

the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-2006-52 and should be submitted on or before June 28, 2006.

#### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Exchange has asked the Commission to approve the proposed rule change on an accelerated basis for an additional year so that the pilot program may continue uninterrupted. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of section 6 of the Act<sup>8</sup> and the rules and regulations thereunder applicable to a national securities exchange,<sup>9</sup> and, in particular, the requirements of section 6(b)(5) of the Act.<sup>10</sup> Section 6(b)(5) requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the current pilot was approved on a one-year basis to give the Commission an opportunity to evaluate the impact of the pilot program on the options markets to determine whether it would be beneficial to customers and to the options markets as a whole before approving any request for permanent approval of the pilot program. The Commission believes that a one-year extension of the pilot period would provide the Commission with additional time to continue evaluate the Exchange's Preferred Market-Maker Program.

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated

approval of the proposed rule change would allow the pilot program to continue without disruption while the Commission and the Exchange continue to review the pilot program's impact on the options market. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,<sup>11</sup> for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-CBOE-2006-52), which institutes the pilot program through June 2, 2007, is hereby approved on an accelerated basis.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53921; File No. SR-ISE-2006-28]

#### Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Extend the Pilot Period for Preferred Orders

June 1, 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 May 18, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis, for a pilot period through June 10, 2007.

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

The Exchange is proposing to extend the pilot program for Preferred Orders until June 10, 2007. The text of the proposed rule change is set forth below. Brackets indicate deletions; *italics* indicates new text.

\* \* \* \* \*

#### Rule 713. Priority of Quotes and Orders

(a) through (f) no change.

#### Supplementary Material to Rule 713

.01 through .02 no change.

.03 Preferred Orders. For a pilot period ending [June 10, 2006] *June 10, 2007*, an Electronic Access Member may designate a "Preferred Market Maker" on orders it enters into the System ("Preferred Orders").

(a) through (c) no change.

\* \* \* \* \*

#### 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 Exchange 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 III 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

According to the Exchange, the purpose of the proposed rule change is to extend, until June 10, 2007, the pilot period for preferred orders as provided in paragraph .03 of the Supplementary Material to ISE Rule 713. The proposal amends ISE's procedure for allocating trades among market makers and non-customer orders under ISE Rule 713 to provide an enhanced allocation to a "Preferred Market Maker" when it is quoting at the national best bid or offer ("NBBO"). Specifically, under the proposal, an Electronic Access Member may designate any market maker appointed to an options class to be a Preferred Market Maker on orders it enters into the Exchange's system ("Preferred Orders"). If the Preferred Market Maker is not quoting at the NBBO at the time

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<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.

the Preferred Order is received, the Exchange's existing allocation and execution procedures will be applied to the execution.<sup>3</sup> The proposed rule is subject to a pilot program that is currently set to expire on June 10, 2006.<sup>4</sup>

Under the proposal, if a Preferred Market Maker is quoting at the NBBO at the time a Preferred Order is received, the allocation procedure is modified so that the Preferred Market Maker (instead of the Primary Market Maker<sup>5</sup>) would receive an enhanced allocation equal to the greater of: (i) The proportion of the total size at the best price represented by the size of its quote; or (ii) sixty percent of the contracts to be allocated if there is only one other Non-Customer Order or market maker quotation at the best price and forty percent if there are two or more other Non-Customer Orders and/or market maker quotes at the best price.<sup>6</sup> Unexecuted contracts remaining after the Preferred Market Maker's allocation would be allocated pro-rata based on size as described above.

The Exchange believes the proposed rule change is a necessary competitive response to the preferencing rules adopted by other options exchanges and would help the ISE attract and retain order flow. The Exchange believes that this order flow would add depth and liquidity to the Exchange's markets and enable the Exchange to continue to compete effectively with other options exchanges.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>8</sup> in particular, in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange also believes that extension of the pilot program would allow the

<sup>3</sup> Marketable customer orders are not automatically executed at prices inferior to the NBBO. If the ISE best bid or offer is inferior to the NBBO, it is handled by the Primary Market Maker according to ISE Rule 803(c).

<sup>4</sup> See Securities Exchange Act Release No. 52066 (July 20, 2005), 70 FR 43479 (July 27, 2005).

<sup>5</sup> A Primary Market Maker may be the Preferred Market Maker, in which case such market maker would receive the enhanced allocation for Preferred Market Makers.

<sup>6</sup> All allocations are automatically performed by the Exchange's system.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

Exchange and the Commission to evaluate the rule change over an additional one-year period.

