

BOX added and the amount of the pass-through licensing surcharges BOX was charging for each product in conjunction with the licensing agreements. While the BSE should have specifically listed each individual ETF option product and the associated surcharge fee on the BOX Fee Schedule, the BSE also believes that, nevertheless, its Participants were (1) aware that surcharges were applicable for options on ETFs pursuant to the language in Section 2(c) of the BOX Fee Schedule; and (2) aware of the specific pass-through licensing surcharges for each product via their monthly billing statement. The BSE believes it was open and transparent with its Participants regarding the applicable surcharges in the above-mentioned products, notwithstanding the fact that the specific information was not updated on the BOX Fee Schedule. The Exchange now proposes to extend this surcharge fee retroactively to all applicable transactions occurring since, and as of, the Effective Dates listed in Table 1.

In addition, the Exchange proposes to amend the BOX Fee Schedule to clarify the meaning of the current text in section 4(b) ("InterMarket Linkage") of the BOX Fee Schedule, which includes an explicit reference to the surcharge with respect to Inbound P and PA orders that are billed per contract.<sup>9</sup> The BSE also proposes that the title of section 4(b) of the BOX Fee Schedule be changed from "Per contract, billed to away market" to "Per contract, billed to clearing firm of away market Member" to provide more clarity as to which party is billed. The BSE believes that the new text is not a substantive change to the BOX Fee Schedule, does not impose any new fees on Linkage Orders, and is consistent with the Linkage Fee pilot program. The Exchange notes that Linkage Orders have always been assessed this surcharge and have been invoiced as such. The Exchange is proposing these changes to section 4 to clarify the BOX Fee Schedule.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Act,<sup>10</sup> in general, and section 6(b)(4) of

the Act,<sup>11</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 issuers and other persons using its facilities.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition 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 neither solicited nor received comments on 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 BSE consents, the Commission shall:

(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 No. SR-BSE-2006-05 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-BSE-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 the BOX. 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-BSE-2006-05 and should be submitted on or before May 4, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6-5482 Filed 4-12-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53608; File No. SR-ISE-2006-17]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees on the Russell 1000 Index

April 6, 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 3, 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

<sup>9</sup> Specifically, the Exchange proposes to replace the sentence "Same as if were BOX Participant" with "This charge is the same as that which is applicable to a BOX Participant under section 2. These orders are also subject to any additional pass-through surcharge fees specified in section 2(c), as applicable." Telephone conversation between Bill Meehan, General Counsel, BOX, and Richard Holley, Special Counsel, Division of Market Regulation, Commission, on March 28, 2006.

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

<sup>11</sup> 15 U.S.C. 78f(b)(4).

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

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

<sup>27</sup> 17 CFR 240.19b-4.

have been prepared by the ISE. 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>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 waive the surcharge for transactions in options on the Russell 1000 Index until September 29, 2006. The text of the proposed rule change 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 purpose of this proposed rule change is to waive the surcharge for transactions in options on the Russell 1000 Index ("RUI") until September 29, 2006. Options on RUI were previously approved for trading by the Commission.<sup>5</sup> Pursuant to a license agreement entered into by the Exchange with the Frank Russell Company ("Russell"), the Exchange currently charges a ten (10) cent surcharge per contract for trading options on RUI.<sup>6</sup>

However, in order to promote trading in options on RUI, the Exchange is proposing to waive all surcharges on RUI for the 2nd and 3rd quarters of 2006 (the "promotional period").

Due to competitive pressures, the Exchange does not charge Public Customer Orders<sup>7</sup> this surcharge fee. The surcharge fee is charged only to Exchange members with respect to non-Public Customer Orders (e.g., Market Maker and Firm Proprietary orders). Accordingly, during the promotional period, the Exchange proposes to waive the surcharge fee on all non-Public Customer Orders and, for a pilot period that is set to expire on July 31, 2006, on all Linkage Orders.<sup>8</sup> The Exchange's normal transaction fees, i.e., an execution fee and a comparison fee, in options on RUI shall continue to apply during the promotional period.<sup>9</sup>

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with section 6(b)(4) of the Act,<sup>10</sup> which requires 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**

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 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)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(2)<sup>12</sup> thereunder because it changes a fee

imposed by the Exchange. 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. 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-2006-17 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-2006-17. 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 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

<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> See Securities Exchange Act Release No. 51619 (April 27, 2005), 70 FR 22947 (May 3, 2005) (Order approving the trading of options on various Russell Indexes, including RUI).

<sup>6</sup> See Securities Exchange Act Release No. 51858 (June 16, 2005), 70 FR 36218 (June 22, 2005) (Notice of filing and immediate effectiveness of fees on various Russell Indexes, including RUI).

<sup>7</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>8</sup> See ISE Rules 1900(10) and 1901.

<sup>9</sup> The Exchange represents that these fees are charged only to Exchange members.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 19b-4(f)(2).

Number SR-ISE-2006-17 and should be submitted on or before May 4, 2006.

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

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6-5480 Filed 4-12-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53609; File No. SR-NYSEArca-2006-01]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Brokers Executing as Principal Orders They Represent as Agent

April 6, 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 March 21, 2006, NYSE Arca, Inc. ("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.

