II. Description of the Proposal

Section XII (''Financial Matters'') of the CTA Plan and Section IX (''Financial Matters'') of the CQ Plan each provide that a network's Operating Expenses are to be deducted from the network's Gross Income before determining the amounts that the network's administrator will distribute to the Participants. Both Section XII(c)(i) (''Determination of Operating Expenses'') of the CTA Plan and Section IX(c)(i) (''Determination of Operating Expenses'') of the CQ Plan currently provide that a network's Operating Expenses include all costs and expenses that the network's administrator incurs in ''collecting, processing and making available Network A market data.'' The Network A Administrator stated that accounting for operating costs, especially the allocation of organization overhead costs to the Network A Administrator function, is administratively burdensome. And as a result, the Network A Participants have proposed to replace their payment to the Network A Administrator of Operating Expenses with an Annual Fixed Payment. In the case of NYSE as the CTA and CQ Network A Administrator, the Participants proposed that ''Operating Expenses'' for any calendar year equal: (1) The Annual Fixed Payment for that year; plus (2) ''Extraordinary Expenses.'' Extraordinary Expenses would include that portion of legal and audit expenses and marketing and consulting fees that are outside of the ordinary and customary functions that a network administrator performs.[6]

For calendar year 2008, the Network A Participants voted to set the Annual Fixed Payment at $6,000,000 to compensate the Network A Administrator for its Network A administrative services during 2008 under both the CTA and CQ Plans. For each subsequent calendar year the Annual Fixed Payment shall increase (but not decrease) by the percentage increase (if any) in the annual cost-of-living adjustment (''COLA'') that the U.S. Social Security Administration applies to the Supplemental Security Income for the calendar year preceding that subsequent year, subject to a maximum annual increase of five percent.[7]

Discussion

After careful review, the Commission finds that the Amendments to the Plans are consistent with the requirements of the Act and the rules and regulations thereunder,[8] and, in particular, Section 11A(a)(1) of the Act[9] and Rule 608 thereunder[10] in that they are necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system. The Commission believes that permitting the Network A Administrator to assess a flat fee should increase the efficiency of the administration of the Plans.[11] Additionally, the Commission notes that every two years the Network A Administrator is required to provide a report detailing any significant changes to the administrative expenses during the preceding two years to enable the Participants to review and determine by majority vote whether to continue the Annual Fixed Payment at its then current level.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,[12] and Rule 608 thereunder,[13] that the proposed amendments to the CTA and CQ Plans (SR–CTA/CQ–2008–05) are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5767 Filed 3–17–09; 8:45 am]

BILLING CODE 8011–01–P

[6] The Commission notes that the Transmittal Letter accompanying the proposed Amendments included language not voted on by the Participants and thus not included in the proposed Amendments: ''Network A Administrator will not incur any extraordinary expense on behalf of the Network A Participants unless the Network A Participants determine by majority vote to approve the incurrence of that extraordinary expense.'' This language is not part of the proposed Amendments that the Commission is approving today.

[7] *See* Notice, *supra* note 5 at 3660 for a more detailed description of how the fee will be assessed

[8] The Commission has considered the proposed amendments' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78k–1(a)(1).

[10] 17 CFR 240.608.

[11] The Commission notes that Nasdaq similarly receives a fixed fee for its performance of administrative functions under the ''Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on Unlisted Trading Privileges Basis.''

[12] 15 U.S.C. 78k–1.

[13] 17 CFR 240.608.

[14] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59567; File No. SR–ISE–2009–12]

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

March 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''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 2 Premium Products.[3] The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Premium Products is defined in the Schedule of Fees as the products enumerated therein.

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 iShares U.S. Preferred Stock Index Fund (''PFF'')[4] and the United States 12 Month Oil Fund, LP (''USL'').[5] The Exchange represents that PFF and USL 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 PFF and USL.[6] The amount of the execution fee for products covered by this filing shall be $0.18 per contract for all Public Customer Orders[7] 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.[8] Finally, the amount of the execution fee for all non-ISE Market Maker transactions shall be $0.45 per contract.[9] Further, since options on PFF and USL are multiply-listed, the Exchange's Payment for Order Flow fee shall apply to all 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.

Further, the Exchange proposes to amend its Schedule of Fees to remove the surcharge fee previously adopted for transactions in options on the iShares S&P MidCap 400 Index Fund (''IJH''), the iShares S&P SmallCap 600 Index Fund (''IJR''),[10] and the iShares S&P SmallCap 600 Value Index Fund (''IJS'').[11] The Exchange is proposing to remove the surcharge fee from its Schedule of Fees because it no longer pays a license fee to Standard & Poor's in connection with transactions in options on IJH, IJR and IJS. Accordingly, there is no longer a need for this surcharge fee. The Exchange will, however, continue to charge an execution fee for transactions in options on IJH, IJR and IJS.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] 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[14] and Rule 19b–4(f)(2)[15] 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 proposal 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.* Please include File No. SR–ISE–2009–12 on the subject line.

