

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58400; File No. SR-ISE-2008-66]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Retire a Pilot Program To List and Trade Options on the iShares Emerging Markets Index Fund

August 20, 2008.

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 August 14, 2008, the International Securities Exchange, LLC ("Exchange" or "ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has 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

The Exchange submits this rule filing to retire a pilot program that permits the Exchange to list options on the iShares MSCI Emerging Markets Index Fund ("EEM Fund").<sup>5</sup> The Exchange is proposing to retire the pilot program because the EEM Fund now meets all of the Exchange's generic initial and maintenance listing standards, which permit the Exchange to list options on the EEM Fund without having to file for Commission approval. The text of the proposed rule change is available on the

Exchange's Web site <http://www.ise.com>, at the principal office of the Exchange, 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 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 purpose of this rule change is to retire the Pilot that permits the Exchange to list options on the EEM Fund.<sup>6</sup> The Exchange is proposing to retire the Pilot because the EEM Fund now meets all of the Exchange's generic initial and maintenance standards. Specifically, the Exchange has in place initial and maintenance listing standards set forth in Rules 502(h) and 503(h), respectively ("Listing Standards"), which are designed to allow the Exchange to list funds structured as investment companies, such as the EEM Fund, without having to file for Commission approval to list for trading options on these types of funds.<sup>7</sup>

When the Exchange first sought to list options on the EEM Fund, the Exchange had determined that the EEM Fund met substantially all of the Exchange's Listing Standards requirements, but did not meet the Listing Standards requirement that no more than 50% of the weight of the securities in the EEM Fund be comprised of securities that are

not subject to a comprehensive surveillance sharing agreement ("CSSA").<sup>8</sup> The Exchange had in place CSSAs with foreign exchanges that covered 45.97% of the securities in the EEM Fund. In order to meet the 50% threshold, the Exchange requested the Commission's approval to rely upon a memorandum of understanding that the Commission had entered into with the CNBV<sup>9</sup> (the "MOU") because the securities traded on the Bolsa represented 6.53% of the weight of the securities in the EEM Fund.<sup>10</sup>

The EEM Fund has now become compliant with ISE Rule 502(h)(B)(1) and more than 50% of the weight of the securities in the EEM Fund are now subject to a CSSA. Specifically, the Exchange represents that the Korean Exchange ("KRX")<sup>11</sup> recently became a member of the Intermarket Surveillance Group and, therefore, securities and other products trading on its markets are now subject to a CSSA. As a result, the percentage of the weight of the EEM Fund represented by South Korean securities now renders the EEM Fund compliant with the Exchange's Listing Standards requirements.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Act of 1934 (the "Act") and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>12</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act's<sup>13</sup> requirements that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In particular, the proposed rule change will enable the Exchange to continue to provide a competitive marketplace for investors to trade options on the EEM Fund.

<sup>8</sup> See Rule 502(h)(B)(1).

<sup>9</sup> The National Commission for Banking and Securities, or "CNBV," is Mexico's regulatory body for financial markets and banking. The CNBV regulates the Bolsa Mexicana de Valores ("Bolsa").

<sup>10</sup> See supra note 5. The Commission permitted the Exchange to rely on the MOU, and the Exchange agreed to use its best efforts to obtain a CSSA with the Bolsa during the respective pilot periods, which to date has not been obtained.

<sup>11</sup> The KRX was created on January 27, 2005, through the consolidation of three domestic Korean exchanges: Korea Stock Exchange (KSE), KOSDAQ Market and Korea Futures Market (KOFEX). See <http://neg.krx.co.kr/index.html>.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<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).

<sup>5</sup> The EEM Fund pilot program commenced on August 27, 2007, and has been renewed one time. The EEM Fund pilot program is scheduled to expire on August 27, 2008. See Securities Exchange Act Release No. 56324 (August 27, 2007), 72 FR 50426 (August 31, 2007) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Options on the iShares Emerging Markets Index Fund for a Six Month Pilot Program) (SR-ISE-2007-72); See Securities Exchange Act Release No. 57399 (February 28, 2008), 73 FR 12241 (March 6, 2008) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program To List and Trade Options on the iShares Emerging Markets Index Fund) (SR-ISE-2008-10).

<sup>6</sup> The EEM Fund is an open-end investment company designed to hold a portfolio of securities that track the MSCI Emerging Markets Index (the "Index"). The Index is a capitalization-weighted index created and maintained by Morgan Stanley Capital International, Inc., and is designed to measure equity market performance in the global emerging markets.

<sup>7</sup> ISE Rules 502(h) and 503(h) set forth the initial listing and maintenance standards for registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts, or other similar entities that are traded on a national securities exchange or through the facilities of a national securities exchange.

### *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 Exchange has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Additionally, the Exchange provided the Commission with written notice of its intention to file the proposed rule change at least five business days before its filing. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed under Rule 19b-4(f)(6) under the Act normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) under the Act<sup>16</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay, which would make the rule change effective and operative upon filing. The Exchange believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to continue to list options on the EEM Fund. For this reason, the Commission designates that the proposed rule change has become effective and operative immediately.<sup>17</sup>

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> For purposes only of waiving the operative delay for this proposal, the Commission has

At any time within 60 days of the filing of the 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 Number SR-ISE-2008-66 on the subject line.

#### *Paper Comments*

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-ISE-2008-66. 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying

considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-ISE-2008-66 and should be submitted on or before September 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**Release No. 34-58411; File No. SR-ISE-2008-65]**

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

August 22, 2008.

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 August 12, 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 12 Premium Products.<sup>3</sup> The text of the proposed rule change is available at the Exchange.

#### **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

<sup>18</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.

<sup>3</sup> Premium Product is defined in the Schedule of Fees as the products enumerated therein.