

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 12b-1; SEC File No. 270-188; OMB Control No. 3235-0212.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 12b-1 (17 CFR 270.12b-1) permits a registered open-end investment company ("mutual fund") to distribute its own shares and pay the expenses of distribution out of the mutual fund's assets provided, among other things, that the mutual fund adopts a written plan ("Rule 12b-1 plan") and has in writing any agreements relating to the implementation of the Rule 12b-1 plan. The rule in part requires that (i) the adoption or material amendment of a Rule 12b-1 plan be approved by the mutual fund's directors and shareholders; (ii) the board review quarterly reports of amounts spent under the Rule 12b-1 plan; and (iii) the board consider continuation of the Rule 12b-1 plan at least annually. Rule 12b-1 also requires funds relying on the rule to preserve for six years, the first two years in an easily accessible place, copies of the Rule 12b-1 plan, related agreements and reports, as well as minutes of board meetings that describe the factors considered and the basis for adopting or continuing a Rule 12b-1 plan.

The board and shareholder approval requirements of Rule 12b-1 are designed to ensure that fund shareholders and directors receive adequate information to evaluate and approve a Rule 12b-1 plan. The requirement of quarterly reporting to the board is designed to ensure that the Rule 12b-1 plan continues to benefit the fund and its shareholders. The recordkeeping requirements of the rule are necessary to enable Commission staff to oversee compliance with the rule.

The number of hours required to comply with Rule 12b-1 will vary considerably depending on several factors, including the complexity of the

plan and the number of classes of fund shares covered by the plan, and is expected to be higher in the first year following adoption of the proposed amendments than in subsequent years. Based on information filed with the Commission by funds, Commission staff estimates that there are approximately 6,536 mutual fund portfolios with Rule 12b-1 plans.

Rule 12b-1 requires the board of each fund with a Rule 12b-1 plan to (i) review quarterly reports of amounts spent under the plan, and (ii) annually consider the plan's continuation (which generally is combined with the fourth quarterly review); (iii) have each fund document the policies and procedures it has implemented to enable it to effect portfolio securities transactions through an executing broker that also distributes the fund's shares, and (iv) approve those policies and procedures.

The number of annual responses per fund portfolio will be four per year. Thus, there will be an estimated 26,144 industry responses (6,536 fund portfolios  $\times$  4 responses per fund portfolio = 26,144 responses) in the first year and in each subsequent year. Thus, we estimate that there will be an average of 26,144 industry responses per year over the three year period for which we are requesting approval of the information collection burden.

Based on conversations with fund industry representatives, Commission staff estimates that for each of the 6,536 mutual fund portfolios that currently have a Rule 12b-1 plan, the average annual burden of complying with the rule is 100 hours to maintain the plan. This estimate takes into account the time needed to prepare quarterly reports to the board of directors, the board's consideration of those reports, and the board's annual consideration of the plan's continuation. The total burden hours per year for all fund portfolios to comply with current information collection requirements under Rule 12b-1, is therefore estimated to be 653,600 hours (6,536 fund portfolios  $\times$  100 hours per fund portfolio = 653,600 hours). The annual cost of the hourly burden per fund under the rule is estimated to be \$11,135.00. Thus, we estimate that the total annual cost to all funds of the Rule 12b-1 hour burden is \$72,778,360.00 (6,536 fund portfolios with Rule 12b-1 plans  $\times$  \$11,135.00 per fund portfolio = \$72,778,360.00).

If a currently operating fund seeks to (i) adopt a new Rule 12b-1 plan or (ii) materially increase the amount it spends for distribution under its Rule 12b-1 plan, Rule 12b-1 requires that the fund obtain shareholder approval. As a consequence, the fund will incur the

cost of a proxy. Based on conversations with fund industry representatives, Commission staff estimates that approximately three funds per year prepare a proxy in connection with the adoption or material amendment of a Rule 12b-1 plan. The staff further estimates that the cost of each fund's proxy is \$30,000. Thus the total annual cost burden of Rule 12b-1 to the fund industry is \$90,000 (3 funds requiring a proxy  $\times$  \$30,000 per proxy).

The collections of information required by Rule 12b-1 are necessary to obtain the benefits of the rule. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov); and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312, or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: January 22, 2007.

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E7-1520 Filed 1-30-07; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55165]

### Order Pursuant to Section 11A of the Securities Exchange Act of 1934 and Rule 608(e) Thereunder Extending a *de minimis* Exemption for Transactions in Certain Exchange-Traded Funds From the Trade-Through Provisions of the Intermarket Trading System

January 25, 2007.

