

indirectly controls the ISE, the books, records, premises, officers, Trustees, Delaware trustee, and employees of the Trust shall be deemed to be the books, records, premises, officers, Trustees, Delaware trustee, and employees of the ISE for purposes of and subject to oversight pursuant to the Act.<sup>103</sup> The Trust agrees to keep confidential, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of the ISE (including, without limitation, disciplinary matters, trading data, trading practices, and audit information) contained in the books and records of the ISE and not use such information for any commercial<sup>104</sup> purposes.<sup>105</sup>

The Trust Agreement requires that it may only be amended with prior written approval of the Commission, as and to the extent required under the Act.<sup>106</sup> Further, for so long as Holdings or the Trust shall control, directly or indirectly, the ISE, any changes to the Trust must be submitted to the ISE Board. If the change must be filed with, or filed with and approved by, the Commission under section 19 of the Act<sup>107</sup> and the rules thereunder, then the change shall not be effective until filed with, or filed with and approved by, the Commission.<sup>108</sup>

The Commission finds that the Trust Agreement is designed to enable the ISE to operate in a manner that complies with the federal securities laws, including the objectives and requirements of sections 6(b) and 19(g) of the Act,<sup>109</sup> facilitate the ability of the ISE and the Commission to fulfill their regulatory and oversight obligations under the Act,<sup>110</sup> and are consistent with the provisions other entities that directly or indirectly own or control an SRO have instituted and that have been approved by the Commission.<sup>111</sup> The

Commission finds that the Trust's provisions are consistent with the Act and that they are designed to facilitate the Exchange's ability to comply with the requirements of the Act.

Under section 20(a) of the Act,<sup>112</sup> any person with a controlling interest in the ISE shall be jointly and severally liable with and to the same extent that the ISE is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, section 20(e) of the Act<sup>113</sup> creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, section 21C of the Act<sup>114</sup> authorizes the Commission to enter a cease-and-desist order against any person who has been "a cause of" a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation. These provisions are applicable to the Trust and all other entities controlling the ISE.

### III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>115</sup>

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>116</sup> that the proposed rule change (SR-ISE-2007-101) is approved, and Amendment No. 1 is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>117</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

22, 2007) (SR-NYSE-2006-120) (merger of NYSE Group, Inc. and Euronext N.V.) and 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (merger of New York Stock Exchange, Inc. and Archipelago Holdings, Inc.).

<sup>112</sup> 15 U.S.C. 78t(a).

<sup>113</sup> 15 U.S.C. 78t(e).

<sup>114</sup> 15 U.S.C. 78u-3.

<sup>115</sup> The Commission's approval of the proposed rule change based on the Exchange's representation that the Resolutions will be signed by the Upstream Owners before or at the closing of the Transaction.

<sup>116</sup> 15 U.S.C. 78s(b)(2).

<sup>117</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56956; File No. SR-ISE-2007-110]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to the \$1 Strike Pilot Program

December 13, 2007.

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 November 14, 2007, the International Securities Exchange, LLC ("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 substantially 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

ISE proposes to expand the \$1 Strike Pilot Program ("Pilot Program") and requests permanent approval of the Pilot Program. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.ise.com>.

#### 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 purpose of the proposed rule change is to expand the Pilot Program and to request permanent approval of

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>103</sup> *Id.*

<sup>104</sup> The Commission believes that any non-regulatory use of such information would be for a commercial purpose.

<sup>105</sup> Trust Agreement, Article VI, Section 6.1(a). The Trust Agreement states that none of its provisions shall be interpreted so as to limit or impede (1) the rights of the Commission or the ISE to have access to and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder, or (2) the ability of any Trustees, Delaware trustee, officers, directors, employees, or agents of Holdings or the Trust to disclose such confidential information to the Commission or the ISE. See Trust Agreement, Article VI, Section 6.2.

<sup>106</sup> Trust Agreement, Article VIII, Section 8.2.

<sup>107</sup> 15 U.S.C. 78s.

<sup>108</sup> Trust Agreement, Article VIII, Section 8.2.

<sup>109</sup> 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g).

