

Dated: October 15, 2008.

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58794; File No. SR-ISE-2008-77]

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

October 15, 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 October 10, 2008, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. 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 4 Premium Products.<sup>3</sup> The text of the proposed rule change is available on the ISE's Web site (<http://www.ise.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 self-regulatory organization 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 self-regulatory organization 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 Claymore/BNY BRIC ETF ("EEB"),<sup>4</sup> the iShares Dow Jones U.S. Home Construction Index Fund ("ITB"),<sup>5</sup> the Market Vectors Steel ETF ("SLX")<sup>6</sup> and the Short Dow 30<sup>SM</sup>

<sup>4</sup> The "BNY BRIC Index" is a trademark of The Bank of New York ("BNY") and has been licensed for use for certain purposes by Claymore Advisors, LLC ("Claymore"). All other trademarks and service marks are the property of their respective owners. Claymore is the investment adviser to EEB. The Claymore/BNY BRIC ETF ("EEB") is not sponsored, endorsed, or promoted by BNY and BNY makes no representation regarding the advisability of investing in EEB. Claymore and BNY 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 EEB 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 EEB or with making disclosures concerning options on EEB under any applicable federal or state laws, rules or regulations. Claymore and BNY do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

<sup>5</sup> iShares® is a registered trademark of Barclays Global Investors, N.A. ("BGI"), a wholly owned subsidiary of Barclays Bank PLC. "Dow Jones" and "Dow Jones U.S. Home Construction Index" are trademarks and service marks of Dow Jones & Company, Inc. ("Dow Jones") and have been licensed for use for certain purposes by BGI. All other trademarks and service marks are the property of their respective owners. The iShares Dow Jones U.S. Home Construction Index Fund ("ITB") is not sponsored, endorsed, or promoted by Dow Jones. BGI and Dow Jones 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 ITB 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 ITB or with making disclosures concerning options on ITB under any applicable federal or state laws, rules or regulations. BGI and Dow Jones do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

<sup>6</sup> The Market Vectors Steel ETF ("SLX") is distributed by Van Eck Securities Corporation ("VESC") and tracks the AMEX Steel Index. Van Eck Associates Corporation ("VEAC") is the investment adviser to SLX. VEAC has entered into a licensing agreement with the American Stock Exchange ("AMEX") to use the AMEX Steel Index in connection with SLX. The AMEX' only relationship with VEAC is the licensing of certain trademarks, service marks and trade names of the AMEX Steel Index. The AMEX does not sponsor, endorse, or promote SLX and makes no representation regarding the advisability of investing in SLX. Neither VESC nor VEAC has licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on SLX 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 SLX or with making disclosures concerning options on SLX under any applicable federal or state laws, rules or regulations. Neither VESC nor VEAC sponsors, endorses, or promotes

ProShares ("DOG").<sup>7</sup> The Exchange represents that EEB, ITB, SLX and DOG 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 proposing to adopt an execution fee for all transactions in options on EEB, ITB, SLX and DOG.<sup>8</sup> The amount of the execution fee for products covered by this filing shall be \$0.18 per contract for all Public Customer Orders<sup>9</sup> and \$0.20 per contract for all Firm Proprietary orders. The amount of the execution fee for all ISE Market Maker transactions shall be equal to the execution fee currently charged by the Exchange for ISE Market Maker transactions in equity options.<sup>10</sup> Finally, the amount of the execution fee for all non-ISE Market Maker transactions shall be \$0.45 per contract.<sup>11</sup> Further, since options on EEB, ITB, SLX and DOG are multiply-listed, the Exchange's Payment for Order Flow fee shall apply to all these products. The Exchange believes the

such activity by ISE, and are not affiliated in any manner with ISE.

<sup>7</sup> "Dow Jones," "The Dow 30<sup>SM</sup>," "DJIA," and the "Dow Jones Industrial Average<sup>TM</sup>" are service marks of Dow Jones & Company, Inc. ("Dow Jones") 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 Short Dow 30<sup>SM</sup> ProShares ("DOG") is not sponsored, endorsed, or promoted by Dow Jones. ProFunds Trust and Dow Jones 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 DOG 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 DOG or with making disclosures concerning options on DOG under any applicable federal or state laws, rules or regulations. ProFunds Trust and Dow Jones does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

<sup>8</sup> These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2009, 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. 58143 (July 11, 2008), 73 FR 41388 (July 18, 2008) (SR-ISE-2008-52).

<sup>9</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 or entity that is not a broker or dealer in securities.

<sup>10</sup> The Exchange applies a sliding scale, between \$0.01 and \$0.18 per contract side, based on the number of contracts an ISE market maker trades in a month.

<sup>11</sup> The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is \$0.19 per contract.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> Premium Products is defined in the Schedule of Fees as the products enumerated therein.

proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

2. *Basis*—The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>13</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.

#### *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**

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act<sup>14</sup> and Rule 19b-4(f)(2)<sup>15</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-2008-77 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-ISE-2008-77. 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 Commissions 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-2008-77 and should be submitted by November 12, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58772; File No. SR-Phlx-2008-72]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the NASDAQ OMX PHLX, Inc. Relating to a Surcharge Fee**

October 10, 2008.

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 October 1, 2008, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. On October 7, 2008, the Exchange filed Amendment No. 1 to the proposal.<sup>3</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 Exchange, pursuant to section 19(b)(1) of the Act<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> proposes to assess a surcharge fee<sup>6</sup> of \$0.10 per contract side on firm/proprietary, firm/proprietary facilitation, Registered Option Trader (on-floor), specialist, and broker/dealer (AUTOM and non-AUTOM delivered) equity option transactions in the following products: (1) Options on the one-tenth of the value of the Nasdaq 100 Index (the "*Mini Nasdaq 100 Index*" or "MNX"); (2) options on the full value of the Nasdaq 100 Index<sup>7</sup> (the "Full-size Nasdaq 100 Index" or "NDX"); (3) options on the Russell 2000<sup>®</sup> Index (the "Full Value Russell Index" or "RUT"), and (4) options on the one-tenth value

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> Amendment No. 1 fixed typographical errors in the rule text of the original filing that were not being changed in this proposed rule change to match the current rule text.

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.

<sup>6</sup> The Exchange now proposes to refer to "license fees" as "surcharge fees" on its fee schedule.

<sup>7</sup> NASDAQ<sup>®</sup>, NASDAQ-100<sup>®</sup> and NASDAQ-100 Index<sup>®</sup> are registered trademarks of The NASDAQ OMX Group, Inc. (which with its affiliates are the "Corporations") and are licensed for use by the NASDAQ OMX PHLX, Inc. in connection with the trading of options products based on the NASDAQ-100 Index<sup>®</sup>.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 19b-4(f)(2) [sic].

<sup>16</sup> 17 CFR 200.30-3(a)(12).