

May 31, 2007, to help compensate the Exchange for its increased costs in providing the TX data and to help offset the license fees paid by the Exchange to its third-party provider for making the TX software available to users during this time period.

On June 1, 2007, the Exchange adopted a monthly fee to recoup the fees CBSX pays a third-party market data vendor and other parties to help establish facilities at CBSX through which the third-party market data vendor can provide CBSX participants with certain market data.<sup>4</sup> The fee is equal to \$19,400 divided by the number of CBSX participants receiving the market data. The Exchange proposes to assess this fee for the period April 1, 2007 through May 31, 2007, to recoup the fees CBSX paid during this time period for providing the infrastructure to make the market data available to CBSX participants.

## 2. Statutory Basis

CBOE believes the proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>6</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would 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

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## 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-2007-73 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-2007-73. 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 10:00 a.m. and 3:00 p.m. Copies of the 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-2007-73 and should be submitted on or before July 31, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-13310 Filed 7-9-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56005; File No. SR-ISE-2007-49]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to Fee Changes on a Retroactive Basis

July 3, 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 June 15, 2007, 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 ISE. 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

ISE is proposing to amend its Schedule of Fees to: (1) Increase the per contract surcharge from \$0.10 per contract to \$0.15 per contract for options on the Russell 1000<sup>®</sup> Index ("RUI"), the Russell 2000<sup>®</sup> Index ("RUT"), and the Mini Russell 2000 Index ("RMN"); and (2) refund surcharge fees collected for transactions in options on the iShares Russell 2000<sup>®</sup> Index Fund ("IWM"), the iShares Russell 2000<sup>®</sup> Value Index Fund ("IWN"), the iShares Russell 2000<sup>®</sup> Growth Index Fund ("IWO"), the iShares Russell 1000<sup>®</sup> Value Index Fund ("IWD") and the iShares Russell 1000<sup>®</sup> Index Fund ("IWB"), in both cases for the period commencing January 1, 2007 and ending June 15, 2007 (the "Retroactive Period"). The Exchange proposes the surcharge increase to become effective retroactively, as of January 1, 2007.<sup>3</sup> The text of the

<sup>7</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> On June 15, 2007, the Exchange filed a proposed rule change as immediately effective under Section

<sup>4</sup> See *id.*

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

proposed rule change is available at ISE, <http://www.iseoptions.com>, and 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 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 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 amend its Schedule of Fees to: (1) Increase the per contract surcharge from \$0.10 per contract to \$0.15 per contract in connection with the listing and trading of options on RUI, RUT, and RMN; and (2) refund surcharge fees collected for transactions in connection with the listing and trading in options on IWM, IWV, IWO, IWD and IWB during the Retroactive Period. The Exchange proposes the surcharge increase to become effective retroactively, as of January 1, 2007.

The Exchange's Schedule of Fees currently has in place a surcharge fee item that calls for a \$0.10 per contract fee in connection with the listing and trading of options on RUI, RUT and RMN.<sup>4</sup> The Exchange revised its license agreement with the Frank Russell Company ("Russell"), effective January 1, 2007. Pursuant to the revised agreement, the Exchange pays Russell \$0.15 per contract to trade options on RUI, RUT and RMN. The Exchange thus proposes to increase the surcharge fee for options on RUI, RUT and RMN from \$0.10 per contract to \$0.15 per contract retroactive to January 1, 2007 and collect from members the applicable

19(b)(3)(A) of the Exchange Act that: (1) Removes the surcharge fee for IWM, IWV, IWO, IWD and IWB from its Schedule of Fees and (2) raises the surcharge fee from \$.10 per contract to \$.15 per contract for options on RUI, RUT and RMN. See Securities Exchange Act Release No. 55975 (June 28, 2007) (SR-ISE-2007-48). Because ISE seeks to apply changes to its Schedule of Fees on a retroactive basis, the Exchange is submitting this proposal for notice and comment.

<sup>4</sup> See Securities Exchange Act Release No. 51858 (June 16, 2005), 70 FR 36218 (June 22, 2005) (SR-ISE-2005-26).

fees due to the Exchange for the Retroactive Period. The Exchange believes that charging the participants that trade these instruments is the most equitable means of recovering the increased costs of the license. However, because competitive pressures in the industry have resulted in the waiver of transaction fees for Public Customers, the Exchange proposes to exclude Public Customer Orders<sup>5</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., ISE Market Maker, non-ISE Market Maker, and Firm Proprietary orders) and shall apply to certain Linkage Orders under a pilot program that is set to expire on July 31, 2007.<sup>6</sup>

Additionally, the Exchange had previously adopted a \$0.10 per contract surcharge in connection with the listing and trading of options on IWM, IWV, IWO, IWD,<sup>7</sup> and IWB.<sup>8</sup> However, pursuant to the revised license agreement with Russell, the Exchange, as of January 1, 2007, no longer pays a license fee to Russell in connection with the listing and trading of options on IWM, IWV, IWO, IWD and IWB. As a result, the Exchange now proposes to refund to members the surcharge fee it has collected during the Retroactive Period.

#### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)<sup>9</sup> that an exchange 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

ISE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>5</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>6</sup> Linkage Orders are defined in ISE Rule 1900(10). Under a pilot program that is set to expire on July 31, 2007, these fees will also be charged to Principal Acting as Agent Orders and Principal Orders (as defined in ISE Rule 1900(10)(i)-(ii)). See Securities Exchange Act Release No. 54204 (July 25, 2006), 71 FR 43548 (August 1, 2006) (SR-ISE-2006-38).

<sup>7</sup> See Securities Exchange Act Release No. 47075 (December 20, 2002), 67 FR 79673 (December 30, 2002) (SR-ISE-2002-29).

<sup>8</sup> See Securities Exchange Act Release No. 47564 (March 24, 2003), 68 FR 15256 (March 28, 2003) (SR-ISE-2003-13).

<sup>9</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 interested parties.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

### 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-2007-49 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-2007-49. 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 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-2007-49 and should be submitted on or before July 31, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56001; File No. SR-NYSEArca-2007-34]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Trading a Class of Options Without Designating a Lead Market Maker

July 2, 2007.

On April 3, 2007, NYSE Arca, Inc. ("NYSE Arca" 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> the proposed rule change to allow an options issue to trade without designating a Lead Market Maker ("LMM"). On May 2, 2007, NYSE Arca filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the *Federal Register* on May 29, 2007.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the

proposed rule change as modified by Amendment No. 1.

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 national securities exchange.<sup>4</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>5</sup> which requires that the rules of the an exchange be designed 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 Exchange proposes to trade options classes without designating an LMM, yet still meet the requirements of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan").<sup>6</sup> Because the Exchange believes that certain highly liquid, highly active options classes have sufficient participation by OTP Holders<sup>7</sup> and do not need an LMM to foster liquidity, the Exchange proposes to remove from NYSE Arca Rule 6.35 the requirement that an LMM be assigned to every option class.<sup>8</sup>

The Exchange also proposes other rule changes to accommodate the requirements of the Linkage Plan. Pursuant to the Linkage Plan, a Principal Acting as Agent ("P/A") Order may be routed to another exchange only through the principal account of a market maker that is authorized to represent customer orders, "reflecting the terms of a related unexecuted Customer order for which the Market Maker is acting as agent."<sup>9</sup> On NYSE Arca, the LMM currently is the

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>6</sup> On July 28, 2000, the Commission approved the Options Intermarket Linkage ("Linkage") proposed by American Stock Exchange LLC, Chicago Board Options Exchange, Incorporated, and International Securities Exchange, LLC. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Philadelphia Stock Exchange, Inc., Pacific Exchange, Inc. (n/k/a NYSE Arca), and Boston Stock Exchange, Inc. joined the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>7</sup> See NYSE Arca Rule 1.1(q) for the definition of "OTP Holder."

<sup>8</sup> In not designating an LMM in certain option issues, orders would be processed in price/time priority, meaning any market participant, regardless of status, may gain priority by improving the market.

<sup>9</sup> See Section 2(16)(a) of the Linkage Plan.

responsible Market Maker for outbound P/A Orders sent through the Intermarket Options Linkage ("Linkage"). The Exchange now proposes to allow for the designation of a Market Maker, assigned on a rotating basis, as the responsible Intermarket Linkage Market Maker ("IMM")<sup>10</sup> for outbound P/A Orders.

Currently, Market Makers on the Exchange other than LMMs are not permitted under the Exchange's current rules to act as an agent on behalf of an order submitted to the Exchange.<sup>11</sup> Therefore, the Exchange proposes to amend NYSE Arca Rule 6.38(a) to provide an exception for a Market Maker acting as an IMM for the purpose of settling P/A Orders sent to another exchange pursuant to NYSE Arca Rules 6.92 and 6.93. To enable the IMM to carry out its agency responsibilities with regard to P/A Orders submitted through the Linkage, the IMM would be required to submit prior written instructions to the Exchange for the routing of any P/A Orders through the Linkage. Although the Exchange intends to rely solely on the use of its outbound routing broker to access the quotes of other exchanges when the Exchange is not disseminating the national best bid or offer, there may be instances when the Exchange's routing broker is not available because of system malfunctions. Therefore, the Exchange proposes that designated IMM be responsible for outbound P/A Orders sent through the Linkage.

The Exchange also proposes to amend NYSE Arca Rule 6.93 to clarify that the Exchange will be responsible for the receipt, processing, and execution of inbound Linkage orders received from other exchanges. Linkage orders sent to NYSE Arca are routed directly to the trading system for immediate automatic execution. Any remaining unexecuted order or portion of an order would be immediately returned by the Exchange to the originating away market.

The Commission believes that the proposed rule change is reasonably designed in that it permits the Exchange to not utilize an LMM in option classes where the Exchange does not believe an LMM is required and promotes the

<sup>10</sup> The IMM would be selected from the pool of all Market Makers who have been appointed in the particular class. Market Makers requesting appointment to an options class would need to agree to participate in the rotation of IMM assignment.

<sup>11</sup> See NYSE Arca Rule 6.38(b)(1), which provides that Market Makers other than LMMs are restricted from acting as a principal and an agent in the same issue on the same business day. See also NYSE Arca Rule 6.38(b)(5), which provides Market Makers are restricted from acting as a floor broker in options covering the same underlying security to which its primary appointment extends.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> See Securities Exchange Act Release No. 55789 (May 21, 2007), 72 FR 29568.