

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52462; File No. SR-ISE-2005-43)

September 19, 2005

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

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 September 1, 2005, 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. 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 establish fees for transactions in options on the DIAMONDS® Trust, Series 1, an exchange-traded fund.<sup>5</sup> The text of the

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<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> DIAMONDS® is a registered trademark of Dow Jones & Company, Inc. (“Dow Jones”) for securities issued by the Diamonds® Trust, Series 1 and has been licensed for use for certain purposes by Dow Jones to PDR Services Corporation (“PDR”) and the American Stock Exchange LLC (“Amex”) pursuant to a license agreement with Dow Jones. DIAMONDS and options which have DIAMONDS as their sole underlying interest (“DIAMONDS Options”) are not sponsored, endorsed, sold, or promoted by Dow Jones. Dow Jones, PDR, and Amex have not licensed or authorized ISE to (i) engage in 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 Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the DIAMONDS® Trust, Series 1 ("DIA"), an exchange-traded fund.<sup>6</sup> Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on DIA.<sup>7</sup> The amount of the execution fee and comparison fee for the

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creation, listing, provision of a market for trading, marketing, and promotion of DIAMONDS Options or (ii) to use and refer to the DIAMONDS® trademark in connection with the listing, provision of a market for trading, marketing, and promotion of DIAMONDS Options or with making disclosures concerning DIAMONDS Options 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 Dow Jones, PDR, or Amex.

<sup>6</sup> The ISE represents that DIA constitutes "Fund Shares," as defined in ISE Rule 502(h). Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and Richard Holley III, Special Counsel, Division of Market Regulation, Commission, on September 8, 2005.

<sup>7</sup> The ISE represents that these fees will be charged only to Exchange members. Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and

product covered by this filing shall be the same for all order types on the Exchange – that is, orders for Public Customers<sup>8</sup> and Non-Customers<sup>9</sup> (which include Market Makers and Firm Proprietary) – and shall be equal to the execution fee and comparison fee, respectively, that are currently charged by the Exchange for transactions by Non-Customers in equity options.<sup>10</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.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>11</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.

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Richard Holley III, Special Counsel, Division of Market Regulation, Commission, on September 8, 2005.

<sup>8</sup> See ISE Rule 100(32) (defining “Public Customer” as a person that is not a broker or dealer in securities).

<sup>9</sup> See ISE Rule 100(22) (defining “Non-Customer” as a person or entity that is a broker or dealer in securities).

<sup>10</sup> The Commission notes that the applicable 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 per side.

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

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>12</sup> and Rule 19b-4(f)(2)<sup>13</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. 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-2005-43 on the subject line.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 19b-4(f)(2).

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-ISE-2005-43. 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-2005-43 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

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

Jill M. Peterson  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).