

- Technical analyses concerning the demand and supply for a sector, index or industry based on trading volume and price;

- Statistical summaries of multiple companies' financial data, including listings of current ratings;

- Recommendations regarding increasing or decreasing holdings in particular industries or sectors; and
- Notices of ratings or price target changes (subject to certain disclosure requirements).

FINRA proposes to define market letters by reference to an exception from the definition of "research report" under NASD Rule 2711 and Incorporated NYSE Rule 472 to make clear that a firm may not supervise as correspondence communications that fall within the definition of "research report." The proposed rule change would, however, increase a firm's flexibility in supervising market letter communications that do not qualify as research reports.

FINRA would announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The implementation date would be the date FINRA publishes the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed amendment would allow firms to distribute market letters in a timely and expedient manner, while still requiring firms to review and supervise these communications to ensure that they are fair, balanced and not misleading.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change would result in 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

Written comments were neither solicited nor received.

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 the self-regulatory organization 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, 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. Please include File Number SR-FINRA-2008-044 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2008-044. 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 such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2008-044 and should be submitted on or before October 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-23047 Filed 9-30-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58635; File No. SR-ISE-2008-68]

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

September 24, 2008.

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 September 16, 2008, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange 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 ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on 8 Premium Products.³ The text of the proposed rule change is available at the Exchange.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Premium Product [sic] is defined in the Schedule of Fees as the products enumerated therein.

⁷ 15 U.S.C. 78o-3(b)(6).

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 self-regulatory organization 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 self-regulatory organization 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 PowerShares DB Commodity Index Tracking Fund (“DBC”),⁴ the PowerShares DB Base Metals Fund (“DBB”),⁵ the Vanguard®

⁴ The PowerShares DB Commodity Index Tracking Fund (“DBC”) is based on the Deutsche Bank Liquid Commodity Index—Optimum Yield Excess Return™. DBC is managed by DB Commodity Services LLC. DBLCI™ and Deutsche Bank Liquid Commodity Index™ are trademarks of Deutsche Bank AG, London (“DB AG”). PowerShares® is a registered service mark of PowerShares Capital Management LLC (“PowerShares”). DBC is not sponsored, endorsed, sold or promoted by DB AG, and DB AG makes no representation regarding the advisability of investing in DBC. Neither DB AG nor PowerShares has licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on DBC or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on DBC or with making disclosures concerning options on DBC under any applicable federal or state laws, rules or regulations. DB AG and PowerShares do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

⁵ The PowerShares DB Base Metals Fund (“DBB”) is based on the Deutsche Bank Liquid Commodity Index—Optimum Yield Industrial Metals Excess Return™. DBB is managed by DB Commodity Services LLC. DBLCI™ and Deutsche Bank Liquid Commodity Index™ are trademarks of Deutsche Bank AG, London (“DB AG”). PowerShares® is a registered service mark of PowerShares Capital Management LLC (“PowerShares”). DBB is not sponsored, endorsed, sold or promoted by DB AG, and DB AG makes no representation regarding the advisability of investing in DBB. Neither DB AG nor PowerShares has licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on DBB or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on DBB or with making disclosures concerning options on DBB under any applicable federal or state laws, rules or regulations. DB AG and PowerShares do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

Total Stock Market ETF (“VTI”),⁶ the PowerShares DB U.S. Dollar Bullish Fund (“UUP”),⁷ the iShares Lehman TIPS Bond Fund (“TIP”),⁸ the iShares MSCI Pacific Ex-Japan Index Fund (“EPP”),⁹ the Ultra Real Estate

⁶ Vanguard, Vanguard ETFs and Vanguard ETF are trademarks of The Vanguard Group, Inc. (“Vanguard”). All other marks are the exclusive property of their respective owners. The Vanguard® Total Stock Market ETF (“VTI”) tracks the Morgan Stanley Capital International® (MSCI®) U.S. Broad Market Index. MSCI does not sponsor, endorse, or promote VTI and makes no representation regarding the advisability of investing in VTI. Vanguard has not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on VTI or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on VTI or with making disclosures concerning options on VTI under any applicable federal or state laws, rules or regulations. Vanguard does not sponsor, endorse, or promote such activity by ISE, and is not affiliated in any manner with ISE.

⁷ The PowerShares DB U.S. Dollar Bullish Fund (“UUP”) is based on the Deutsche Bank Long U.S. Dollar Index (USDIX®) Futures Index™ (“DB Long USD Futures Index”). The sponsor of the DB Long USD Futures Index is Deutsche Bank AG, London (“DB AG”). UUP is managed by DB Commodity Services LLC. U.S. Dollar Index® and USDIX® are registered service marks of IntercontinentalExchange, Inc. PowerShares® is a registered service mark of PowerShares Capital Management LLC (“PowerShares”). UUP is not sponsored, endorsed, sold or promoted by DB AG, and DB AG makes no representation regarding the advisability of investing in UUP. Neither DB AG nor PowerShares has licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on UUP or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on UUP or with making disclosures concerning options on UUP under any applicable federal or state laws, rules or regulations. DB AG and PowerShares do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

