fund Shares,” as defined by ISE Rule 502(h).

<sup>11</sup> These fees will be charged only 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

products covered by this filing shall be \$0.15 and \$0.03 per contract, respectively, for all Public Customer Orders<sup>12</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 currently charged by the Exchange for ISE Market Maker transactions in equity options.<sup>13</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 the Frank Russell Company and Standard & Poor's in connection with the listing and trading of options on IWB, IWD and XLV, XLU, and XLK, as applicable. As with certain other licensed options, the Exchange proposes to adopt a fee of ten (10) cents per contract for trading in these options to defray the licensing costs. The Exchange believes charging the participants that trade these products is the most equitable means of recovering the costs of the licenses. 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-

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1900). See *infra* footnote 15 (regarding ISE's proposed rule change to extend its Linkage fees pilot program).

<sup>12</sup> Public Customer Order is defined in Exchange Rule 100(a)(33) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(32) as a person that is not a broker or dealer in securities.

<sup>13</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.

ISE Market Maker, and Firm Proprietary orders) and shall apply to Linkage Orders<sup>14</sup> under a pilot program that is set to expire on July 31, 2006.<sup>15</sup> Finally, since options on PHO, XHB, FXI, DVY, IWB, IWD, XLV, XLU, and XLK are multiply-listed, the Payment for Order Flow fee shall also apply.

## **2. Statutory Basis**

The Exchanges believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) of the Act<sup>16</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 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)

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<sup>14</sup> See ISE Rule 1900.

<sup>15</sup> In File No. SR-ISE-2006-38, the Exchange proposed, and the Commission subsequently approved, a rule change to extend the Linkage fees pilot program until July 31, 2007. See Securities Exchange Act Release No. 54204 (July 25, 2006), 71 FR 43548 (August 1, 2006).

<sup>16</sup> 15 U.S.C. 78f(b)(4).

of the Act<sup>17</sup> and Rule 19b-4(f)(2)<sup>18</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>19</sup>

#### **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-2006-43 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-2006-43. 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

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 19b-4(f)(2).

<sup>19</sup> The effective date of the original proposed rule is July 25, 2006. The effective date of Amendment No. 1 is August 10, 2006. 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 10, 2006, the date on which the ISE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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-2006-43 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>20</sup>

Nancy M. Morris  
Secretary

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