

reinstate any fine waived by FICC management. If FICC management were not to waive the fine, the member could appeal the decision to a panel comprised of FICC officers ("Minor Rule Violation Panel").

#### *B. Hearings for All Other Violations and Minor Rule Violation Appeals*

For matters involving (1) an alleged violation of a GSD or MBSD rule for which a fine in an amount of over \$5,000 is assessed, (2) applicants for membership, (3) other disciplinary actions to which the Minor Rule Violation Plan would not apply, or (4) for appeals from a Minor Rule Violation Panel decision adverse to a member or applicant, the member or applicant is entitled to a hearing before a panel comprised of three individuals of the FICC Board of Directors or their designees appointed by the Chairman of the FICC Board. Decisions of the panel are final; however, the full Board of Directors retains the right to modify any sanction or reverse any decision of the panel that is adverse to the member or applicant.

Currently with respect to hearings, a member or applicant is afforded the opportunity to be heard and may be represented by counsel if desired. A record is kept of the hearing, and at the discretion of the panel, the associated cost may be charged in whole or part to the member or applicant in the event that the decision is adverse to the member or applicant. The member or applicant is advised of the panel's decision within ten business days after the conclusion of the hearing. These procedures would also apply with respect to the Minor Rule Violation Plan.

#### *C. Administrative Changes: Uniformity of Time Frames*

The rule changes will implement uniform time periods for the Divisions and among FICC, DTC, and NSCC governing actions a member or applicant would be required to take in order to request a hearing.<sup>8</sup> Currently, the deadlines a member or applicant must adhere to in order to request a hearing vary between the Divisions. Under the rule change, a member or applicant has five business days, or two business days in the case of a summary action taken against the member or

applicant pursuant to Rule 21 or 22,<sup>9</sup> from the date on which FICC first informs it of a sanction or a denial of membership in which to request a hearing.

Within seven business days, or three business days in the case of a summary action taken against the member or applicant, after filing a request for a hearing with FICC, the member or applicant is required to submit to FICC a clear and concise written statement setting forth the action or proposed action of FICC with respect to which the hearing is requested, the basis for objection to such action, whether the member or applicant intends to attend the hearing, and whether the member or applicant chooses to be represented by counsel at the hearing.

#### **III. Discussion**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),<sup>10</sup> which, among other things, requires that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions and with the requirements of Section 17A(b)(3)(H)<sup>11</sup> which, among other things, requires that the rules of a clearing agency provide a fair procedure with respect to the disciplining of participants and the denial of participation to any person seeking to be a participant. The Commission finds that the proposed rule change, which harmonizes FICC's hearing procedure rules with those of DTC and NSCC and which adopts a Minor Rule Violation Plan, is consistent with those statutory obligations.

#### **IV. Conclusion**

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>12</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (File No. SR-FICC-2007-06) be, and hereby is, approved.<sup>14</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57397; File No. SR-ISE-2008-13]

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

February 28, 2008.

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 February 11, 2008, 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, II, and III below, which Items have been substantially prepared by the ISE. The ISE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member 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 five Premium Products.<sup>5</sup> The text of the proposed rule change is available at the ISE, at the

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>5</sup> "Premium Products" is defined in the Schedule of Fees as the products enumerated therein.

<sup>8</sup> DTC rules do not impose an accelerated deadline for an Interested Person to request a hearing in the case of summary action taken against the Interested Person. A summary action is an action taken prior to a hearing to determine the propriety of the action.

<sup>9</sup> Examples of a summary action are a suspension of a member or restriction of a member's access to services as described in Rule 21, Section 1 ("Restrictions on Access to Services").

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(H).

<sup>12</sup> 15 U.S.C. 78q-1.

Commission's Public Reference Room, and on the ISE's Web site ([http://www.iseoptions.com/legal/proposed\\_rule\\_changes.asp](http://www.iseoptions.com/legal/proposed_rule_changes.asp)).

