

must be submitted within 30 days of this notice.

Dated: January 16, 2008.

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57182; File No. SR-ISE-2007-109]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Rule 2213, Market Maker Trading Licenses

January 22, 2008.

#### I. Introduction

On November 14, 2007, the International Securities Exchange, LLC ("ISE" 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> a proposed rule change to eliminate the limitation in ISE Rule 2213, "Market Maker Trading Licenses," that a foreign exchange options primary market maker ("FXPMM") in the Exchange's foreign currency options ("FX options") cannot hold FXPMM trading licenses in more than four currency pairs. On December 13, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 21, 2007.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

#### II. Description of the Proposal

ISE Rule 2213 currently provides that an FXPMM in the Exchange's FX options will be limited to holding no more than four FXPMM trading licenses across all currency pairs. The Exchange proposes to eliminate this restriction on the number of FXPMM trading licenses that a member can hold. The Exchange states that there is currently only one FXPMM trading in the four FX options

presently listed on the Exchange.<sup>4</sup> As such, this FXPMM is precluded from serving as an FXPMM in any additional currency pairs. The Exchange represents that it intends to launch additional currency pairs in the near future and would like to allow the current FXPMM to participate in the auction for FXPMM trading licenses in these additional currency pairs.

#### III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,<sup>5</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.<sup>6</sup>

The Commission believes that eliminating the limitation in ISE Rule 2213 prohibiting a member from acting as an FXPMM in more than four currency pairs could assist the Exchange in listing additional currency pairs by allowing the only current FXPMM to participate in the auction for FXPMM trading licenses in these additional currency pairs. At the same time, the Commission believes that the existing process for obtaining FXPMM trading licenses in ISE Rule 2213(f) pursuant to a sealed bid auction should continue to ensure that trading licenses are awarded in a fair and reasonable manner and provide fair access to the exchange.<sup>7</sup>

#### IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the

<sup>4</sup> The Exchange currently lists options on the euro, the British pound, the Japanese yen, and the Canadian dollar. See Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR-ISE-2006-59).

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

<sup>6</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>7</sup> See ISE Rule 2213(f). See also Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963, 17966 (April 10, 2007) (SR-ISE-2006-59) (noting that the Commission believed that the sealed bid auction for FXPMM trading licenses was reasonably calculated to award trading licenses in a fair and reasonable manner and provide fair access to the Exchange).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-ISE-2007-109), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-1480 Filed 1-28-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57185; File No. SR-ISE-2008-07]

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

January 22, 2008.

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 January 14, 2008, 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 the ISE. The ISE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) 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 is proposing to amend its Schedule of Fees to establish fees for transactions in options on five Premium Products.<sup>5</sup> The text of the proposed rule change is available at the ISE, at the Commission's Public Reference Room, and on the ISE's Web site ([http://www.iseoptions.com/legal/proposed\\_rule\\_changes.asp](http://www.iseoptions.com/legal/proposed_rule_changes.asp)).

<sup>9</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)(ii).

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

<sup>5</sup> "Premium Products" is defined in the Schedule of Fees as the products enumerated therein.

<sup>1</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. 72808 (December 17, 2007), 72 FR 72808.

## 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 iShares MSCI Mexico Index Fund ("EWW"),<sup>6</sup> FocusShares ISE-Revere Wal-Mart Supplier Index Fund ("WSI"),<sup>7</sup> FocusShares ISE-ndash;CMM Homeland Security Index Fund ("MYP"), FocusShares ISE SIndex Fund ("PUF"),

<sup>6</sup> iShares® is a registered trademark of Barclays Global Investors, N.A. ("BGI"), a wholly owned subsidiary of Barclays Bank PLC. "MSCI Mexico 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. EWW 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 EWW; or (ii) 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 EWW or with making disclosures concerning options on EWW 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>7</sup> The ISE-Revere Wal-Mart Supplier Index was jointly developed by ISE and Revere Data, LLC ("Revere"). Revere, an independent and privately owned provider of research data and investment analytics, provides specific research and support for the Wal-Mart Supplier Index. Wal-Mart® is a trademark of Wal-Mart Stores, Inc. The Wal-Mart Supplier Index ("WMX") is not sponsored, endorsed, sold or promoted by Wal-Mart Stores, Inc., and Wal-Mart Stores, Inc. makes no representation regarding the advisability of investing in WMX. Wal-Mart Stores, Inc. has not licensed or authorized ISE to: (i) Engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on exchange-traded funds based on WMX ("WMX ETF options"); or (ii) use any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of WMX ETF options or with making disclosures concerning WMX ETF options under any applicable federal or state laws, rules or regulations. Wal-Mart Stores, Inc. does not sponsor, endorse, or promote such activity by ISE, and is not affiliated in any manner with ISE.