<sup>110</sup> Trust Agreement, Articles V, VI, and VIII.

<sup>111</sup> See, e.g., Securities Exchange Act Release Nos. 55293 (February 14, 2007), 72 FR 8033 (February

the Pilot Program.<sup>3</sup> The Pilot Program currently allows ISE to select a total of 5 individual stocks on which an option series may be listed at \$1 strike price intervals. In order to be eligible for selection into the Pilot Program, the underlying stock must close below \$20 in its primary market on the previous trading day. If selected for the Pilot Program, the Exchange may list strike prices at \$1 intervals from \$3 to \$20, but no \$1 strike price may be listed that is greater than \$5 from the underlying stock's closing price in its primary market on the previous day. The Exchange also may list \$1 strikes on any other option class designated by other securities exchanges that employ a similar Pilot Program under their respective rules. The Exchange may not list long-term option series (LEAPS) at \$1 strike price intervals for any class selected for the Pilot Program. The Exchange also is restricted from listing any series that would result in strike prices being \$0.50 apart.

The Exchange proposes to expand the Pilot Program to allow ISE to select a total of 10 individual stocks on which an option series may be listed at \$1 strike price intervals. Additionally, ISE proposes to expand the price range on which it may list \$1 strikes from \$3 to \$50. The existing restrictions on listing \$1 strikes would continue, *i.e.*, no \$1 strike price may be listed that is greater than \$5 from the underlying stock's closing price in its primary market on the previous day, and ISE is restricted from listing any series that would result in strike prices being \$0.50 apart.

As stated in the Commission order approving ISE's Pilot Program and in the subsequent extensions of the Pilot Program,<sup>4</sup> ISE believes that \$1 strike price intervals provide investors with greater flexibility in the trading of equity options that overlie lower priced stocks by allowing investors to establish equity options positions that are better tailored to meet their investment

objectives. The Exchange states that its member firms representing customers have repeatedly requested that ISE seek to expand the Pilot Program, both in terms of the number of classes on which an option series may be listed at \$1 strike price intervals and the range in which \$1 strikes may be listed.

With regard to the impact on systems capacities, ISE's analysis of the Pilot Program shows that the impact on the automated systems of ISE, the Options Price Reporting Authority ("OPRA"), and market data vendors has been minimal. The Exchange analyzed the quoting activity for all classes selected for the Pilot Program as a percentage of all quoting activity for all classes being quoted during the specified number of months.<sup>5</sup> The Exchange concluded that, prior to the implementation of the Pilot Program in May 2003, the number of Best Bid/Offer ("BBO") quotes sent to OPRA in the five classes selected for the Pilot Program represented approximately 0.47% of all BBO quotes sent by the Exchange.<sup>6</sup> As of April 2007, the BBO quote share in the five classes selected for the Pilot Program remained below May 2003 levels in all months analyzed by the Exchange, with the exception of one month, February 2005.<sup>7</sup> The Exchange notes that these statistics may overstate the contribution of \$1 strike prices because these figures also include quotes for options series listed in intervals higher than \$1 (*i.e.*, \$2.50 strikes) in the same option classes. Even with the non-\$1 strike series quotes included in these figures, ISE believes that the overall impact on capacity is still minimal. ISE represents that it has sufficient capacity to handle an expansion of the Pilot Program, as proposed.

The Exchange believes that the Pilot Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. Furthermore, the Exchange has not detected any material proliferation of illiquid option series resulting from the narrower strike price intervals. For these reasons, ISE requests that the Pilot Program be approved on a permanent basis.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>9</sup> in that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that expanding the Pilot Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities and for a more extended period of time than currently permitted.

