

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-51962; File No. SR-ISE-2005-29)**

**July 1, 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 June 6, 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 June 20, 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 a technical change to the text of Exhibit 5 (ISE’s Schedule of Fees) and added footnote 6 to this rule filing. The correction to Exhibit 5 does not affect the fees for transactions in options on the five narrow-based indexes that are the subject of this filing, but only corrects Exhibit 5 to remove asterisks between the Payment for Order Flow section under Execution Fees and the Comparison Fee section, since no rule text has been omitted between those two sections.

<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 narrow-based indexes: the ISE-CCM Homeland Security Index, the ISE Oil & Gas Services Index, the ISE Semiconductors Index, the ISE Gold Index and the ISE Homebuilders Index.<sup>6</sup> The text of the proposed rule change 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 narrow-based indexes: the ISE-CCM Homeland Security Index (“HSX”), the ISE Oil & Gas Services Index (“OOG”), the ISE Semiconductors Index (“BYT”), the ISE Gold Index (“HVY”), and the ISE Homebuilders Index (“RUF”). Specifically, the

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<sup>6</sup> The Exchange represents that the following five narrow-based indexes, ISE-CCM Homeland Security Index, the ISE Oil & Gas Services Index, the ISE Semiconductors Index, the ISE Gold Index and the ISE Homebuilders Index, 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

Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on HSX, OOG, BYT, HVY, and RUF.<sup>7</sup> The amount of the execution fee and comparison fee shall be the same for all order types on the Exchange – that is, orders for Public Customers, Market Makers, and Firm Proprietary – and shall be equal to the execution fee and comparison fee currently charged by the Exchange for Market Maker and Firm Proprietary transactions in equity options.<sup>8</sup> 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 Cronus Capital Markets in connection with the listing and trading of options on HSX. As with certain other licensed options, the Exchange is adopting a surcharge per contract for trading in these options to defray the licensing costs.<sup>9</sup> The Exchange believes that charging the participants that trade this instrument is the most equitable means of recovering the costs of the license. However, because of competitive pressures in the industry, the Exchange proposes to exclude Public Customer Orders<sup>10</sup> from this surcharge fee. Accordingly, this surcharge fee will only be charged to Exchange members with respect to non-Public Customer Orders (e.g., Market Maker and Firm Proprietary orders) and shall apply to Linkage Orders<sup>11</sup> under a pilot program that is set to expire

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commencement of trading these new products pursuant to Rule 19b-4(e) of the Act. Accordingly, ISE filed Form 19b-4(e) with the Commission on June 13, 2005.

<sup>7</sup> The Exchange represents that these fees will be charged only to Exchange members.

<sup>8</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.

<sup>9</sup> The Commission notes the proposed fee is five (5) cents per contract/side.

<sup>10</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>11</sup> See ISE Rule 1900(10).

on July 31, 2005. Further, since options on HSX, OOG, BYT, HVY, and RUF are not multiply-listed, the Payment for Order Flow fee shall not apply.

## **2. Statutory Basis**

The Exchange believes that the proposed rule change 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.

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

The Exchange believes that the proposed rule change 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) of the Act<sup>13</sup> and Rule 19b-4(f)(2)<sup>14</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

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<sup>12</sup> 15 U.S.C. 78f(b)(4).

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

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

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>

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

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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-2005-29 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-2005-29. 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

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<sup>15</sup> The effective date of the original proposed rule is June 6, 2005. The effective date of Amendment No. 1 is June 20, 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 June 20, 2005, the date on which the ISE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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-2005-29 and should be submitted by [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>

Margaret H. McFarland  
Deputy Secretary

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