

*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-2006-08 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-2006-08. 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 CBOE. 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-2006-08 and should be submitted on or before March 21, 2006.

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

After careful review, 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>10</sup> In particular, the Commission finds that the proposed rule change is consistent with Section

<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).

6(b)(5) of the Act,<sup>11</sup> which 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 believes that CBOE's proposal to revise the methodology for determining the expiration dates for options on certain volatility-based indexes so that such options expire on the "Wednesday that is thirty days prior to the third Friday of the calendar month immediately following the expiring month" is appropriate. As noted by CBOE above, this revised approach will provide consistency in the expiration of options on all volatility indexes by ensuring that every volatility index option will expire exactly thirty days prior to the date on which the index that the volatility index is based, rather than the prior approach under which such options would not expire exactly thirty days prior to the expiration of the options on the index on which that volatility index is based in four of the months in any rolling twelve-month period.

The Exchange has requested accelerated approval of the proposed rule change.<sup>12</sup> The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing in the **Federal Register**. The proposal is intended to ensure consistency in expiration dates for options on all volatility indexes approved for listing and trading on CBOE with the expiration of the options on the underlying indexes. The Commission does not believe that the Exchange's proposal raises any novel regulatory issues. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>13</sup> to approve the proposed rule change, as amended, on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-CBOE-2006-

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

<sup>12</sup> Telephone conversation between James Flynn, Attorney, CBOE, and Florence Harmon, Senior Special Counsel, and Geoffrey Pemble, Special Counsel, Division of Market Regulation, Commission, on February 9, 2006.

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

<sup>14</sup> *Id.*

08) is hereby approved on an accelerated basis.

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

Nancy M. Morris,  
Secretary.

[FR Doc. E6-2767 Filed 2-27-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53329; File No. SR-ISE-2006-05]

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

February 16, 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 20, 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 ISE. On February 9, 2006, ISE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> ISE has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to 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

ISE is proposing to amend its Schedule of Fees to establish fees for

<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> In Amendment No. 1, the Exchange revised its Schedule of Fees to clarify ambiguities and correct misstatements therein, and discussed those changes in the purpose section of the proposal. Specifically, in Amendment No. 1, the Exchange removed the misstatement that a \$0.10 surcharge is applied to all Premium Products (as defined herein) and instead provided a list of the specific Premium Products that are subject to the surcharge. Amendment No. 1 also clarified that the fee pilot program expiring on July 31, 2006 applies exclusively to Linkage orders.

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

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

transactions in options on 11 Premium Products<sup>6</sup>. The proposed rule change, as amended, also seeks to make certain technical and clarifying changes to the original filing as well as to clean up the Schedule of Fees to eliminate confusion regarding fees charged by the Exchange.

The text of the proposed rule change is available on ISE's Web site at <http://www.iseoptions.com>, at the Office of the Secretary at 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, 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 amend its Schedule of Fees to establish fees for transactions in options on the following Premium Products: iShares Dow Jones U.S. Real Estate Index Fund ("IYR"),<sup>7</sup> iShares MSCI Japan Index Fund ("EWJ"),<sup>8</sup> Biotech HOLDERS ("BBH"),

<sup>6</sup> "Premium Products" are defined in the Schedule of Fees as the products enumerated therein.

<sup>7</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. Real Estate Index Fund" are servicemarks of Dow Jones & Company, Inc. ("Dow Jones") and have been licensed for use for certain purposes by BGI. All other trademarks and servicemarks are the property of their respective owners. The Dow Jones U.S. Real Estate Index Fund ("IYR") is not sponsored, endorsed, issued, sold or promoted by Dow Jones. No company has licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on IYR or (ii) to use and refer to any trademark of BGI or Dow Jones in connection with the listing, provision of a market for trading, marketing, and promotion of options on IYR or with making disclosures concerning options on IYR under any applicable Federal or state laws, rules or regulations, and do not sponsor, endorse, or promote such activity by ISE. ISE is not affiliated in any manner with any of the companies above.

<sup>8</sup> iShares(r) is a registered trademark of Barclays Global Investors, N.A. ("BGI"), a wholly owned subsidiary of Barclays Bank PLC. "MSCI Japan Index" is a servicemark of Morgan Stanley Capital International ("MSCI") and has been licensed for use for certain purposes by BGI. All other

Internet HOLDERS ("HHH"), Pharmaceutical HOLDERS ("PPH"), Regional Bank HOLDERS ("RKH"), Retail HOLDERS ("RTH"), Software HOLDERS ("SWH"), Enterra Energy Trust ("EENC"), Fording Canadian Coal Trust ("FDG"), and Enerplus Resources Fund ("ERF"). Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on IYR, EWJ, BBH, HHH, PPH, RKH, RTH, SWH, EENC, FDG, and ERF.<sup>9</sup> The amount of the execution fee and comparison fee for products covered by this filing would 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 Market Maker transactions would be equal to the execution fee and comparison fee currently charged by the Exchange for Market Maker transactions in equity options<sup>11</sup>. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced. Additionally, the Exchange proposes to remove NYC, NY and XLU from the list of Premium Products on the Schedule of Fees. These products have been delisted and no longer trade on the Exchange.