This order extends, through March 4, 2007, a *de minimis* exemption to the provisions of the Intermarket Trading System Plan ("ITS Plan"),<sup>1</sup> a national

<sup>1</sup> The self-regulatory organizations ("SROs") participating in the ITS Plan include the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the

market system plan,<sup>2</sup> governing intermarket trade-throughs that currently is due to expire on February 4, 2007. The *de minimis* exemption was originally issued by the Commission on August 28, 2002<sup>3</sup> and extended on May 30, 2003,<sup>4</sup> on March 3, 2004,<sup>5</sup> on December 3, 2004,<sup>6</sup> on September 6, 2005,<sup>7</sup> and on June 28, 2006.<sup>8</sup>

Specifically, this order continues the *de minimis* exemption from compliance with Section 8(d)(i) of the ITS Plan with respect to two specific exchange-traded funds ("ETFs"), the Dow Jones Industrial Average ETF ("DIA") and the Standard & Poor's 500 Index ETF ("SPY").<sup>9</sup> By its terms, the June 2006

Chicago Stock Exchange, Inc., the National Stock Exchange, Inc. (formerly the Cincinnati Stock Exchange, Inc.), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange LLC, NYSE Arca, Inc. (formerly the Pacific Exchange, Inc.), and the Philadelphia Stock Exchange, Inc. (collectively, the "participants"). See Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

<sup>2</sup> Securities Exchange Act of 1934 ("Act") Rule 608(c) (formerly Rule 11Aa3-2(d)), 17 CFR 242.608(c), promulgated under Section 11A, 15 U.S.C. 78k-1, of the Act requires each SRO to comply with, and enforce compliance by its members and their associated persons with, the terms of any effective national market system plan of which it is a sponsor or participant. Rule 608(e) (formerly Rule 11Aa3-2(f)), 17 CFR 242.608(e), under the Act authorizes the Commission to exempt, either unconditionally or on specified terms and conditions, any SRO, member of an SRO, or specified security from the requirement of the rule if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.

<sup>3</sup> See Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) (the "August 2002 Order"). The August 2002 Order granted relief through June 4, 2003.

<sup>4</sup> See Securities Exchange Act Release No. 47950 (May 30, 2003), 68 FR 33748 (June 5, 2003) (the "May 2003 Order"). The May 2003 Order granted relief through March 4, 2004.

<sup>5</sup> See Securities Exchange Act Release No. 49356 (March 3, 2004), 69 FR 11057 (March 9, 2004) (the "March 2004 Order"). The March 2004 Order granted relief through December 4, 2004.

<sup>6</sup> See Securities Exchange Act Release No. 50795 (December 3, 2004), 69 FR 71445 (December 9, 2004) (the "December 2004 Order"). The December 2004 Order granted relief through September 4, 2005.

<sup>7</sup> See Securities Exchange Act Release No. 52382 (September 6, 2005), 70 FR 53695 (September 9, 2005) (the "September 2005 Order"). The September 2005 Order granted relief through June 28, 2006.

<sup>8</sup> See Securities Exchange Act Release No. 54063 (June 28, 2006), 71 FR 38433 (July 6, 2006) (the "June 2006 Order"). The June 2006 Order granted relief through February 4, 2007.

<sup>9</sup> The Commission limited the *de minimis* exemption to these two securities because they share certain characteristics that may make immediate execution of their shares highly desirable to certain investors. In particular, trading in the two ETFs is highly liquid and market participants may value an immediate execution at a displayed price more than the opportunity to

Order continued the exemption from the trade-through provisions of the ITS Plan of any transactions in the two ETFs that are effected at prices at or within three cents away from the best bid and offer quoted in the Consolidated Quote System ("CQS") through February 4, 2007.

In the Commission's previous orders to issue and extend the *de minimis* exemption,<sup>10</sup> the Commission discussed its basis for determining that the *de minimis* exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system. In the June 2006 Order, the Commission further noted that:

In March 2004 and in May 2003, the Commission extended the three cent *de minimis* exemption for additional nine-month periods, in order to assess trading data associated with the *de minimis* exemption and to consider whether to adopt the *de minimis* exemption on a permanent basis, to adopt some other alternative solution, or to allow the exemption to expire. As a result of its review of trading data associated with the *de minimis* exemption, the Commission has proposed, as part of its market structure initiatives, Regulation NMS under the Act, which would include a new rule relating to trade-throughs.

