

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 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, 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-Amex-2006-70 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-Amex-2006-70. 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 Amex. 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-Amex-2006-70 and should

be submitted on or before September 11, 2006.

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

Nancy M. Morris,

Secretary.

[FR Doc. E6-13728 Filed 8-18-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54315; File No. SR-ISE-2006-43]

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

August 14, 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 July 25, 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 the ISE. On August 10, 2006, ISE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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>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

The ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on nine

<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> Amendment No. 1 revised the rule text contained in Exhibit 5 to conform it to the discussion contained in the Purpose section, which explains that a ten (10) cent per contract surcharge applies only to IWB, IWD, XLV, XLU, and XLK and not to all of the Premium Products that are the subject of this filing.

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

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

Premium Products.<sup>6</sup> The text of the proposed rule change, as amended, 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 Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the following nine Premium Products: PowerShares Water Resources Portfolio ("PHO"),<sup>7</sup> SPDR Homebuilders ETF ("XHB"),<sup>8</sup> iShares FTSE/Xinhua China 25 Index Fund ("FXI"), iShares Dow Jones Select

<sup>6</sup> "Premium Products" is defined in the ISE's Schedule of Fees as the products enumerated therein.

<sup>7</sup> PowerShares™ and PHO™ are trademarks of PowerShares Capital Management LLC ("PowerShares"). The Palisades Water Index is a trademark of Hydrogen Ventures and has been licensed for use for certain purposes by PowerShares. All other trademarks and service marks are the property of their respective owners. The PHO is not sponsored, endorsed, sold or promoted by Hydrogen Ventures, and Hydrogen Ventures makes no representation regarding the advisability of investing in PHO. Hydrogen Ventures and PowerShares 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 PHO; 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 PHO or with making disclosures concerning options on PHO under any applicable Federal or state laws, rules or regulations. Hydrogen Ventures and PowerShares do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

<sup>8</sup> "Standard & Poor's 500®," "S&P 500®," "S&P 500 500®," "Standard & Poor's 500®" "Standard & Poor's Depository Receipts®," "SPDR®," are trademarks of The McGraw-Hill Companies, Inc. ("McGraw-Hill"), and have been licensed for use by State Street Bank and Trust in connection with the listing and trading of XHB on the American Stock Exchange. XHB is not sponsored, sold or endorsed by Standard & Poor's, ("S&P"), a division of

Dividend Index Fund (“DVY”),<sup>9</sup> iShares Russell 1000 Index Fund (“IWB”), iShares Russell 1000 Value Index Fund (“IWD”), Health Care Select Sector SPDR Fund (“XLV”), Utilities Select Sector SPDR Fund (“XLU”), and Technology Select Sector SPDR Fund (“XLK”).<sup>10</sup> Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on PHO, XHB, FXI, DVY, IWB, IWD, XLV, XLU, and XLK.<sup>11</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>12</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

McGraw-Hill, and S&P makes no representation regarding the advisability of investing in XHB. McGraw-Hill 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 XHB; 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 XHB or with making disclosures concerning options on XHB under any applicable Federal or state laws, rules or regulations. McGraw-Hill and S&P do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

<sup>9</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. Select Dividend Index Fund” are trademarks and service marks of Dow Jones & Company, Inc. (“Dow Jones”) and have been licensed for use for certain purposes by BGI. “FTSE” is a trademark jointly owned by the London Stock Exchange PLC and The Financial Times Limited. “Xinhua” is a service mark and trademark of Xinhua Financial News Network Limited. All marks are licensed for use by FTSE/Xinhua Index Limited. All other trademarks and service marks are the property of their respective owners. Neither DVY nor FXI are sponsored, endorsed, issued, sold or promoted by Dow Jones or FTSE/Xinhua Index Limited. BGI, Dow Jones, and FTSE/Xinhua Index Limited 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 DVY and FXI; 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 DVY and FXI or with making disclosures concerning options on DVY and FXI under any applicable Federal or state laws, rules or regulations. BGI, Dow Jones, and FTSE/Xinhua Index Limited do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

<sup>10</sup>PHO, XHB, FXI, DVY, IWB, IWD, XLV, XLU, and XLK constitute “Fund Shares,” as defined by ISE Rule 502(h).

<sup>11</sup>These fees will be charged only 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). See *infra* footnote 15 (regarding ISE’s proposed rule change to extend its Linkage fees pilot program).

<sup>12</sup>Public Customer Order is defined in Exchange Rule 100(a)(33) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(32) as a person that is not a broker or dealer in securities.

comparison fee currently charged by the Exchange for ISE Market Maker transactions in equity options.<sup>13</sup> Finally, the amount of the execution fee and comparison fee for all non-ISE Market Maker transactions shall be \$0.16 and \$0.03 per contract, respectively. All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium 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.