⁸ iShares® is a registered trademark of Barclays Global Investors, N.A. (“BGI”), a majority owned subsidiary of Barclays Bank PLC. “Lehman Brothers U.S. Treasury TIPS Index” is a trademark of Lehman Brothers and has been licensed for use for certain purposes by BGI. All other trademarks and service marks are the property of their respective owners. iShares Lehman TIPS Bond Fund (“TIP”) is not sponsored, endorsed, issued, sold or promoted by Lehman. BGI and Lehman have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on TIP or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on TIP or with making disclosures concerning options on TIP under any applicable federal or state laws, rules or regulations. BGI and Lehman do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

⁹ iShares® is a registered trademark of Barclays Global Investors, N.A. (“BGI”), a majority owned subsidiary of Barclays Bank PLC. “MSCI Pacific Ex-Japan Index” is a service mark of Morgan Stanley Capital International (“MSCI”) and has been licensed for use for certain purposes by BGI. All other trademarks and service marks are the property of their respective owners. iShares MSCI Pacific Ex-

ProShares (“URE”) and the UltraShort MSCI EAFE ProShares (“EFU”).¹⁰ The Exchange represents that DBC, DBB, VTI, UUP, TIP, EPP, URE, and EFU are eligible for options trading because they constitute “Exchange-Traded Fund Share,” as defined by ISE Rule 502(h).

All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is proposing to adopt an execution fee for all transactions in options on DBC, DBB, VTI, UUP, TIP, EPP, URE, and EFU.¹¹ The amount of the execution fee for products covered by this filing shall be \$0.18 per contract for all Public Customer Orders¹² and Firm Proprietary orders. The amount of the execution fee for all ISE Market Maker transactions shall be equal to the execution fee currently charged by the Exchange for ISE Market Maker

Japan Index Fund (“EPP”) is not sponsored, endorsed, issued, sold or promoted by MSCI. BGI and MSCI have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on EPP or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on EPP or with making disclosures concerning options on EPP under any applicable federal or state laws, rules or regulations. BGI and MSCI do not sponsor, endorse, or promote such activity by ISE, and are not affiliated in any manner with ISE.

¹⁰ “Dow Jones” and “Dow Jones U.S. Real Estate SM” are service marks of Dow Jones & Company, Inc. (“Dow Jones”) and have been licensed for use for certain purposes by ProShares. MSCI, Morgan Stanley Capital International and EAFE are service marks of MSCI and have been licensed for use for certain purposes by ProShares. All other trademarks and service marks are the property of their respective owners. The Ultra Real Estate ProShares (“URE”) and the UltraShort MSCI EAFE ProShares (“EFU”) are not sponsored, endorsed, issued, sold or promoted by Dow Jones or MSCI. Dow Jones and MSCI have not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on URE and EFU or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on URE and EFU or with making disclosures concerning options on URE and EFU under any applicable federal or state laws, rules or regulations. Dow Jones and MSCI do not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

¹¹ These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2009, these fees will also be charged to Linkage Principal Orders (“Linkage P Orders”) and Linkage Principal Acting as Agent Orders (“Linkage P/A Orders”). The amount of the execution fee charged by the Exchange for Linkage P Orders and Linkage P/A Orders is \$0.24 per contract side and \$0.15 per contract side, respectively. See Securities Exchange Act Release No. 58143 (July 11, 2008), 73 FR 41388 (July 18, 2008) (SR-ISE-2008-52)

¹² Public Customer Order is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(38) as a person or entity that is not a broker or dealer in securities.

transactions in equity options.¹³ Finally, the amount of the execution fee for all non-ISE Market Maker transactions shall be \$0.45 per contract.¹⁴ Further, since options on DBC, DBB, VTI, UUP, TIP, EPP, URE, and EFU are multiply-listed, the Exchange's Payment for Order Flow fee shall apply to all these products. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

(b) *Basis*—The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(4),¹⁶ in particular, in that it is designed to provide for the 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 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 has become effective pursuant to Section 19(b)(3) of the Act¹⁷ and Rule 19b-4(f)(2)¹⁸ 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.

¹³ The Exchange applies a sliding scale, between \$0.01 and \$0.18 per contract side, based on the number of contracts an ISE market maker trades in a month.

¹⁴ The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is \$0.19 per contract.

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 19b-4(f)(2).

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. Please include File Number SR-ISE-2008-68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2008-68. 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-68 and should be submitted on or before October 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-22967 Filed 9-30-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58613; File No. SR-Phlx-2008-65]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Administration and Enforcement of Certain Rules Pertaining to XLE

September 22, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ and Rule 19b-4² thereunder, notice is hereby given that on September 5, 2008, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") 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 Phlx. 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, pursuant to Section 19(b)(1) of the Act³ and Rule 19b-4 thereunder,⁴ proposes to change the administration and enforcement of certain rules in light of the fact that the Exchange will cease operation of the technology used to operate XLE[®],⁵ the Exchange's equity trading system, on or before October 24, 2008 (the "Shutdown"). At this time, the Exchange is not proposing to amend the text of any rules, but simply to change the administration and enforcement of certain rules, as described below. The Shutdown will not affect any other trading systems or markets at Phlx.

¹⁹ 17CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ See Securities Exchange Act Release No. 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (SR-Phlx-2006-43) (Order approving XLE[®]).