

Act<sup>16</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>17</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The CHX has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement the changes to the ROC without delay.<sup>18</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the proposed 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-CHX-2008-05 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-CHX-2008-05. 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, 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 CHX. 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-CHX-2008-05 and should be submitted on or before May 27, 2008.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57736; File No. SR-ISE-2008-35]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Position and Exercise Limits for Options on the DIAMONDS Trust

April 29, 2008.

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 April 17, 2008, the International Securities Exchange, LLC ("Exchange" or "ISE") 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 the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change

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 proposes to amend its rules to increase the position and exercise limits applicable to options on the DIAMONDS Trust, Series 1 ("DIA"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the offices 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 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 amend its rules pertaining to position and exercise limits for options on DIA. The Exchange proposes to increase position and exercise limits for options on DIA to 300,000 contracts on the same side of the market. The Commission previously approved a similar proposal of the Chicago Board Options Exchange ("CBOE").<sup>5</sup>

<sup>5</sup> See Securities Exchange Act Release No. 47346 (February 11, 2003), 68 FR 8316 (February 20, 2003) (SR-CBOE-2002-26) (approving an increase in the position limits and exercise limits to 300,000 for DIA options). The Commission stated that "given the surveillance capabilities of the [CBOE] and the depth and liquidity in both the DIA options and the underlying cash market in DIAs, the Commission believes it is permissible to significantly raise position and exercise limits for DIA options without risk of disruption to the options or underlying cash markets." The Commission also stated that "financial and reporting requirements . . . should allow [CBOE] to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow [CBOE] to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary."

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

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

<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<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.

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

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

The Exchange also recently made permanent its increased position and exercise limits for certain equity options on ISE which were in effect on a pilot basis.<sup>6</sup> The Exchange stipulated, as part of its proposal for such permanent approval, that “its surveillance procedures and options reporting procedures, in conjunction with the financial requirements and risk management review procedures generally in place at the clearing firms and the Options Clearing Corporation, will serve to adequately address any concerns the Commission may have with respect to account(s) engaging in any manipulative schemes or assuming too high a level of risk exposure.”<sup>7</sup> These representations also apply to the current proposal to increase the position and exercise limits for options on DIA. The Exchange now seeks to increase the position and exercise limits for options on DIA on ISE to the level that such limits are in effect on CBOE (300,000 contracts on the same side of the market).

The Exchange asserts that the justifications behind the Commission’s approval of CBOE’s proposal should support the same increased position and exercise limits on options on DIA on ISE. Specifically, the Exchange believes that the “structure of the DIA options and the considerable liquidity of both the underlying cash and options market for DIA options lessen the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against.”<sup>8</sup>

The Exchange believes that the reporting requirements imposed under the Exchange’s rules will help protect against potential manipulation.<sup>9</sup> Additionally, the Exchange believes that such an increase in position and exercise limits on options on DIA on ISE is also required for competitive purposes as well as for purposes of consistency and uniformity among the competing options exchanges. This, taken in conjunction with the permanent establishment of other increased position and exercise limits for certain equity options on ISE, supports the Exchange’s proposal related to such increased position and exercise limits applicable to DIA.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act<sup>10</sup> in general, and Section 6(b)(5) of the Act<sup>11</sup> in particular, in that it is 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. Specifically, the Exchange believes that the structure of the DIA options and the considerable liquidity of the market for DIA options diminishes the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against.

### *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, 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: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>13</sup>

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule

The Exchange notes that the proposed rule change is based on a rule change previously approved by the Commission<sup>14</sup> and does not raise any novel issues. Additionally, the proposed rule change is necessary to eliminate any confusion among members of multiple exchanges regarding position and exercise limits applicable to options on DIA and for purposes of maintaining a fair and orderly market.

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Exchange states that waiving the operative delay will allow the Exchange to immediately increase the position and exercise limits applicable to options on DIA on ISE, for purposes of conformity and uniformity, so as to align such limits with those of other options exchanges.

The Commission believes that waiving the 30-day operative delay of the Exchange’s proposal is consistent with the protection of investors and the public interest.<sup>15</sup> Therefore, the Commission designates the proposal to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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 No. SR-ISE-2008-35 on the subject line.

change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

<sup>14</sup> See Securities Exchange Act Release No. 47346, *supra* note 5.

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> See Securities Exchange Act Release No. 57416 (March 3, 2008), 73 FR 12489 (March 7, 2008) (SR-ISE-2008-20).