Additionally, the Exchange has entered into a license agreement with the Frank Russell Company and Standard & Poor’s in connection with the listing and trading of options on IWB, IWD and XLV, XLU, and XLK, as applicable. As with certain other licensed options, the Exchange proposes to adopt a fee of ten (10) cents per contract for trading in these options to defray the licensing costs. The Exchange believes charging the participants that trade these products is the most equitable means of recovering the costs of the licenses. However, because of competitive pressures in the industry, the Exchange proposes to exclude Public Customer Orders 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 Linkage Orders<sup>14</sup> under a pilot program that is set to expire on July 31, 2006.<sup>15</sup> Finally, since options on PHO, XHB, FXI, DVY, IWB, IWD, XLV, XLU, and XLK are multiply-listed, the Payment for Order Flow fee shall also apply.

## 2. Statutory Basis

The Exchanges believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) of the Act<sup>16</sup> that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

<sup>13</sup> The execution fee is currently between \$.21 and \$.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently \$.03 per contract side.

<sup>14</sup> See ISE Rule 1900.

<sup>15</sup> In File No. SR-ISE-2006-38, the Exchange proposed, and the Commission subsequently approved, a rule change to extend the Linkage fees pilot program until July 31, 2007. See Securities Exchange Act Release No. 54204 (July 25, 2006), 71 FR 43548 (August 1, 2006).

<sup>16</sup> 15 U.S.C. 78f(b)(4).

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

The Exchange believes 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. 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, as amended, 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>17</sup> and Rule 19b-4(f)(2)<sup>18</sup> thereunder. At any time within 60 days of the filing of such amended 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>19</sup>

## 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 No. SR-ISE-2006-43 on the subject line.

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 19b-4(f)(2).

<sup>19</sup>The effective date of the original proposed rule is July 25, 2006. The effective date of Amendment No. 1 is August 10, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on August 10, 2006, the date on which the ISE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

*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-2006-43. 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 Number SR-ISE-2006-43 and should be submitted on or before September 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Nancy M. Morris,**  
Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-54316; File No. SR-NYSE-2006-59]

**Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Specialists Hitting Bids and/or Taking Offers Algorithmically on a Temporary Basis Until Phase II of the Hybrid Market Is Fully Implemented**

August 15, 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 August 8, 2006, the New York Stock Exchange LLC ("NYSE" or "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. NYSE filed the 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 the proposed rule change 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**

NYSE proposes to amend Exchange Rule 104 (Dealings by Specialists) with respect to the specialists' ability to establish systems employing algorithms to send messages via a connection to the Display Book<sup>®</sup> for the purpose of quoting or executing trades systemically. The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.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 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

Through the NYSE Hybrid Market<sup>SM</sup> initiative,<sup>5</sup> the Exchange is permitting specialists to establish electronic connections to the Display Book<sup>®</sup> system<sup>6</sup> ("Display Book"). Specialists will have electronic access to certain information which will permit them to make a range of specified quoting and trading decisions based on that information via the Display Book connection. Specifically, the amendments to Rule 104 (Dealings by Specialists) pursuant to the NYSE Hybrid Market<sup>SM</sup> provide specialists with the ability to implement systems that use proprietary algorithms based on predetermined parameters to electronically participate in the Hybrid Market<sup>SM</sup> ("Specialist Algorithm"). The Specialist Algorithm is designed to communicate with the Display Book via an Exchange-owned external application program interface ("API").

As approved in the Hybrid Market initiative, the Specialist Algorithm is permitted to send messages to the Display Book via the API to quote or trade on behalf of the specialist's proprietary interest. The Specialist Algorithm will generate these quoting or trading messages in reaction to specific types of information it will have access to. This information includes specialist dealer position, existing quotes, publicly available information the specialist chooses to supply to the algorithm, incoming orders as they are entering Exchange systems, and information about orders on the Display Book such as limit orders, percentage orders, stop orders, and auction limit and auction market orders. This latter information stream is known as "state of the book" information.

The Exchange has continued to discuss Hybrid Market features with its members and advisory committees. Based on these discussions, the Exchange has effected selective changes to certain aspects of the Hybrid Market,

<sup>5</sup> See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006).

<sup>6</sup> The Display Book system is an order management and execution facility. It receives and displays orders to the specialist, contains the orders received by the specialist (the "Book"), and provides a mechanism to execute and report transactions to the Consolidated Tape.

<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).

<sup>20</sup> 17 CFR 200.30-3(a)(12).