## 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 UltraShort FTSE/Xinhua China 25 ProShares ("FXP"),<sup>6</sup> UltraShort MSCI Emerging Markets ProShares ("EEV"),<sup>7</sup> iShares Russell 1000 Growth Index

<sup>6</sup> "FTSE®" is a trademark jointly owned by the London Stock Exchange PLC and The Financial Times Limited and is used by FTSE/Xinhua Index Limited ("FXI") under license. "Xinhua(r)" is a trademark of Xinhua Finance Limited and is used by FXI under license. All other trademarks and service marks are the property of their respective owners. The UltraShort FTSE/Xinhua China 25 ProShares ("FXP") are not sponsored, endorsed, issued, sold or promoted by FXI. FXI has not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on FXP or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on FXP or with making disclosures concerning options on FXP under any applicable federal or state laws, rules or regulations. FXI does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

<sup>7</sup> "MSCI Emerging Markets Index" and "MSCI" are service marks of Morgan Stanley Capital International ("MSCI") and have been licensed for use for certain purposes by ProFunds Trust. All other trademarks and service marks are the property of their respective owners. The UltraShort MSCI Emerging Markets ProShares ("EEV") are not sponsored, endorsed, issued, sold or promoted by MSCI. MSCI has not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on EEV or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on EEV or with making disclosures concerning options on EEV under any applicable federal or state laws, rules or regulations. MSCI does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

Fund ("IWF"),<sup>8</sup> SPDR S&P Retail Select ETF ("XRT"),<sup>9</sup> and The Market Vectors—Agribusiness ETF ("MOO").<sup>10</sup> The Exchange represents that FXP, EEV, IWF, XRT and MOO are eligible for options trading because they constitute "Exchange-Traded Fund Shares," as defined by ISE Rule 502(h).

All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is

<sup>8</sup> iShares® is a registered trademark of Barclays Global Investors, N.A. ("BGI"), a wholly owned subsidiary of Barclays Bank PLC. "Russell 1000® Growth Index" is a trademark of Frank Russell Company ("Russell") and has been licensed for use for certain purposes by BGI. All other trademarks and service marks are the property of their respective owners. iShares Russell 1000 Growth Index Fund ("IWF") is not sponsored, sold or endorsed by Russell. Russell and BGI have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on IWF or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on IWF or with making disclosures concerning options on IWF under any applicable federal or state laws, rules or regulations. Russell and BGI do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

<sup>9</sup> "Standard & Poor's®," "S&P®," "Standard & Poor's Depository Receipts®," "SPDR®" and "the S&P® Retail Select Industry Index," are trademarks of The McGraw-Hill Companies, Inc. ("McGraw-Hill"), and have been licensed for use by SS&A Fund Management, Inc., and streetTRACKS® Series Trust in connection with the listing and trading of SPDR® S&P Retail Select ETF ("XRT"). XRT is not sponsored, sold or endorsed by Standard & Poor's, ("S&P"), a division of McGraw-Hill, and S&P makes no representation regarding the advisability of investing in XRT. McGraw-Hill and S&P have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on XRT or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on XRT or with making disclosures concerning options on XRT under any applicable federal or state laws, rules or regulations. McGraw-Hill and S&P do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

<sup>10</sup> The Market Vectors—Agribusiness ETF ("MOO") is distributed by Van Eck Securities Corporation and seeks to track the DAXglobal® Agribusiness Index, which is published by Deutsche Börse AG ("Deutsche Börse"). The DAXglobal® Agribusiness Index is a trademark of Deutsche Börse and is licensed for use by Van Eck Associates Corporation ("Van Eck") in connection with MOO. Deutsche Börse does not sponsor, endorse, or promote MOO and makes no representation regarding the advisability of investing in MOO. Van Eck has not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on MOO or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on MOO or with making disclosures concerning options on MOO under any applicable federal or state laws, rules or regulations. Van Eck does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