Furthermore, the proposed rule change makes certain technical and clarifying changes to ISE's Schedule of Fees. Specifically, under the Execution Fees section of the Schedule of Fees, the Exchange seeks to replace the general reference to a surcharge for options on Premium Products with a list of the specific Premium Products for which there is a surcharge charged by the

trademarks and servicemarks are the property of their respective owners. The MSCI Japan Index Fund ("EWJ") is not sponsored, endorsed, issued, sold or promoted by MSCI. No company has licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on EWJ or (ii) to use and refer to any trademark of BGI or MSCI in connection with the listing, provision of a market for trading, marketing, and promotion of options on EWJ or with making disclosures concerning options on EWJ under any applicable Federal or state laws, rules or regulations, and do not sponsor, endorse, or promote such activity by ISE. ISE is not affiliated in any manner with any of the companies above.

<sup>9</sup> These fees will be charged 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> The execution fee is currently between \$0.21 and \$0.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently \$0.03 per contract side.

Exchange.<sup>12</sup> Also, under the Execution Fees section of the Schedule of Fees, for purposes of eliminating ambiguity and confusion, the Exchange proposes to move the parenthetical regarding the Linkage pilot program under "Firm Proprietary" to the Notes section.

#### 2. Statutory Basis

The Exchange believes that the statutory basis for the proposal is the requirement under Section 6(b)(4) of the Act<sup>13</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

ISE does not believe that the proposed rule change, as amended, 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, as amended. 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, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>14</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>15</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 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.<sup>16</sup>

<sup>12</sup> Prior to this proposed rule change, the Exchange's Schedule of Fees improperly reflected that all Premium Products were subject to a surcharge of \$0.10 per contract/side.

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

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

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>16</sup> The effective date of the original proposed rule change is January 20, 2006, the date of the original filing, and the effective date of Amendment No. 1 is February 9, 2006, the filing date of the amendment. For purposes of calculating the 60-day abrogation period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) 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, as amended, 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-2006-05 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-2006-05. 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 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-2006-05 and should be submitted on or before March 21, 2006.

the Commission considers the period to commence on February 9, 2006, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Nancy M. Morris,**  
Secretary.

[FR Doc. E6-2751 Filed 2-27-06; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53333; File No. SR-NASD-2006-011]

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Principal Pre-Use Approval of Member Correspondence to 25 or More Existing Retail Customers Within a 30 Calendar- Day Period

February 17, 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 27, 2006, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. On February 13, 2006, NASD filed Amendment No. 1 to the proposed rule change.<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

NASD is proposing to amend NASD Rule 2211 to require principal pre-use approval of member correspondence to 25 or more existing retail customers within a 30 calendar-day period. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in [brackets].

##### 2211. Institutional Sales Material and Correspondence

- (a) No Change.
- (b) Approval and Recordkeeping
  - (1) Registered Principal Approval
    - (A) Correspondence. Correspondence need not be approved by a registered principal prior to use, [but] *unless such*

<sup>17</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 to SR-NASD-2006-011 replaced and superseded the original rule filing filed on January 27, 2006 in its entirety.

*correspondence is distributed to 25 or more existing retail customers within any 30 calendar-day period and is not solely and exclusively clerical or ministerial in nature. All correspondence is subject to the supervision and review requirements of Rule 3010(d).*

(B) No Change.

(2) No Change.

(c) through (e) 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, 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

##### *Definition of "Correspondence"*

In 2003, the SEC approved as part of NASD's modernization of its advertising rules the creation of new Rule 2211, which included an amended definition of "correspondence." The amended definition of correspondence includes any written letter or electronic mail message distributed by a firm to one or more of its existing retail customers and to fewer than 25 prospective retail customers within a 30 calendar-day period.<sup>4</sup> Previously, "correspondence" included any written or electronic communication prepared for delivery to a single current or prospective customer, and not for dissemination to multiple customers or the general public.

The definition of correspondence is significant in several respects. Firms generally are not required to have a registered principal approve correspondence prior to use, nor are they required to file correspondence with the NASD Advertising Regulation

<sup>4</sup> NASD has clarified that, for purposes of its rules governing member communications with the public, NASD views instant messaging in the same manner in which it views traditional electronic mail messages. Accordingly, instant messaging may qualify as correspondence or sales literature, depending upon the facts and circumstances. See *Notice to Members* 03-33 (July 2003).