

requirements of section 7(c)(2)(B) of the Act.

In addition, Rule 403 under the Act<sup>17</sup> provides that a national securities exchange may set margin levels lower than 20% of the current market value of the security future for an offsetting position involving security futures and related positions, provided that an exchange's margin levels for offsetting positions meet the criteria set forth in Section 7(c)(2)(B) of the Act. The offsets proposed by CBOE are consistent with the strategy-based offsets permitted for comparable offset positions involving exchange-traded options and therefore consistent with section 7(c)(2)(B) of the Act.

Finally, the Commission believes it is consistent with the Act for the CBOE to exclude from its margin requirements positions in security futures contracts carried in a futures account. The Commission believes that by choosing to exclude such positions from the scope of its rules, the CBOE has made compliance by members that are subject to regulatory requirements of several SROs easier.

### III. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-CBOE-2002-67), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47536; File No. SR-ISE-2003-12]

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

March 19, 2003.

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 12, 2003, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange

Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. 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 Exchange is proposing to establish a \$.10 surcharge for non-public customer transactions in options on certain Select Sector SPDR Funds and exchange traded funds based on indexes developed by the Frank Russell Company.

#### 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

The Exchange is proposing to add to the list of options of Select Sector SPDR Funds and exchange traded funds based on indexes developed by the Frank Russell Company that will be subject to the \$.10 surcharge on the Exchange's Schedule of Fees. The Exchange's Schedule of Fees currently lists three (3) Select Sector SPDR Funds and five (5) exchange traded funds based on indexes developed by the Frank Russell Company that are subject to the surcharge.<sup>3</sup> The Exchange is proposing to add options on four (4) more Select Sector SPDR Funds<sup>4</sup> and five (5) more exchange traded funds based on the indexes developed by the Frank Russell

<sup>3</sup> See Securities Exchange Act Release Nos. 47075 (December 20, 2002), 67 FR 79673 (December 30, 2002)(SR-ISE-2002-29) and 47243 (January 23, 2003), 68 FR 5066 (January 31, 2003)(SR-ISE-2003-01).

<sup>4</sup> Pursuant to this proposed rule change, the proposed fee will apply to options on the Health Care Select Sector SPDR Fund, Industrial Select Sector SPDR Fund, Consumer Discretionary Select SPDR Fund and Materials Select Sector SPDR Fund.

Company<sup>5</sup> that will be subject to the surcharge. These additional options are listed in the Schedule of Fees.

The purpose of the fee for trading in these options is to defray the licensing costs. The ISE believes that charging the participants that trade in options on these instruments is the most equitable means of recovering the costs of the license. However, because competitive pressures in the industry have resulted in the waiver of all transaction fees for customers, we propose to exclude Public Customer Orders (as defined in Exchange Rule 100) from this additional fee. This additional fee will only be charged with respect to non-Public Customer Orders.<sup>6</sup>

###### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) of the Act that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.<sup>7</sup>

##### 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

The foregoing rule change establishes or changes a due, fee, or other charge

<sup>5</sup> Pursuant to this proposed rule change, the proposed fee will apply to options on the following exchange traded funds: Russell Midcap Index Fund iShares, Russell 3000 Value Index Fund iShares, Russell 3000 Growth Index Fund iShares, Russell Midcap Growth Index Fund iShares, and Russell Midcap Value Index Fund iShares.

<sup>6</sup> Under Exchange Rule 100, a "Public Customer" is a person that is not a broker or dealer in securities, and a "Public Customer Order" is an order for the account of a Public Customer. Accordingly, the execution of orders for the account of a "non-broker-dealer" will not be subject to the proposed \$.10 surcharge fee. All other orders, *i.e.*, orders for the account of a broker-dealer, will be subject to the proposed \$.10 surcharge fee. Telephone conversation between Joseph Ferraro, Assistant General Counsel, ISE, and Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, on March 18, 2003.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>17</sup> 17 CFR 240.403(b)(2).

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</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.