

that the Commission waive the 30-day operative date, so that the proposal may take effect January 16, 2007. The Exchange believes that the proposed rule change does not raise any new regulatory issues. The Commission agrees and, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date, which renders the proposal effective on January 16, 2007.<sup>11</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 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 Number SR-CBOE-2007-06 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2007-06. 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

change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change, or such shorter time designated by the Commission. CBOE has satisfied the five day pre-filing requirement.

<sup>11</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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-CBOE-2007-06 and should be submitted on or before March 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55234; File No. SR-ISE-2006-79]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to a Fee Refund

February 2, 2007.

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 December 22, 2006, the International Securities Exchange, LLC ("ISE" 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 the ISE. On February 1, 2007, the ISE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>12</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> In Amendment No. 1, ISE converted the original proposed rule change from a proposal filed pursuant to Section 19(b)(3)(A)(ii) of the Act and Rule 19b-4(f)(2) thereunder to a "non-controversial" proposal filed pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder, and requested waiver of the 30-day pre-operative delay and pre-filing notice requirement for "non-controversial" proposals.

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

The ISE is proposing to refund surcharge fees collected for transactions in options on Standard & Poor's ("S&P") Depository Receipts®, SPDRs® (ticker: SPY). The text of the proposed rule change is available at the ISE, the Commission's Public Reference Room, and <http://www.iseoptions.com>.<sup>4</sup>

### 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

In SR-ISE-2005-06, the Exchange adopted a \$0.10 per contract surcharge fee for transactions in options on SPDRs.<sup>5</sup> In that filing, the Exchange represented that a lawsuit between the Exchange and S&P involving the surcharge fee on SPY, if resolved by the courts in ISE's favor, could result in a refund of the license fee ISE paid to S&P for transactions in SPY and, upon any refund of the surcharge fee by S&P to ISE, the Exchange would submit a rule filing to the Commission to document the reimbursement of the surcharge fees paid by members to ISE.<sup>6</sup> In SR-ISE-2006-60, the Exchange repealed the \$0.10 per contract surcharge fee for transactions in options on SPDRs.<sup>7</sup> The Exchange recently received a refund of the surcharge fees, plus interest, from S&P and proposes to refund the surcharge fees to its members. Accordingly, the Exchange is submitting this rule filing to reflect that it is returning to each member (both current and former) its pro-rata share of the refunded amount (including interest),

<sup>4</sup> The refund announcement is available on the Exchange's Web site at [http://www.iseoptions.com/legal/fee\\_notice.asp](http://www.iseoptions.com/legal/fee_notice.asp).

<sup>5</sup> See Securities Exchange Act Release No. 51901 (June 22, 2005), 70 FR 37455 (June 29, 2005).

<sup>6</sup> See Amendment No. 1.

<sup>7</sup> See Securities Exchange Act Release No. 54589 (October 11, 2006), 71 FR 61518 (October 18, 2006).

which represents the actual amount of surcharge fees paid by the member, plus interest, less its pro-rata share of the Exchange's legal costs in connection with obtaining the refund.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>8</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 proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) Does not impose any significant burden on competition; and (3) By its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> The Commission has agreed to waive the requirement that the Exchange provide it with written notice of its intent to file the proposed rule change, at least five business days prior to the date of the

filing of the proposed rule change as required by Rule 19b-4(f)(6).

A proposed rule change filed under Rule 19b-4(f)(6) under the Act<sup>11</sup> normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) under the Act<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay, which would make the rule change effective and operative upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change seeks to refund the surcharge fees that were previously collected by the Exchange from its members with respect to trades in options on SPY.<sup>13</sup> Further, the Exchange's intent to refund those surcharge fees upon a successful resolution of the Exchange's lawsuit against S&P was reflected in the proposed rule change that initially adopted the surcharge fee on SPY options.

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.<sup>14</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 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

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> The effective date of the original proposed rule is December 22, 2006. The effective date of Amendment No. 1 is February 1, 2007. 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 February 1, 2007, the date on which the ISE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-ISE-2006-79 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 Number SR-ISE-2006-79. 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-2006-79 and should be submitted on or before March 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 200.30-3(a)(12).