

order approves the proposed rule change, as amended.

II. Description of the Proposal

Currently, an EAM may not use the ISE's facilitation mechanism to facilitate a complex order. The ISE proposes to amend ISE Rule 716(d) to allow EAMs to use the facilitation mechanism to facilitate complex orders. Under the proposal, each leg of the complex order must be for at least 50 contracts. After an EAM enters a complex order into the facilitation mechanism, ISE members will be able to enter at net prices indications at which they would be willing to participate in the facilitation of the order. Complex orders entered into the facilitation mechanism will be executed pursuant to ISE Rule 716(d)(4), and the priority rules for complex orders in ISE Rule 722(b)(2) will apply.⁵ If a complex order entered into the facilitation mechanism could receive an improved net price from bids and offers for the individual legs of the order in the ISE's auction market, then the complex order will be executed at the better net price.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁷ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal could facilitate the execution of complex orders. The Commission notes that the priority rules in ISE Rule 722(b)(2) will apply to complex orders

entered into the facilitation mechanism. In addition, if bids and offers in the ISE's auction market for the individual legs of the complex order being facilitated could produce a better net price for the order, then the complex order will receive an execution at the better net price.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-ISE-2004-33), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52330; File No. SR-ISE-2005-38]

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

August 24, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 1, 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 August 22, 2005, ISE filed Amendment No. 1 to the proposed rule change.³ 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,⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal effective upon

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 made changes to the filing, including Exhibit 5 (ISE's Schedule of Fees), to correct the names of the indexes: iShares Russell 2000(r) Index is the iShares Russell 2000(r) Index Fund and the full and proper name of the Lehman Brothers 20+ year Treasury Bond Index is the iShares Lehman Brothers 20+ year Treasury Bond Index ETF, and to remove references to the ISE Integrated Gas and Services Index (PMP).

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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 products: The iShares Russell 2000(r) Index Fund, the Semiconductor HOLDRs Trust, the Oil Service HOLDRs Trust, the Energy Select Sector SPDR® Fund, and the iShares Lehman Brothers 20+ year Treasury Bond Index ETF. 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), 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 products: the iShares Russell 2000 Index Fund ("IWM"), the Semiconductor HOLDRs Trust ("SMH"), the Oil Service HOLDRs Trust ("OIH"), the Energy Select Sector SPDR Fund ("XLE"), and the iShares Lehman Brothers 20+ year Treasury Bond Index ETF ("TLT").⁶ Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for transactions by Public Customers⁷ in options on IWM, SMH, OIH, XLE, and TLT.⁸ The Exchange currently charges an execution fee and a comparison fee

⁶ The ISE represents that all five products are "Fund Shares," as defined by ISE Rule 502(h).

⁷ ISE Rule 100(32) defines "Public Customer" as a person that is not a broker or dealer in securities.

⁸ The ISE represents that these fees will be charged only to Exchange members.

⁵ ISE Rule 722(b)(2) provides, in part, that a complex order may be executed at a total credit or debit price with another ISE member without giving priority to established bids or offers in the market that are not better than the bids or offers comprising such net debit or credit, provided that if any of the established bids or offers consists of a public customer limit order, the price of at least one leg of the complex order must trade at a price that is better than the corresponding bid or offer in the marketplace.

⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

only for transactions by Non-Customers⁹ in options on IWM, SMH, OIH, XLE, and TLT. The amount of the execution fee and comparison fee for the products covered by this filing shall be the same for all order types on the Exchange—that is, orders for Public Customers and Non-Customers (which include Market Makers and Firm Proprietary)—and shall be equal to the execution fee and comparison fee, respectively, that are currently charged by the Exchange for transactions by Non-Customers in equity options.¹⁰

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act,¹¹ 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)(A) of the Act¹² and Rule 19b-4(f)(2)¹³ 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

⁹ ISE Rule 100(22) defines "Non-Customer" as a person or entity that is broker or dealer in securities.

¹⁰ 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.

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 19b-4(f)(2).

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹⁴

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. Please include File No. SR-ISE-2005-38 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-2005-38. 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 make available publicly. All

¹⁴ The effective date of the original proposed rule is August 1, 2005. The effective date of Amendment No. 1 is August 22, 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 22, 2005, the date on which the ISE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

submissions should refer to File Number SR-ISE-2005-38 and should be submitted on or before September 21, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52331; File No. SR-ISE-2004-16]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto Establishing a Directed Order Process

August 24, 2005.

On May 20, 2004, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt new ISE Rule 811 to allow Exchange market makers to receive Public Customer Orders directed to them from Electronic Access Members ("EAMs") through the Exchange's system ("Directed Orders"). On April 26, 2005, the ISE filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on June 20, 2005.⁴ The Commission received no comments on the proposed rule change.

Under ISE's proposal, a market maker that wishes to accept Directed Orders must systemically indicate that it wishes to receive Directed Orders each day, must be willing to accept Directed Orders from all EAMs, may receive Directed Orders only through the Exchange's system, and may not reject Directed Orders. A market maker receiving a Directed Order ("Directed Market Maker") would have to, within three seconds of receipt of the order, either submit the Directed Order to the

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the original filing in its entirety.

⁴ Securities Exchange Act Release No. 51835 (June 13, 2005), 70 FR 35479.