and FocusShares ISE Homebuilders Index Fund ("SAW").<sup>8</sup> The Exchange represents that EWW, MYP, PUF, SAW and WSI 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 and a comparison fee for all transactions in options on EWW, MYP, PUF, SAW and WSI.<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 shall be equal to the execution fee and comparison fee currently charged by the Exchange for ISE Market Maker transactions in equity options.<sup>11</sup> Finally, the amount of the execution fee and comparison fee for all non-ISE Market Maker transactions shall be \$0.37 and \$0.03 per contract, respectively.<sup>12</sup> Further, since options on EWW are multiply-listed, the Exchange's Payment for Order Flow fee shall apply only to this one product. The Exchange believes

<sup>8</sup> FocusShares is a registered trademark of FocusShares, LLC. "ISE Homebuilders Index," "ISE SIndex," "ISE-CCM Homeland Security Index," and "ISE-Revere Wal-Mart Supplier Index" are trademarks of the ISE and have been licensed for use for certain purposes by FocusShares. All other trademarks and service marks are the property of their respective owners. FocusShares ISE Homebuilders Index Fund, FocusShares ISE SIndex Fund, FocusShares ISE-CCM Homeland Security Index Fund, and FocusShares ISE-Revere Wal-Mart Supplier Index Fund are not sponsored, endorsed, issued, sold or promoted by ISE.

<sup>9</sup> These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2008, 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 \$0.24 per contract side and \$0.15 per contract side, respectively. See Securities Exchange Act Release No. 56128 (July 24, 2007), 72 FR 42161 (August 1, 2007) (SR-ISE-2007-55). Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and Sara Gillis, Special Counsel, Division of Trading and Markets, Commission, on January 17, 2008.

<sup>10</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>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.

<sup>12</sup> The amount of the execution and comparison fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is \$0.16 and \$0.03 per contract, respectively.

the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

Further, as a matter of housekeeping, the Exchange proposes to remove FTZ from its Schedule of Fees.<sup>13</sup>

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>15</sup> 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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(2)<sup>17</sup> 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 proposed rule change is consistent with the Act.

<sup>13</sup> FTZ was recently delisted and no longer trades on the Exchange.

<sup>14</sup> 15 U.S.C. 78f.

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

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 19b-4(f)(2).

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 No. SR-ISE-2008-07 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2008-07. 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 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-2008-07 and should be submitted on or before February 19, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57175; File No. SR-NASDAQ-2008-006]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify the Recipients of Certain Risk Disclosures

January 18, 2008.

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 January 17, 2007, The NASDAQ Stock Market LLC ("Nasdaq") 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 substantially by Nasdaq. Nasdaq filed the proposed rule change as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it 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

Nasdaq proposes to amend Rule 4631 to clarify to whom members must provide disclosures pursuant to the Rule. Nasdaq proposes to implement the proposed rule change immediately.

The text of the proposed rule change is available at <http://nasdaq.complinet.com>, the principal office of Nasdaq, 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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<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).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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

##### 1. Purpose

Nasdaq proposes to amend Rule 4631, which covers the disclosures required of members when accepting certain orders for trades outside the regular market session, to clarify to whom members must provide these disclosures. Rule 4631 requires members to provide certain risk disclosures to non-members prior to accepting orders for the pre- or post-market sessions. The term "non-member" may be interpreted to include a broker-dealer who is not a member of Nasdaq. In the approval order for the Rule,<sup>5</sup> however, the discussion of Nasdaq's purpose for Rule 4631 is framed in terms of disclosures to "non-member customers." Nasdaq Rule 0120(g) defines the term "customer" to exclude a broker or dealer.<sup>6</sup> The differing terminology used in the Rule and in the approval order has caused some confusion among members.

Nasdaq notes that, as currently written, Rule 4631 could be interpreted to require members to make the risk disclosures to non-member broker-dealers, but not to member broker-dealers. Nasdaq believes that such a technical distinction is not meaningful nor was it Nasdaq's intention to make such a distinction when proposing the Rule. By clarifying that the Rule applies to members' disclosures to customers, as defined by Rule 0120(g), Nasdaq would avoid further member confusion surrounding the reading of the Rule and its associated approval order, while remaining consistent with the rule's intent.

Accordingly, Nasdaq believes it is necessary to amend Rule 4631 to make clear that the disclosures required by the Rule apply to members when accepting orders from customers, not "non-members."

##### 2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Sections 6(b)(1) and (b)(5) of the Act,<sup>8</sup> in particular, in that the proposal enables Nasdaq to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by

<sup>5</sup> Securities Exchange Act Release No. 56985 (December 18, 2007), 72 FR 73388 (December 27, 2007) (SR-NASDAQ-2007-098).

<sup>6</sup> Rule 0120(g) states: The term "customer" shall not include a broker or dealer.

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

<sup>8</sup> 15 U.S.C. 78f(b)(1) and (b)(5).

<sup>18</sup> 17 CFR 200.30-3(a)(12).