### 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 the proposed rule change.

## III. 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 and whether the pilot time frame is appropriate. 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-2006-28 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-ISE-2006-28. 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 Exchange. 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-2006-28 and should be submitted on or before June 28, 2006.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Exchange has asked the Commission to approve the proposed rule change on an accelerated basis for an additional year in order to avoid disruption in the operation of the market. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of section 6 of the Act<sup>9</sup> and the rules and regulations thereunder applicable to a national securities exchange,<sup>10</sup> and, in particular, the requirements of section 6(b)(5) of the Act.<sup>11</sup> Section 6(b)(5) requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the current pilot was approved for a total of one year<sup>12</sup> to give the Commission an opportunity to evaluate the impact of the pilot program on the options markets to determine whether it would be beneficial to customers and to the options markets as a whole before approving any request for permanent approval of the pilot program. The Commission believes that a one-year extension of the pilot period would provide the Commission with additional

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> The Commission initially approved the Exchange's Preferred Order program on a six week pilot basis while the Commission sought comment on the proposed rule change. See Securities Exchange Act Release No. 51818 (June 10, 2006), 70 FR 35146 (June 16, 2006). The Commission subsequently extended to the pilot period until June 10, 2006, which was one year from the date the Commission first approved the Exchange's Preferred Order program on a pilot basis. See Securities Exchange Act Release No. 52066 (July 20, 2005), 70 FR 43479 (July 27, 2005).

time to continue to evaluate the Exchange's Preferred Order program.

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change would allow the pilot program to continue without disruption while the Commission and the Exchange continue to review the pilot program's impact on the options market. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,<sup>13</sup> for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**.

#### V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-ISE-2006-28), which institutes the pilot program through June 10, 2007, is hereby approved on an accelerated basis.

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

J. Lynn Taylor,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53910; File No. SR-ISE-2006-22]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Fee Changes

May 31, 2006.

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 April 26, 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. On May 18, 2006, ISE filed Amendment No. 1 to

the proposed rule change.<sup>3</sup> The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under section 19(b)(3)(A)(ii) of the Act,<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</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 ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on two Premium Products.<sup>6</sup> The text of the proposed rule change, as amended, is available on the ISE's Web site ([http://www.iseoptions.com/legal/proposed\\_rule\\_changes.asp](http://www.iseoptions.com/legal/proposed_rule_changes.asp)), 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 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 following two Premium Products: iShares S&P 500 Index Fund ("IVV")<sup>7</sup> and iShares MSCI

Hong Kong Index Fund ("EWH").<sup>8</sup> Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on IVV and EWH.<sup>9</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>10</sup> and Firm Proprietary orders. The amount of the execution fee and comparison fee for all ISE Market Maker transactions and all non-ISE Market Maker transactions shall be equal to the execution fee and comparison fee currently charged by the Exchange for ISE Market Maker transactions and non-ISE Market Maker transactions in equity options.<sup>11</sup> All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. The Exchange believes the proposed rule change will further the Exchange's goal of

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<sup>8</sup> iShares® is a registered trademark of BGI, a wholly owned subsidiary of Barclays Bank PLC. "MSCI Hong Kong Index" is a service mark of Morgan Stanley Capital International ("MSCI") and has been licensed for use for certain purposes by BGI. All other trademarks and service marks are the property of their respective owners. EWH is not sponsored, endorsed, issued, sold or promoted by MSCI. BGI and MSCI 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 EWH 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 EWH or with making disclosures concerning options on EWH under any applicable federal or state laws, rules or regulations. BGI and MSCI do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

<sup>9</sup> The Exchange represents that these fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2006, these fees will also be charged to Linkage Orders (as defined in ISE Rule 1900).

<sup>10</sup> Public Customer Order is defined in ISE Rule 100(a)(33) as an order for the account of a Public Customer. Public Customer is defined in ISE Rule 100(a)(32) as a person that is not a broker or dealer in securities.

<sup>11</sup> Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and Richard Holley III, Special Counsel, Division of Market Regulation, Commission, on May 31, 2006.

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

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<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> Amendment No. 1 made certain clarifying changes to the purpose section regarding fees charged to non-ISE market makers for transactions in options on the Premium Products that are the subject of this filing. These changes did not affect the fees covered by this filing.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> "Premium Products" is defined in the ISE's Schedule of Fees as the products enumerated therein. The Exchange represents that the Premium Products that are the subject of this proposed rule change, iShares S&P 500 Index Fund and iShares MSCI Hong Kong Index Fund, constitute "Fund Shares," as defined by ISE Rule 502(h).

<sup>7</sup> iShares® is a registered trademark of Barclays Global Investors, N.A. ("BGI"), a wholly owned