

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54414; File No. SR-ISE-2006-49]

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

September 7, 2006.

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 August 29, 2006, 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 filed the proposed rule change 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 5 Premium Products.<sup>5</sup> The text of the proposed rule change is available on the Exchange’s Internet Web site (<http://www.iseoptions.com>), 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 5 Premium Products: iShares S&P SmallCap 600 Value Index Fund (“IJS”), iShares Russell 1000 Growth Index Fund (“IWF”), iShares Russell MidCap Growth Index Fund (“IWP”), iShares Russell MidCap Value Index Fund (“IWS”), and iShares Russell 3000 Index Fund (“I WV”).<sup>6</sup> Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on IJS, IWF, IWP, IWS and I WV.<sup>7</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>8</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>9</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.

The Exchange has entered into a license agreement with Standard & Poor’s and the Frank Russell Company in connection with the listing and trading of options on IJS and IWF, IWP, IWS and I WV, respectively. As with

certain other licensed options, the Exchange is adopting a fee of \$0.10 per contract for trading in these options to defray the licensing costs. The Exchange believes 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 from this surcharge fee. Accordingly, this surcharge fee would be charged only to Exchange members with respect to Non-Public Customer Orders (e.g., ISE Market Maker, Non-ISE Market Maker & Firm Proprietary orders) and would apply to Linkage Orders<sup>10</sup> under a pilot program that is set to expire on July 31, 2007. Further, since options on IJS, IWF, IWP, IWS and I WV are multiply-listed, the Payment for Order Flow fee would also apply.

##### 2. Statutory Basis

The basis for the proposed rule change is the requirement under Section 6(b)(4) of the Act<sup>11</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 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 proposed 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 the proposed rule change the Commission may summarily abrogate such proposed rule change if it

<sup>6</sup> IJS, IWF, IWP, IWS and I WV constitute “Fund Shares,” as defined by ISE Rule 502(h).

<sup>7</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). See Securities Exchange Release No. 54204 (July 25, 2006), 71 FR 43548 (August 1, 2006).

<sup>8</sup> Public Customer Order is defined in Exchange Rule 100(a)(33) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(32) as a person that is not a broker or dealer in securities.

<sup>9</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.

<sup>10</sup> See *supra* note 7.

<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> The term “Premium Products” is defined in the Schedule of Fees as the products enumerated therein.

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 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-2006-49 on the subject line.

##### *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 No. SR-ISE-2006-49. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. 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 No. SR-ISE-2006-49 and should be submitted on or before October 6, 2006.

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

Nancy M. Morris,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54417; File No. SR-NYSEArca-2006-52]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exchange Fees and Charges

September 8, 2006.

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 August 31, 2006, the NYSE Arca, Inc. ("NYSE Arca" 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 Exchange. The Exchange has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to 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 Exchange proposes to amend its Schedule of Fees and Charges in order to extend the pilot program ("Pilot Program") that applies to Option Strategy Executions until March 1, 2007. The Exchange also proposes at this time to correct a minor typographical error on the schedule. The text of the proposed rule change is available on NYSE Arca's Web site at (<http://www.nysearca.com>), at the Office of the Secretary at NYSE Arca, and at the Commission's Public Reference Room.

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

<sup>15</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).

#### 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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 represents that the purpose of this proposed rule change is to extend the Pilot Program that applies to Option Strategy Executions until March 1, 2007. The transactions included as part of the Pilot Program include reversals and conversions,<sup>5</sup> dividend spreads,<sup>6</sup> box spreads,<sup>7</sup> short stock interest spreads,<sup>8</sup> and merger spreads.<sup>9</sup> Because the referenced Options Strategy Transactions are generally executed by professionals whose profit margins are generally narrow, the Pilot Program caps the transaction fees associated with such executions at \$1,000 per strategy execution that are executed on the same trading day in the same option class. In addition, there is also a monthly cap of \$50,000 per initiating firm for all strategy executions. The Exchange believes that by keeping fees low, the

<sup>5</sup> Reversals and conversions are transactions that employ calls, puts and the underlying stock to lock in a nearly risk free profit. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration.

<sup>6</sup> Dividend spreads are trades involving deep in the money options that exploit pricing differences arising around the time a stock goes ex-dividend.

<sup>7</sup> Box spreads is a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively.

<sup>8</sup> A short stock interest spread is a spread that uses two deep in the money put options of the same class followed by the exercise of the resulting long position in order to establish a short stock interest arbitrage position.

<sup>9</sup> A merger spread is a transaction executed pursuant to a strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but with different strike prices followed by the exercise of the resulting long option position.