

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-54697; File No. SR-ISE-2006-61)**

**November 2, 2006**

**Self-Regulatory Organizations; International Securities Exchange, LLC; 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 October 5, 2006, 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 ISE. On October 17, 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> In Amendment No. 1, the Exchange revised footnote 10, *infra*, to clarify that six of the Premium Products that are the subject of this filing constitute Fund Shares under ISE Rule 502(h), while the other two Premium Products are narrow-based index options listed pursuant to the Exchange’s generic listing standards. The Exchange also represented that Amendment No. 1 did not affect the proposed fees covered by 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 eight 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 eight Premium Products: KBW Bank Index (“BKX”), ISE Revere Natural Gas Index (“FUM”), iShares Dow Jones U.S. Energy Sector Index Fund (“IYE”), iShares Dow Jones Transportation Average Index Fund (“IYT”),<sup>7</sup> PowerShares

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

<sup>7</sup> iShares® is a registered trademark of Barclays Global Investors, N.A. (“BGI”), a wholly owned subsidiary of Barclays Bank PLC. “Dow Jones,” “Dow Jones U.S. Energy Sector Index Fund,” and “Dow Jones Transportation Average 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. All other trademarks and service marks are the property of their respective owners. Neither IYE nor IYT are sponsored, endorsed, issued, sold 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 IYE and IYT; or (ii) use and refer to

WilderHill Clean Energy Portfolio (“PBW”),<sup>8</sup> Merrill Lynch Utilities HOLDERS Trust (“UTH”),<sup>9</sup> Consumer Staples Select Sector SPDR Fund (“XLP”), and Consumer Discretionary Select Sector SPDR Fund (“XLY”).<sup>10</sup> Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on BKX, FUM, IYE, IYT, PBW, UTH, XLP, and

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any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on IYE and IYT or with making disclosures concerning options on IYE and IYT 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>8</sup> PowerShares<sup>TM</sup> and PBW<sup>TM</sup> are trademarks of PowerShares Capital Management LLC (“PowerShares” or the “Adviser”). The WilderHill Clean Energy Index is a service mark of WilderShares, LLC (“WilderShares”). All other trademarks and service marks are the property of their respective owners. WilderShares is not affiliated with the PBW or with the Adviser. PBW is not sponsored, endorsed, sold or promoted by WilderShares, and WilderShares makes no representation regarding the advisability of investing in PBW. WilderShares 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 PBW; 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 PBW or with making disclosures concerning options on PBW under any applicable federal or state laws, rules or regulations. WilderShares and PowerShares do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

<sup>9</sup> UTH issues Depositary Receipts called Utilities HOLDERS<sup>SM</sup> representing undivided beneficial ownership in the U.S.-traded common stock of a group of specified companies that, among other things, are involved in various segments of the utilities industry. “HOLDERS” and “HOLDing Company Depositary Receipts” are service marks of Merrill Lynch & Co., Inc. (“Merrill Lynch”). All other trademarks and service marks are the property of their respective owners. Merrill Lynch has not licensed or authorized ISE to: (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on UTH; 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 UTH or with making disclosures concerning options on UTH under any applicable federal or state laws, rules or regulations. Merrill Lynch does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

<sup>10</sup> The Exchange represents that IYE, IYT, PBW, UTH, XLP and XLY constitute “Fund Shares,” as defined by ISE Rule 502(h). The Exchange further represents that BKX and FUM meet the standards of ISE Rule 2002(b), which allows the ISE to begin trading these products by filing Form 19b-4(e) at least five business days after commencement of trading these new products pursuant to Rule 19b-4(e) of the Act. Accordingly, the ISE has submitted Form 19b-4(e) to the Commission.

XLY.<sup>11</sup> The amount of the execution fee and comparison fee for 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 Keefe, Bruyette & Woods, Inc. in connection with the listing and trading of options on BKX; with Revere Data, LLC in connection with the listing and trading of options on FUM; and with Standard & Poor's in connection with the listing and trading of options on XLP and XLY. As with certain other licensed options, to defray the licensing costs, the Exchange is adopting a surcharge fee of \$0.10 per contract for trading in options on BKX, XLP and XLY, and \$0.05 per contract for trading in options on FUM. The Exchange believes charging the participants that trade these products is

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<sup>11</sup> These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2007, these fees will also be charged to Linkage Orders (as defined in ISE Rule 1900).

<sup>12</sup> "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.

<sup>13</sup> 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.

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-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, 2007. Further, since options on BKKX, IYE, IYT, PBW, UTH, XLP and XLY are multiply-listed, the Payment for Order Flow fee shall also apply.

Finally, the Exchange has terminated its development agreement with Boenning & Scattergood, Inc. for options on the ISE Water Index (“HHO”). As a result, the Exchange proposes to no longer charge a \$0.05 per contract surcharge fee for options on HHO. Accordingly, the Exchange proposes to delete the reference to a surcharge for HHO on its Schedule of Fees.

## **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>15</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.

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

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

**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>16</sup> and Rule 19b-4(f)(2)<sup>17</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>18</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-2006-61 on the subject line.

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>18</sup> 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

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-2006-61. 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

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considers the period to commence on October 17, 2006, the date on which the ISE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

make available publicly. All submissions should refer to File Number SR-ISE-2006-61 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>19</sup>

Nancy M. Morris  
Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).