On April 6, 2005, the Commission approved Regulation NMS under the Act.<sup>11</sup> In Regulation NMS, the Commission adopted an approach that, among other things, protects only automated quotations and excludes manual quotations from trade-through protection, and renders the *de minimis* exemption unnecessary. Given the significant systems and other changes necessary to implement Rule 610 and Rule 611,<sup>12</sup> the Commission originally

obtain a slightly better price. Unlike prior orders, the December 2004, September 2005, and June 2006 extensions of the *de minimis* exemption applied only to the DIA and the SPY, and not the QQQ, because, on December 1, 2004, trading of the QQQ transferred from the American Stock Exchange to Nasdaq, and thus trades in the QQQ ceased to be subject to the trade-through provisions of the ITS Plan. Accordingly, an exemption for the QQQ was no longer necessary. See December 2004 Order, September 2005 Order, and June 2006 Order.

<sup>10</sup> See *supra* notes 3 to 8.

<sup>11</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>12</sup> Rule 610 generally prohibits national securities exchanges and national securities associations from imposing unfairly discriminatory terms that prevent or inhibit access to quotations, and establishes a limit on access fees, and requires each national securities exchange and national securities association to adopt, maintain, and enforce written rules that prohibit their members from engaging in a pattern or practice of displaying quotations that lock or cross protected quotations. Rule 611 requires trading centers to establish, maintain, and enforce written policies and procedures reasonably

established delayed compliance dates for Rule 610 and Rule 611, the first of which was scheduled to begin on June 29, 2006.<sup>13</sup> In the September 2005 Order, the Commission stated that until Regulation NMS is implemented, the reasons for maintaining the *de minimis* exemption in effect continue to be valid, and thus the Commission extended the *de minimis* exemption though June 28, 2006, which was the date before the initial compliance date for Rule 610 and Rule 611.

On May 18, 2006, the Commission extended the compliance dates for Rule 610 and Rule 611 to give trading centers additional time to finalize the development of their new or modified trading systems, and to give the securities industry sufficient time to establish the necessary access to such trading systems.<sup>14</sup> The initial compliance date was extended to a series of five dates, beginning on October 16, 2006, for different functional stages of compliance, with February 5, 2007 (the "Trading Phase Date") being the final date for full operation of Regulation NMS-compliant trading systems for initial trade-through protection under Rule 611, as described in the First NMS Extension Release. The Commission also extended the *de minimis* exemption through February 4, 2007, which was the day before the Trading Phase Date.<sup>15</sup>

On January 24, 2007, the Commission extended the Trading Phase Date to March 5, 2007.<sup>16</sup> Therefore, to maintain the status quo and avoid requiring market participants to make short-term trading or programming changes pending the extended implementation period for Rule 610 and Rule 611 of Regulation NMS, it is appropriate to extend the *de minimis* exemption through March 4, 2007, the day before

designed to prevent the execution of trades at prices inferior to protected quotations displayed by other trading centers, subject to an applicable exception.

<sup>13</sup> See *supra* note 11.

<sup>14</sup> Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30037 (May 24, 2006) ("First NMS Extension Release").

<sup>15</sup> See *supra* note 8.

<sup>16</sup> Securities Exchange Act Release No. 55160 (January 24, 2007) ("Second NMS Extension Release"). To reflect the extended Trading Phase Date and avoid coinciding with major trading days in June 2007, the Commission also extended the Pilot Stocks Phase Date (as defined in the Second NMS Extension Release) until July 9, 2007, and the All Stocks Phase Date (as defined in the Second NMS Extension Release) until August 20, 2007. In contrast, the Specifications Date (as defined in the Second NMS Extension Release) of October 16, 2006 has already passed and was not extended. In addition, the Completion Date (as defined in the Second NMS Extension Release) of October 8, 2007 was not changed.

the extended Trading Phase Date.<sup>17</sup> The Commission emphasizes, as it did in the previous orders,<sup>18</sup> that the *de minimis* exemption does not relieve brokers and dealers of their best execution obligations under the federal securities laws and SRO rules.

Accordingly, it is ordered, pursuant to Section 11A of the Act and Rule 608(e) thereunder,<sup>19</sup> that participants of the ITS Plan and their members are hereby exempt from Section 8(d) of the ITS Plan during the period covered by this Order with respect to transactions in DIAs and SPYs that are executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS. This Order extends the *de minimis* exemption from February 5, 2007 through March 4, 2007.