### *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.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited comments on the proposed rule change and 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which ISE 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,

<sup>3</sup> The Commission approved the Pilot Program on June 16, 2003. See Securities Exchange Act Release No. 48033 (June 16, 2003), 68 FR 37036 (June 20, 2003) (SR-ISE-2003-17). The Pilot Program has subsequently been extended through June 5, 2008. See Securities Exchange Act Release Nos. 49827 (June 8, 2004), 69 FR 33966 (June 17, 2004) (SR-ISE-2004-21) (extending the Pilot Program until August 5, 2004); 50060 (July 22, 2004), 69 FR 45864 (July 30, 2004) (SR-ISE-2004-26) (extending the Pilot Program for 10 months until June 5, 2005); 51769 (May 31, 2005), 70 FR 33232 (June 7, 2005) (SR-ISE-2005-22) (extending the Pilot Program until June 5, 2006); 53806 (May 15, 2006), 71 FR 29694 (May 23, 2006) (SR-ISE-2006-20) (extending the Pilot Program until June 5, 2007); and 55715 (May 7, 2007), 72 FR 26854 (May 11, 2007) (SR-ISE-2007-26) (extending the Pilot Program until June 5, 2008).

<sup>4</sup> See *id.*

<sup>5</sup> See Securities Exchange Act Release No. 55715 (May 7, 2007), 72 FR 26854 (May 11, 2007) (SR-ISE-2007-26), Exhibit 3, Pilot Program Report (providing empirical analyses of the impact of the Pilot Program on the capacity of automated systems during years 2003 to 2007).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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 Number SR-ISE-2007-110 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-ISE-2007-110. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-ISE-2007-110 and should be submitted on or before January 9, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-56957; File No. SR-ISE-2007-115]

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Historical ISE Open/Close Trade Profile Fees**

December 13, 2007.

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 December 11, 2007, the International Securities Exchange, LLC ("ISE" 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 substantially prepared by ISE. The Exchange filed the proposal 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 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**

ISE proposes to amend its Schedule of Fees to: (1) Clarify the terms on which it offers the ISE Open/Close Trade Profile, a market data product described below; and (2) adopt a subscription fee for the sale of historical ISE Open/Close Trade Profile. The text of the proposed rule change is available at the Exchange, on the Exchange's Web site at <http://www.ise.com>, 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.

<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).

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### **1. Purpose**

ISE currently creates volume data for each ISE listed option that consists of opening buys and opening sells and closing buys and closing sells.<sup>5</sup> ISE currently uses a subset of this data, the customer "opening only" trade data, for its calculation of investor sentiment, the ISE Sentiment Index®, or ISEE®, and for ISEE Select®. The Commission recently approved a broader market data offering comprised of the entire opening and closing trade data of ISE listed options of both customers and firms, referred to by the Exchange as the ISE Open/Close Trade Profile.<sup>6</sup> The ISE Open/Close Trade Profile offering is subdivided by origin code (*i.e.*, customer or firm) and the customer data is then further subdivided by order size. The volume data is summarized by day and series (*i.e.*, symbol, expiration date, strike price, call or put). ISE Open/Close Trade Profile is a subscription service, available to both members and non-members, and that enables subscribers to create their own proprietary put/call calculations. The data is compiled and formatted by ISE as an end of day file. The Exchange charges both members and non-members \$600 per month based on an annual subscription<sup>7</sup> for the ISE Open/Close Trade Profile market data offering.

ISE now proposes to sell historical ISE Open/Close Trade Profile, a market data offering comprised of the entire opening and closing trade data of both customers and firms that dates back to May 2005, to both members and non-members, on an ad-hoc basis or as a complete set that dates back to May 2005. Ad-hoc subscribers will be able to purchase this data for any number of months, beginning from May 2005 through the current month. Alternatively, subscribers will be able to purchase the entire set of this data, beginning from May 2005 through the

<sup>5</sup> An opening buy is a transaction that creates or increases a long position and an opening sell is a transaction that creates or increases a short position. A closing buy is a transaction made to close out an existing position. A closing sell is a transaction to reduce or eliminate a long position.

<sup>6</sup> See Securities Exchange Act Release No. 56254 (August 15, 2007), 72 FR 47104 (August 22, 2007) (SR-ISE-2007-70).

<sup>7</sup> The Exchange notes that while historical ISE Open/Close Trade Profile is available on a month to month basis, the non-historical ISE Open/Close Trade Profile offering is available only on an annual subscription basis, which the Exchange proposes to clarify by adding the words "With an annual subscription" under the Notes section on its Schedule of Fees.

<sup>10</sup> 17 CFR 200.30-3(a)(12).