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

The Exchange is proposing to change the time period that NYSE Arca Brokers ("Brokers") must wait prior to executing as principal orders they represent as agent. The text of the proposed rule change is available on the Exchange's Web site (<http://www.archipelago.com>), at the Exchange's Office of the Secretary, 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 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

The purpose of this filing is to amend NYSE Arca Rule 6.76, "Priority and Order Allocation Procedures," relating to the Exchange's PCX Plus System ("PCX Plus" or "System"). NYSE Arca Rule 6.76(c), which governs Crossing Orders on PCX Plus, among other things provides for a Crossing Mechanism that Brokers may utilize to electronically cross two orders.<sup>3</sup> With respect to principal-agency crosses effected electronically on the Exchange but not through the Crossing Mechanism, Rule 6.76(c)(3)(B)(i) stipulates that Brokers may not execute as principal orders that they represent as agent unless the agency orders are first exposed on the Exchange for at least 30 seconds.<sup>4</sup> Rule 6.76(c)(3)(B)(i) was included in the rules to guard against Brokers circumventing the time parameters established in the Crossing Mechanism by immediately executing as principal orders they represent as agent. It is this section of Rule 6.76 that the Exchange proposes to change.

When entering two orders into the Crossing Mechanism, one of the orders must be designated as an Exposed Order.<sup>5</sup> Exposed Orders are exposed to market participants for a period of 3

<sup>3</sup> See NYSE Arca Rule 6.76(c)(2), which defines the Crossing Mechanism as "a process by which a NYSE Arca Broker may facilitate orders or cross two orders." As detailed below, the Crossing Mechanism exposes one of the orders to market participants for a specified period of time before executing the cross. See also NYSE Arca Rule 6.76(c)(1)(A), which defines Cross Order for the purposes of Rule 6.76(c) as "two orders with instructions to match the identified buy-side with the identified sell-side at a specified price (the 'Cross Price').".

<sup>4</sup> Telephone conversation between Glenn Gsell, Director, Regulation, Exchange, and Ira Brandriss, Special Counsel, and Kate Robbins, Attorney, Division of Market Regulation, Commission, on April 4, 2006 ("Telephone Conversation of April 4, 2006"). The Broker may also execute a cross in open outcry, pursuant to Rule 6.47. Telephone Conversation of April 4, 2006.

<sup>5</sup> See NYSE Arca Rule 6.76(c)(1)(D), which defines "Exposed Order" as follows: "The buy or sell side of a Cross Order that has been designated by a NYSE Arca Broker as the side to be exposed to the market and that is eligible for execution against all trading interest. Public Customer orders will always be deemed to be the Exposed Order in a Cross Order. In the case of a Cross Order involving a non-customer on both the buy side and sell side, the NYSE Arca Broker must designate one side of the Cross Order as the Exposed Order."

seconds prior to an electronic cross execution. The exposure period allows an opportunity for OTP Holders and OTP Firms to trade against the Exposed Order.

When NYSE Arca Rule 6.76(c)(2), governing the Crossing Mechanism, was approved by the Commission as part of SR-PCX-2002-36,<sup>6</sup> the rule called for a 30-second exposure period. At the time the rule was approved, PCX Plus was not applicable to all issues traded on the Exchange and not all OTP Holders and OTP Firms were utilizing fully electronic trading systems. It was felt that a 30-second exposure period was needed in order to allow an opportunity for all market participants to enter orders.

Once PCX Plus was fully phased in Exchange-wide, with all issues trading on the System, and once all market participants became electronically connected to the System, it was felt that a 30-second exposure period was no longer necessary to insure adequate exposure of orders. Since the full implementation of the all-electronic PCX Plus System, the Exchange has on two previous occasions filed with the Commission to amend Rule 6.76(c) in order to reduce the exposure period contained in the Crossing Mechanism. The most recent change established the present 3-second exposure period.<sup>7</sup>

To be consistent with exposure periods included in the rules governing the Crossing Mechanism, the Exchange now proposes to shorten the time that a Broker must wait prior to executing as principal orders he or she represents as agent from 30 seconds to 3 seconds. Under the present rules, the Broker that enters an agency order into the PCX Plus System must wait 30 seconds before entering a principal order to execute against the agency order. All other OTP Holders and OTP Firms are given an opportunity to respond to the original order during this period.<sup>8</sup> Since the intent of the original 30-second time period in NYSE Arca Rule 6.76(c)(3)(B)(i) was to prevent circumvention of the 30-second exposure period in the Crossing Mechanism rules, and since the Crossing Mechanism now contains a 3-second exposure period, the Exchange believes that customer orders may be

<sup>6</sup> See Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003).

<sup>7</sup> See Securities Exchange Act Release Nos. 52814 (November 21, 2005), 70 FR 71591 (November 29, 2005) (order approving a 10-second exposure period in the Crossing Mechanism) and 53384 (February 27, 2006), 71 FR 11280 (March 6, 2006) (order approving a 3-second exposure period in the Crossing Mechanism) ("PCX Plus 3-Second Approval Order").

<sup>8</sup> Telephone Conversation of April 4, 2006.

<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.