

Program. The letter from CBOE, which was based on a very limited analysis of the program, stated that in its opinion, the Pilot Program did not have any impact on CBOE's best quote and size of best quote or the quality of the CBOE market. CBOE stated in the letter that it believed that additional Market-Makers would utilize the Pilot Program if given more time to make the required systems changes.

Should the Exchange decide to propose to extend, or to obtain permanent approval of, the Pilot Program, the Commission expects to receive a more comprehensive analysis of the entire Pilot Program two months prior to the expiration of this six-month extension, so that the Commission may evaluate the effectiveness of the Pilot Program.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> for approving the proposed rule change, as amended, prior to the thirtieth day after the publication of notice thereof in the **Federal Register**. The Pilot Program is set to expire on August 17, 2005, and as such, to allow the Pilot Program to continue to operate pursuant to proper authority, the Commission believes it is appropriate to accelerate approval. Accordingly, the Commission finds that good cause exists, consistent with Section 6(b)(5) of the Act,<sup>11</sup> to approve the proposal on an accelerated basis.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change, as amended (SR-CBOE-2005-56), is hereby approved on an accelerated basis on a pilot basis, scheduled to expire on February 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jonathan G. Katz,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52250; File No. SR-ISE-2005-34]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments Nos. 1, 2, and 3 Thereto Relating to Fee Changes

August 12, 2005.

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 12, 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 July 29, 2005, ISE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On August 10, 2005, ISE filed Amendment No. 2 to the proposed rule change.<sup>4</sup> On August 11, 2005, ISE filed Amendment No. 3 to the proposed rule change.<sup>5</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>6</sup> and Rule 19b-4(f)(2) thereunder,<sup>7</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.

<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 technical changes to the text of the filing, including Exhibit 5 (ISE's Schedule of Fees), to correct the name of one of the narrow-based indexes, the ISE Integrated Oil & Gas Index, and to add asterisks after the Comparison Fee section in the Schedule of Fees to indicate omitted text.

<sup>4</sup> Amendment No. 2 made a clarifying change to the text of the filing to indicate that options on the ISE Integrated Oil & Gas Index are not currently listed for trading on the Exchange but that the Exchange expects to list those options in the near future. ISE also made a technical change to correctly renumber all pages of Exhibit 4 and to clarify the language in Item II.

<sup>5</sup> Amendment No. 3 deletes ISE Integrated Oil & Gas Index from the Schedule of Fees in Exhibit 5, as well as all references to that Index in the text of the filing. Due to technical reasons, the Exchange is not currently able to list options on the ISE Integrated Oil & Gas Index. The correction to Exhibit 5 does not affect the fees for transactions in options on the three narrow-based indexes and the three broad-based indexes that are the subject of this filing.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</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 three narrow-based indexes and three broad-based indexes. The three narrow-based indexes are the ISE U.S. Regional Banks Index, the ISE SINdex, and the ISE Bio-Pharmaceuticals Index. The three broad-based indexes are the ISE 250 Index, the ISE 100 Index, and the ISE 50 Index. 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 three narrow-based indexes and three broad-based indexes. The narrow-based indexes are the ISE U.S. Regional Banks Index ("JLO"), the ISE SINdex ("SIN"), and the ISE Bio-Pharmaceuticals Index ("RND").<sup>8</sup> The three broad-based indexes are the ISE 250 Index ("IXZ"), the ISE 100 Index ("IXX"), and the ISE 50 Index ("IXK").<sup>9</sup> Specifically, the

<sup>8</sup> The Exchange represents that the following three narrow-based indexes, the ISE U.S. Regional Banks Index, the ISE SINdex, and the ISE Bio-Pharmaceuticals 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 commencement of trading these new products pursuant to Rule 19b-4(e) of the Act. The Commission notes that the ISE filed Form 19b-4(e) for these narrow-based indexes with the Commission on June 19, 2005.

<sup>9</sup> See Securities Exchange Act Release No. 51913 (June 23, 2005), 70 FR 38220 (July 1, 2005) (SR-ISE-2004-28) (order approving the trading of options on the ISE 250 Index, the ISE 100 Index, and the ISE 50 Index).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on JLO, SIN, RND, IXZ, IXX, and IXK.<sup>10</sup> The amount of the execution fee and comparison fee for products covered by this filing 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>11</sup> Further, since options on JLO, SIN, RND, IXZ, IXX, and IXK are not multiply-listed, the Payment for Order Flow fee shall not apply. The Exchange believes that the proposed rule change, as amended, will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

## 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.

### *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) of the Act<sup>13</sup>

<sup>10</sup> The Exchange represents that these fees will be charged only to Exchange members.

<sup>11</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 per side.

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

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

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 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, 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-2005-34 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-2005-34. 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

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

<sup>15</sup> The effective date of the original proposed rule is July 12, 2005. The effective date of Amendment No. 1 is July 29, 2005. The effective date of Amendment No. 2 is August 10, 2005. The effective date of Amendment No. 3 is August 11, 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 August 11, 2005, the date on which the ISE submitted Amendment No. 3. See 15 U.S.C. 78s(b)(3)(C).

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-2005-34 and should be submitted on or before September 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Jonathan G. Katz,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52251; File No. SR-NYSE-2005-47]

### **Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 2 Thereto Relating to NYSE Rule 103.12 Requiring Specialists and Clerks To Record Their Time on the Trading Floor of the Exchange**

August 12, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 11, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and paragraph (f)(6) of Rule 19b-4 under the Act,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission.<sup>5</sup> On August 10, 2005, NYSE filed Amendment No. 1 to the

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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> NYSE has requested that the Commission waive both the five-day pre-filing notification requirement and the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).