

CBOE-2005-89), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53173; File No. SR-ISE-2006-03]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes for Transactions in Options on Three Narrow-Based Indexes

January 24, 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 January 5, 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 designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(iii) 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 proposes to amend its Schedule of Fees to establish fees for transactions in options on three narrow-based indexes: the ISE-B&S Water Index ("HHO"), the ISE-CCM Alternative Energy Index ("POW") and the ISE-CCM Nanotechnology Index ("TNY"). The text of the proposed rule change is available at the Exchange, at the Exchange's Web site <http://www.iseoptions.com/legal/>

[proposed\\_rule\\_changes.asp](#)) 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 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 is proposing to adopt an execution fee and a comparison fee for all transactions in options on HHO, POW and TNY.<sup>5</sup> These fees will be charged only to Exchange members. The amount of the execution fee and comparison fee for products covered by this filing shall be \$0.15 and \$0.03, respectively, for all Public Customer and Firm Proprietary orders. The amount of the execution fee and comparison fee for all Market Maker orders shall be equal to the execution fee and comparison fee currently charged by the Exchange for Market Maker transactions in equity options.<sup>6</sup> The Exchange believes the proposed rule change will further its goal of introducing new products to the marketplace that are competitively priced.

Additionally, the Exchange has entered into separate development agreements with Cronus Capital Markets and Boenning & Scattergood, Inc., in connection with the development, listing and trading of options on POW and TNY and HHO, respectively. As with certain other licensed options, the Exchange is adopting a fee of \$0.05 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<sup>7</sup> from this surcharge fee. Accordingly, this surcharge fee will only be charged to Exchange members with respect to non-Public Customer Orders (*e.g.*, Market Maker and Firm Proprietary orders) and shall apply to Linkage Orders<sup>8</sup> under a pilot program that is set to expire on July 31, 2006.<sup>9</sup> Further, since options on HHO, POW and TNY are not multiply-listed, the Payment for Order Flow fee shall not apply.

###### 2. Statutory Basis

The Exchange states that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)<sup>10</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 Exchange believes that the proposed rule change will 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 neither solicited nor received comments on the proposed rule change. The ISE 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>11</sup> and paragraph (f)(2) of Rule 19b-4 thereunder<sup>12</sup> because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the

<sup>7</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>8</sup> See Exchange Rule 1900.

<sup>9</sup> See Securities Exchange Act Release No. 52168 (July 29, 2005), 70 FR 45454-01 (August 5, 2005), SR-ISE-2005-32 (extending the expiration date for this pilot program from July 31, 2005 to July 31, 2006).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>18</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)(iii).

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

<sup>5</sup> The Exchange states that the HHO, POW and TNY meet the standards of ISE Rule 2002(b), which allows the Exchange to begin trading these products by filing Form 19b-4(e) at least five business days after commencement of trading these new products pursuant to Rule 19b-4(e) of the Act, 17 CFR 240.19b-4(e).

<sup>6</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.

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 Number SR-ISE-2006-03 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 20549-9303.

All submissions should refer to File Number SR-ISE-2006-03. 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 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-2006-03 and should be submitted on or before February 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Nancy M. Morris,

Secretary.

[FR Doc. E6-1176 Filed 1-30-06; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53149; File No. SR-NASD-2006-003]

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Guidance Regarding Firms' Obligations Under NASD Rule 2111 Regarding Market Order Protection

January 19, 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 January 6, 2006, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. NASD has designated the proposed rule change as "constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule" under Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) 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

NASD is filing with the Commission *Notice to Members* ("NTM") 06-03, which provides guidance regarding the application of new NASD Rule 2111 prohibiting members from trading ahead of customer market orders under certain circumstances.

No changes to the text of NASD rules are required by this proposed rule change.

<sup>13</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)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

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

In its filing with the Commission, NASD 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. NASD 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

On August 9, 2005, the Commission approved new NASD Rule 2111, Trading Ahead of Customer Market Orders, which, among other things, prohibits a firm that accepts and holds a customer market order from trading for its own account at prices that would satisfy the customer market order, unless the firm immediately thereafter executes the customer market order.<sup>5</sup> On October 10, 2005, NASD issued *NTM 05-69* informing firms of Commission approval of new Rule 2111 and the January 9, 2006 effective date of the new rule.<sup>6</sup> *NTM 05-69* also informed firms that NASD would be publishing a separate *NTM* providing guidance regarding the application of Rule 2111. In *NTM 06-03*, NASD staff is, among other things, publishing questions and answers regarding the application of the new rule to assist members in their implementation.

NASD is filing the proposed rule change for immediate effectiveness as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of NASD. The compliance date of the proposed rule change will be January 9, 2006, which will coincide with the compliance date for Rule 2111.

###### 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD

<sup>5</sup> See Securities Exchange Act Release No. 52226 (August 9, 2005), 70 FR 48219 (August 16, 2005) (SR-NASD-2004-045).

<sup>6</sup> See NASD *NTM 05-69* (October 2005).