Paper Comments

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

All submissions should refer to File No. SR–ISE–2009–12. 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

[4] iShares® is a registered trademark of Barclays Global Investors, N.A. (''BGI''). ''Standard & Poor's®'' and ''S&P®'' are trademarks of The McGraw-Hill Companies, Inc. (''McGraw-Hill'') and have been licensed for use for certain purposes by BGI. All other trademarks and service marks are the property of their respective owners. iShares U.S. Preferred Stock Index Fund (''PFF'') is not sponsored, endorsed, issued, sold or promoted by Standard & Poor's, (''S&P''), a division of McGraw-Hill, and S&P makes no representation regarding the advisability of investing in PFF. BGI 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 PFF 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 PFF or with making disclosures concerning options on PFF under any applicable federal or state laws, rules or regulations. BGI and S&P do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

[5] The United States 12 Month Oil Fund, LP (''USL'') is distributed by ALPS Distributors, Inc. (''ALPS''), administered by Brown Brothers Harriman & Co. (''BBH'') and United States Commodity Fund, LLC (''USCF'') is the General Partner. ALPS, BBH and USCF 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 USL 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 USL or with making disclosures concerning options on USL under any applicable federal or state laws, rules or regulations. ALPS, BBH and USCF do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

[6] 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 $0.27 per contract side and $0.18 per contract side, respectively. *See* Securities Exchange Act Release No. 58143 (July 11, 2008), 73 FR 41388 (July 18, 2008) (SR–ISE–2008–52).

[7] 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.

[8] 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.

[9] The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is $0.20 per contract.

[10] *See* Securities Exchange Act Release No. 34–49557 (April 12, 2004), 69 FR 20955 (April 19, 2004).

[11] *See* Securities Exchange Act Release No. 34–54414 (September 7, 2006), 71 FR 54546 (September 15, 2006).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

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 changes 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 No. SR–ISE–2009–12 and should be submitted on or before April 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–5779 Filed 3–17–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59551; File No. SR–NYSE–2009–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending for Two Months to May 31, 2009 the Moratorium Related to the Qualification and Registration of Registered Competitive Market Makers Pursuant to NYSE Rule 107A and Competitive Traders Pursuant to NYSE Rule 110

March 10, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 3, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''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 Exchange proposes to extend for two months to May 31, 2009 the moratorium related to the qualification and registration of Registered Competitive Market Makers (''RCMMs'') pursuant to NYSE Rule 107A and Competitive Traders (''CTs'') pursuant to NYSE Rule 110.

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 those 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 parts 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 proposes to extend for two months to May 31, 2009 the moratorium related to the qualification and registration of RCMMs pursuant to NYSE Rule 107A and CTs pursuant to NYSE Rule 110.

On September 22, 2005, the Exchange filed SR–NYSE–2005–63[4] with the Securities and Exchange Commission (''Commission'') proposing to implement a moratorium on the qualification and registration of new RCMMS and CTs (''Moratorium''). The purpose of the Moratorium was to allow the Exchange an opportunity to review the viability of RCMMs and CTs in the NYSE HYBRID MARKET℠ (''Hybrid Market'').[5]

During each phase of the Hybrid Market, the NYSE implemented new system functionality that generated additional data to review. As a result, the Exchange was unable to make an informed decision as to the viability of RCMMs and CTs in the Hybrid Market. The phasing in implementation of the Hybrid Market required the Exchange to extend the Moratorium an additional six times over a twenty-four (24) month period.[6] During the Moratorium, the Exchange reviewed the quarterly volume data of RCMM and CT trading data to determine the average trading volume of RCMMs.

On October 24, 2008, the Commission approved the Exchange's new market model filing (''Next Generation NYSE'').[7] The Next Generation NYSE filing: (i) provided market participants with additional abilities to post hidden liquidity on Exchange systems; (ii) created a Designated Market Maker (''DMM''), and phased out the NYSE specialist; and (iii) enhanced the speed of execution through technological enhancements and a reduction in message traffic between Exchange systems and its DMMs. In light of the implementation of Next Generation NYSE, the Exchange requested extensions of the Moratorium to evaluate the viability of the RCMMs and CTs in the proposed Next Generation NYSE.[8]

Next Generation NYSE is currently operating as a pilot scheduled to end on October 1, 2009. The Exchange continued to review RCMM and CT trading data. As a result of its review, the Exchange concluded that RCMMs and CTs no longer serve as viable supplemental market makers. Accordingly, the Exchange determined that RCMMs and CTs should no longer be viable classes of traders on the Exchange and will formally file a separate proposed rule change with the Commission to eliminate RCMMs and CTs as viable classes of NYSE traders.

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 52648 (October 21, 2005), 70 FR 62155 (October 28, 2005) (SR–NYSE–2005–63).

[5] *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR–NYSE–2004–05) (establishing the NYSE HYBRID MARKET℠).

[6] *See* Securities Exchange Act Release Numbers 54140 (July 13, 2006), 71 FR 41491 (July 21, 2006) (SR–NYSE–2006–48); 54985 (December 21, 2006), 72 FR 171 (January 3, 2007) (SR–NYSE–2006–113); 55992 (June 29, 2007), 72 FR 37289 (July 9, 2007) (SR–NYSE–2007–57); 56556 (September 27, 2007), 72 FR 56421 (October 3, 2007) (SR–NYSE–2007–86); 57072 (December 31, 2007), 73 FR 1252 (January 7, 2008) (SR–NYSE–2007–125); 57601 (April 2, 2008), 73 FR 19123 (April 8, 2008) (SR–NYSE–2008–22).

[7] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[8] *See* Securities Exchange Act Release Numbers 58033 (June 26, 2008), 73 FR 38265 (July 3, 2008) (SR–NYSE–2008–49); 58713 (October 2, 2008), 73 FR 59024 (October 8, 2008) (SR–NYSE–2008–96); 59069 (December 8, 2008), 73 FR 76081 (December 15, 2008) (SR–NYSE–2008–124).