

including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-2003-05 and should be submitted by April 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47564; File No. SR-ISE-2003-13]

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

March 24, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on March 13, 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 Exchange. 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 add to the list of options on Select Sector SPDR Funds and exchange traded funds ("ETFs") based on indexes developed by the Frank Russell Company ("Russell") that will be subject to the \$.10 surcharge for non-public customer transactions on the Exchange's Schedule of Fees. The text of the proposed rule change is available from the Office of the Secretary of the ISE or the Commission.

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 has entered into a license agreement to use various indexes and trademarks of Russell in connection with the listing and trading of options on certain ETFs based on Russell indexes. The Exchange has entered into a license agreement to use various indexes and trademarks of Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("S&P"), in connection with the listing and trading of options on certain Select Sector SPDR Funds. The purpose of this proposed rule change is to add to the list of options on Select Sector SPDR Funds and ETFs based on indexes developed by Russell that will be subject to the \$.10 surcharge fee for non-public customer transactions on the Exchange's Schedule of Fees. The Exchange's Schedule of Fees currently lists seven (7) Select Sector SPDR Funds and ten (10) exchange-traded funds based on indexes developed by Russell that are subject to the surcharge.³ The

Exchange is proposing to add options on two (2) more Select Sector SPDR Funds and two (2) more exchange-traded funds based on indexes developed by Russell that will be subject to the surcharge.⁴ 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 Exchange 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.⁵

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.⁶

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.

⁴ Pursuant to this proposed rule change, the proposed fee will apply to options on the Energy Select Sector SPDR Fund, Consumer Staples Select Sector SPDR Fund, Russell 1000 Index Fund iShares and Russell 3000 Index Fund iShares.

⁵ 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 call between Joseph Ferraro, Assistant General Counsel, ISE, and Jennifer Colihan, Special Counsel, Division of Market Regulation ("Division"), Commission, March 19, 2003.

⁶ 15 U.S.C. 78f(b)(4).

³ See Securities Exchange Act Release Nos. 47075 (December 20, 2002), 67 FR 79673 (December 30, 2002) (SR-ISE-2002-29); 47243 (January 24, 2003), 68 FR 5066 (January 31, 2003) (SR-ISE-2003-01); and 47536 (March 19, 2003) (SR-ISE-2003-12).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.