By the Commission.

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55163; File No. SR-Amex-2007-11]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Establishment of a Pilot Program Increasing Position and Exercise Limits for Options on the iShares® Russell 2000® Index Fund

January 24, 2007.

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 January 22, 2007, the American Stock Exchange LLC ("Amex" 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 substantially prepared by Amex. On January 22, 2007, Amex submitted Amendment No. 1 to the proposed rule change. Amex has filed the proposal pursuant to Section 19(b)(3)(A) of the

Act<sup>3</sup> and Rule 19b-4(f)(6) 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, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 904 to exempt options on the iShares® Russell 2000® Index Fund ("IWM") from the position and exercise limits provided for under the Rule 904 Pilot Program and to increase the standard position and exercise limits for IWM as part of a six-month pilot ("IWM Pilot Program"). The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and [www.amex.com](http://www.amex.com).

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex 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. Amex 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 proposes to amend Commentary .07 to Rule 904 on a six-month pilot basis to exempt options on IWM from the Rule 904 Pilot Program. Under the Rule 904 Pilot Program, the position and exercise limits for IWM would be reduced on January 22, 2007 from 500,000 to 250,000 contracts. The Exchange now proposes to allow position and exercise limits for options on IWM to remain at 500,000 contracts on a pilot basis, from January 22, 2007 through July 22, 2007.

In June 2005, as a result of a 2-for-1 stock split, the position limit for IWM options was temporarily increased from 250,000 contracts (covering 25,000,000 shares) to 500,000 contracts (covering 50,000,000 shares). At the time of the split, the furthest IWM option expiration date was January 2007.

Therefore, the temporary increase of the IWM position limit will revert to the pre-split level (as provided for in connection with the Rule 904 Pilot Program) of 250,000 contracts after expiration in January 2007, or on January 22, 2007.<sup>5</sup>

The Exchange believes that a position limit of 250,000 contracts is too low and may be a deterrent to the successful trading of IWM options. Importantly, options on IWM are 1/10th the size of options on the Russell 2000® Index ("RUT"), which have a position limit of 50,000 contracts.<sup>6</sup> Traders who trade IWM options to hedge positions in RUT options are likely to find a position limit of 250,000 contracts in IWM options too restrictive and insufficient to properly hedge. For example, if a trader held 50,000 RUT options and wanted to hedge that position with IWM options, the trader would need—at a minimum—500,000 IWM options to properly hedge the position. Therefore, the Exchange believes that a position limit of 250,000 contracts is too low and may adversely affect market participants' ability to provide liquidity in this product.

Additionally, IWM options have grown to become one of the largest options contracts in terms of trading volume. For example, the volume in options on IWM set a new single-day record on June 8, 2006, when 760,803 contracts (120,229 calls and 640,574 puts) traded on that day. This record level volume beat the previous single-day high of 727,521 contracts on May 17, 2006. Further, over the previous six months, ending December 31, 2006, the average daily trading volume (market-wide) of IWM options has been 300,409 contracts and a total of 2,444,470 contracts have traded on the Exchange.

As a result, the Exchange proposes that options on IWM be subject to position and exercise limits of 500,000 contracts on a pilot basis to run from January 22, 2007 through July 22, 2007.<sup>7</sup> The Exchange believes that increasing position and exercise limits for IWM options will lead to a more liquid and

<sup>5</sup> See Amex Information Circular #05-0397.

<sup>6</sup> See Amex Rule 904C; see also Securities Exchange Act Release Nos. 45236 (January 2, 2002), 67 FR 1378 (January 10, 2002) (SR-Amex-2001-42) (increase of position and exercise limits to 300,000 for QQQ options); and 51043 (January 14, 2005), 70 FR 3402 (January 24, 2005) (SR-Amex-2005-06) (increase of position and exercise limits for options on Standard and Poor's Depository Receipts® from 75,000 to 300,000).

<sup>7</sup> Pursuant to Rule 905, the exercise limit established for IWM options shall be equivalent to the position limit prescribed for IWM options in Commentary .07 to Rule 904. The increased exercise limits would only be in effect during the pilot period, to run from January 22, 2007 through July 22, 2007. See Amendment No. 1 to the proposed rule change.

<sup>17</sup> The Commission expects most trading centers to be operating consistent with the requirements of Rule 611 by the Trading Phase Date.

<sup>18</sup> See *supra* notes 3 to 8.

<sup>19</sup> 17 CFR 242.608(e).

<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).

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