

Commission, and all written communications relating 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 the filing also will be available for inspection and copying at the principal office of the Exchange. 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-CHX-2005-06 and should be submitted on or before July 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>41</sup>

J. Lynn Taylor,

Assistant Secretary

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54016; File No. SR-ISE-2006-32]

### 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

June 19, 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 June 1, 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 June 15, 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 increase the threshold average daily volume (ADV) levels for the reduction and waiver of execution fees and the waiver of comparison fees with respect to trading options on the Nasdaq 100 Index Tracking Stock® (QQQQ) and transactions executed in the Exchange's Facilitation Mechanism.

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 purpose of this proposed rule change is to increase the threshold ADV levels for the reduction and waiver of execution fees and the waiver of comparison fees in the Exchange's Schedule of Fees for (i) trading options in the QQQQ and (ii) transactions executed through the Exchange's Facilitation Mechanism. In November 2003, on a pilot basis, the Exchange

adopted a reduction and a waiver of execution fees and a waiver of comparison fees for QQQQ options.<sup>6</sup> In September 2004, again on a pilot basis, the Exchange adopted a similar reduction and a waiver of execution fees and a waiver of comparison fees on transactions executed through the Exchange's Facilitation Mechanism.<sup>7</sup>

##### Discount on QQQQ Execution and Comparison Fees

Under the current QQQQ pilot program, when a member's monthly ADV in QQQQ options reaches 8,000 contracts, the member's execution fee for the next 2,000 contracts is reduced by \$0.10 per contract.<sup>8</sup> Further, when a member's monthly ADV in QQQQ options reaches 10,000 contracts, the Exchange waives the entire execution fee and the comparison fee for each QQQQ option contract traded thereafter. The Exchange states that its volume in QQQQ options traded has increased as a result of this pilot program. As a result, ISE now proposes to increase the threshold ADV levels at which the fee reduction and waiver for QQQQ options traded apply, such that the \$0.10 per contract fee reduction shall apply for the next 2,000 contracts when a member's monthly ADV in QQQQ options reaches 10,000 contracts. Further, when a member's monthly ADV reaches 12,000 contracts, the Exchange will waive the entire execution fee and the comparison fee for each QQQQ option contract traded thereafter.

##### Discount on Facilitation Mechanism Fees

With respect to the Exchange's Facilitation Mechanism, the structure of

<sup>6</sup> See Securities Exchange Act Release No. 49147 (January 29, 2004), 69 FR 5629 (February 5, 2004). See also Securities Exchange Act Release Nos. 49853 (June 14, 2004), 69 FR 35087 (June 23, 2004) (extending the pilot program until November 30, 2004); 50900 (December 21, 2004), 69 FR 78075 (December 29, 2004) (extending the pilot program until November 30, 2005); and 52934 (December 9, 2005), 70 FR 74859 (December 16, 2005) (extending the pilot program until November 30, 2006).

<sup>7</sup> See Securities Exchange Act Release Nos. 50658 (November 12, 2004), 69 FR 67768 (November 19, 2004); and 52934, *supra* note 6 (extending the pilot program until November 30, 2006). The Facilitation Mechanism is a process by which Electronic Access Members facilitate block-size orders. Options traded in the Facilitation Mechanism are treated as Firm Proprietary orders and, as such, are subject to an execution and comparison fee of \$0.15 and \$0.03 per contract per side, respectively.

<sup>8</sup> This execution fee and any reduction or waiver thereof is applicable to Firm Proprietary orders and ISE Market Maker orders. For ISE Market Maker orders, 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 per side.

<sup>41</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 deleted brackets included in the initial Exhibit 5. The brackets reflected a proposed rule change in SR-ISE-2006-30, which was originally submitted under Section 19(b)(3)(A) of the Act, rejected by the Commission, and subsequently re-filed by the Exchange under Section 19(b)(2) of the Act. The Exchange also made

clarifying changes to the purpose section of the filing. The correction to Exhibit 5 and the clarifications to the purpose section of the original filing do not affect the fees covered by this filing.

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

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

the reduction and waiver of the execution fee for the Facilitation Mechanism (“facilitation execution fee”) and the waiver of the comparison fee are similar to the structure of the reduction and waiver of the QQQQ execution fee and the waiver of the comparison fee noted above. That is, when a member’s monthly ADV in the Facilitation Mechanism reached 8,000 contracts, the member’s facilitation execution fee for the next 2,000 contracts transacted in the Facilitation Mechanism is reduced by \$0.10 per contract.<sup>9</sup> Further, when a member’s monthly ADV in the Facilitation Mechanism reaches 10,000 contracts, the Exchange waives the entire facilitation execution fee and the comparison fee for each contract transacted in the Facilitation Mechanism thereafter. The Exchange believes that the current pilot program has also encouraged members to use the Facilitation Mechanism, illustrated by its increased volume. As such, the Exchange now also proposes to increase the threshold ADV levels at which the fee reduction and waiver for options traded in the Facilitation Mechanism apply, such that the \$0.10 per contract fee reduction shall apply for the next 5,000 contracts when a member’s monthly ADV in the Facilitation Mechanism reaches 15,000 contracts. Further, when a member’s monthly ADV reaches 20,000 contracts, the Exchange will waive the entire execution fee and the comparison fee for each option contract traded in the Facilitation Mechanism thereafter.

The Exchange believes that the proposed increases of the threshold levels will allow it to maintain its competitiveness in trading QQQQ options and encourage continued use by members of the Facilitation Mechanism.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, 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. In particular, these fees would extend current reductions and waivers.

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

The Exchange believes that the proposed rule change does not impose

<sup>9</sup> This execution fee and any reduction or waiver thereof is applicable only to Firm Proprietary orders. See *supra* note 7.

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

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 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>13</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 from (<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-2006-32 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-2006-32. This file

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

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

<sup>13</sup> The effective date of the original proposed rule is June 1, 2006. The effective date of Amendment No. 1 is June 15, 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 June 15, 2006, the date on which the ISE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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 filings 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-2006-32 and should be submitted on or before July 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-54018; File No. SR-NSX-2006-06]**

### **Self-Regulatory Organizations; National Stock Exchange; Notice of Filing of Proposed Rule Change To Allow the Primary Market Print Protection Rule To Be Applied on an Optional Basis**

June 20, 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 April 12, 2006, the National Stock Exchange (“NSX” 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

<sup>14</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.