proposing to adopt an execution fee and a comparison fee for all transactions in options on FXP, EEV, IWF, XRT and MOO.<sup>11</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>12</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>13</sup> Finally, the amount of the execution fee and comparison fee for all non-ISE Market Maker transactions shall be \$0.37 and \$0.03 per contract, respectively.<sup>14</sup> Further, since options on FXP, EEV, IWF, XRT and MOO are multiply-listed, the Exchange's Payment for Order Flow fee shall apply to all of these 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.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>15</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>16</sup> in particular, in that it is designed to provide for the 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.

<sup>11</sup> These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2008, these fees will also be charged to Linkage Principal Orders ("Linkage P Orders") and Linkage Principal Acting as Agent Orders ("Linkage P/A Orders"). The amount of the execution fee charged by the Exchange for Linkage P Orders and Linkage P/A Orders is \$0.24 per contract side and \$0.15 per contract side, respectively. See Securities Exchange Act Release No. 56128 (July 24, 2007), 72 FR 42161 (August 1, 2007) (SR-ISE-2007-55).

<sup>12</sup> Public Customer Order is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(38) as a person that is not a broker or dealer in securities.

<sup>13</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 per contract side.

<sup>14</sup> The amount of the execution and comparison fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is \$0.16 and \$0.03 per contract, respectively.

<sup>15</sup> 15 U.S.C. 78f.

<sup>16</sup> 15 U.S.C. 78f(b)(4).

*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>17</sup> and Rule 19b-4(f)(2)<sup>18</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 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-2008-13 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-2008-13. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-2008-13 and should be submitted on or before March 27, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57398; File No. SR-ISE-2007-112]

**Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Obvious Errors**

February 28, 2008.

On November 29, 2007, the International Securities Exchange, LLC ("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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend ISE Rule 720 ("Obvious Error Rule" or "Rule") to address "catastrophic errors." On January 4, 2008, the ISE submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal**

**Register** on January 16, 2008.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended.

The Exchange proposes to amend the Obvious Error Rule to add criteria for identifying catastrophic errors and making adjustments when they occur. The Exchange also proposes to streamline the procedure for reviewing actions taken when catastrophic errors occur.

Currently, under the Obvious Error Rule, trades that result from an obvious error may be adjusted or nullified based on objective standards set forth in the Rule. Under the Rule, whether an obvious error has occurred is determined by comparing the execution price of the option to its theoretical price and assessing whether the minimum amount of difference that is set forth in the Rule is met. The Rule requires that members notify ISE Market Control within a short time period following the execution of a trade (five minutes for market makers and 20 minutes for Electronic Access Members ("EAMs")) if they believe the trade qualifies as an obvious error. Trades that qualify for adjustment are adjusted under the Rule to a price that matches the theoretical price plus or minus an adjustment value, which is \$.15 if the theoretical value is under \$3 and \$.30 if the theoretical value is at or above \$3. By adjusting trades above or below the theoretical price, the Rule assesses a "penalty" in that the adjustment price is not as favorable as the amount the party making the error would have received had it not made the error.

In some extreme situations, ISE members may not be aware of errors that result in very large losses within the notification time periods required under the Rule. The proposal will allow members experiencing catastrophic errors additional time to seek relief so that there is a greater opportunity to mitigate very large losses and reduce corresponding windfalls. In such cases, the proposal sets forth the minimum amount by which the option's execution price must differ from the theoretical price for a catastrophic error determination to occur. The proposal also sets forth the adjustment value to be used by the Exchange when it makes a catastrophic error determination.

A catastrophic error will be deemed to have occurred when the execution price of a transaction differs from the theoretical price for the option by an amount equal to at least the specified

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 19b-4(f)(2).

<sup>19</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> Securities Exchange Act Release No. 57127 (January 10, 2008), 73 FR 2967 ("Notice").