

records that contain testing or examination material the release of which may compromise testing or examination procedures are also exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

Dated: August 15, 2005.

**Gilbert Smith**

*Associate Director for Management.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52462; File No. SR-ISE-2005-43]

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

September 19, 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 September 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. 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>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</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 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 the DIAMONDS® Trust, Series 1, an exchange-traded fund.<sup>5</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 the DIAMONDS® Trust, Series 1 ("DIA"), an exchange-traded fund.<sup>6</sup> Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on DIA.<sup>7</sup> The amount of the execution fee and comparison fee for the product covered by this filing shall be the same for all order types on the Exchange—that is, orders for Public Customers<sup>8</sup> and Non-Customers<sup>9</sup> (which include Market

sponsored, endorsed, sold, or promoted by Dow Jones. Dow Jones, PDR, and Amex have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of DIAMONDS Options or (ii) to use and refer to the DIAMONDS® trademark in connection with the listing, provision of a market for trading, marketing, and promotion of DIAMONDS Options or with making disclosures concerning DIAMONDS Options under any applicable federal or state laws, rules or regulations, and do not sponsor, endorse, or promote such activity by ISE. ISE is not affiliated in any manner with Dow Jones, PDR, or Amex.

<sup>6</sup> The ISE represents that DIA constitutes "Fund Shares," as defined in ISE Rule 502(h). Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and Richard Holley III, Special Counsel, Division of Market Regulation, Commission, on September 8, 2005.

<sup>7</sup> The ISE represents that these fees will be charged only to Exchange members. Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and Richard Holley III, Special Counsel, Division of Market Regulation, Commission, on September 8, 2005.

<sup>8</sup> See ISE Rule 100(32) (defining "Public Customer" as a person that is not a broker or dealer in securities).

<sup>9</sup> See ISE Rule 100(22) (defining "Non-Customer" as a person or entity that is a broker or dealer in securities).

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.<sup>10</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.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>11</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 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>12</sup> and Rule 19b-4(f)(2)<sup>13</sup> thereunder. At any time within 60 days of the filing of such 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.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

<sup>10</sup> The Commission notes that the applicable 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>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 19b-4(f)(2).

<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)(ii).

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

<sup>5</sup> DIAMONDS® is a registered trademark of Dow Jones & Company, Inc. ("Dow Jones") for securities issued by the Diamonds® Trust, Series 1 and has been licensed for use for certain purposes by Dow Jones to PDR Services Corporation ("PDR") and the American Stock Exchange LLC ("Amex") pursuant to a license agreement with Dow Jones. DIAMONDS and options which have DIAMONDS as their sole underlying interest ("DIAMONDS Options") are not

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-2005-43 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-2005-43. 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 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-2005-43 and should be submitted on or before October 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52463; File No. SR-NYSE-2005-35]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Changes to Listed Company Manual Section 902.00 Regarding Listing Fees

September 16, 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 May 18, 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, II, and III below, which Items have been prepared by the NYSE. On July 29, 2005, NYSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On August 16, 2005, NYSE filed Amendment No. 2 to the proposed rule change.<sup>4</sup> 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 proposed rule filing proposes a number of changes to the current fee chapter set out in Sections 902.01 to 902.04 of the Listed Company Manual. In addition, the Exchange is proposing a reorganization of the relevant sections of the Listed Company Manual into a clearer and more concise format setting out fees by type of listed security.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

#### Listed Company Manual

\* \* \* \* \*

<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 clarified and supplemented certain aspects of its proposal. Amendment No. 1 supplements the information provided in various sections of the Exchange's Form 19b-4.

<sup>4</sup> In Amendment No. 2, the Exchange made technical and clarifying changes to its proposal. Amendment No. 2 supplements the information provided in various sections of the Exchange's Form 19b-4. The Commission has made minor technical changes to this notice with Nasdaq's consent. Telephone conversation between Susie Cho, Special Counsel, Jan Woo, Attorney, Division of Market Regulation, Commission, and John Carey, Assistant General Counsel, NYSE, on August 19, 2005.

902.00 [Listing] Fees for Listed Securities

902.01 Listed[ing] Securities Fee Agreement [, Current Form]  
Each Listing Application submitted to the Exchange should must be accompanied by a Listed Securities Fee Agreement, in which the Company undertakes to pay Listing Fees and Annual Fees, unless such an agreement in the form shown below has previously been filed with the Exchange.

AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ by \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ (hereinafter called the "Company") with the New York Stock Exchange, Inc. (hereinafter called the "Exchange").

WITNESSETH:

I. WHEREAS the Company has applied for the listing upon the Exchange of:

2. WHEREAS it is a condition precedent to the consideration of listing applications that this fee agreement be in effect between the Company and the Exchange covering the payment of Listing Fees [initial] and [continuing] A[a]nnual F[f]ees.

NOW, THEREFORE, in consideration of the Exchange receiving and considering the application for the listing of the aforementioned securities, and subsequent applications, if any, for the listing of additional shares of such securities and/or other securities of the Company, the Company covenants and agrees to pay, when due, any applicable L[l]isting F[f]ees and Annual Fees established from time to time by the Exchange.

IN WITNESS WHEREOF, the Company has caused these presents to be executed by its proper officers thereunto duly authorized and its corporate seal to be hereunto affixed, as of the day and year first above written.

by \_\_\_\_\_  
(Name and Title)

#### 902.02 GENERAL INFORMATION ON FEES

*There are two types of fees applicable to listed issuers—Listing Fees and Annual Fees. All fees are payable upon receipt of invoice. This chapter sets out fees by type of security, with different fees applicable to equity securities, closed-end funds, structured products (defined as securities listed under Sections 703.18, 703.19 and 703.21), short-term securities (defined as securities having a term of seven years or less), investment company units*

<sup>14</sup> 17 CFR 200.30-3(a)(12).