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

<sup>8</sup> See Securities Exchange Act Release No. 47346, *supra* note 5.

<sup>9</sup> See ISE Rule 415.

*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-2008-35. 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 information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2008-35 and should be submitted on or before May 27, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57744; File No. SR-ODD-2008-01]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Accelerated Delivery of Supplement to the Options Disclosure Document Reflecting Changes to Disclosure Regarding Certain Binary Options and Delayed Start Option Series; and Amendment to the Options Disclosure Document Front Cover Page To Update the Markets in Which Options Are Traded

April 30, 2008.

On December 21, 2007, The Options Clearing Corporation ("OCC") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Rule 9b-1 under the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> five preliminary copies of a supplement to its options disclosure document ("ODD") reflecting changes to disclosure regarding certain binary options and delayed start option series ("DSOs").<sup>2</sup> The ODD would also be amended to update its front inside cover page so that it contains a current list of the U.S. exchanges that trade options issued by the OCC. On April 25, 2008, the OCC submitted to the Commission five definitive copies of the supplement.<sup>3</sup>

The ODD currently contains general disclosures on the characteristics and risks of trading standardized options. Recently, the American Stock Exchange, LLC amended its rules to permit the listing and trading of binary options on individual stocks and exchange-traded funds, also known as fixed return options.<sup>4</sup> The Chicago Board Options Exchange, Incorporated amended its rules to permit the listing and trading of certain DSOs.<sup>5</sup> The NASDAQ Stock Market LLC ("Nasdaq") began trading options March 31, 2008.<sup>6</sup> The proposed

supplement amends the ODD to accommodate these changes by providing disclosure regarding certain binary options and DSOs, and to update the front cover page of the ODD.

Specifically, the proposed supplement to the ODD adds new disclosure regarding the characteristics of binary options on individual equity securities, which includes fund shares, as well as the special risks of these binary options other than credit default options.<sup>7</sup> The proposed supplement to the ODD also adds new disclosure regarding the characteristics of DSOs and the risks associated with their purchase and sale. Finally, the ODD would be amended to add Nasdaq, which currently trades options issued by OCC, and its corporate address to the front cover page of the ODD. This change will ensure that the ODD accurately identifies the markets on which options currently trade. The proposed supplement is intended to be read in conjunction with the more general ODD, which, as described above, discusses the characteristics and risks of options generally.<sup>8</sup>

Rule 9b-1(b)(2)(i) under the Act<sup>9</sup> provides that an options market must file five copies of an amendment or supplement to the ODD with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of information disclosed and the public interest and protection of investors.<sup>10</sup> In addition, five copies of the definitive ODD, as amended or supplemented, must be filed with the Commission not later than the date the amendment or supplement, or the amended options disclosure document, is furnished to customers.

(order approving File Nos. SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080).

<sup>7</sup> As noted above, the proposed supplement provides disclosure that addresses binary options on individual stock options and exchange-traded fund shares. The Commission also notes that disclosure on credit default options, which are also binary options, is currently addressed in the ODD through the previously issued June 2007 supplement. See Securities Exchange Act Release No. 55921 (June 18, 2007), 72 FR 34495 (June 22, 2007) (SR-ODD-2007-03).

<sup>8</sup> The Commission notes that the options markets must continue to ensure that the ODD is in compliance with the requirements of Rule 9b-1(b)(2)(i) under the Act, 17 CFR 240.9b-1(b)(2)(i), including when future changes regarding binary options and/or DSOs are made. Any future changes to the rules of the options markets concerning binary options and/or DSOs would need to be submitted to the Commission under Section 19(b) of the Act, 15 U.S.C. 78s(b).

<sup>9</sup> 17 CFR 240.9b-1(b)(2)(i).

<sup>10</sup> This provision permits the Commission to shorten or lengthen the period of time which must elapse before definitive copies may be furnished to customers.

<sup>1</sup> 17 CFR 240.9b-1.

<sup>2</sup> See letter from Jean M. Cawley, Senior Vice President and Deputy General Counsel, OCC, to Sharon Lawson, Senior Special Counsel, Division of Trading and Markets ("Division"), Commission, dated December 20, 2007.

<sup>3</sup> See letter from Jean M. Cawley, Senior Vice President and Deputy General Counsel, OCC, to Sharon Lawson, Senior Special Counsel, Division, Commission, dated April 25, 2008.

<sup>4</sup> See Securities Exchange Act Release No. 56251 (August 14, 2007), 72 FR 46523 (August 20, 2007) (SR-Amex-2004-27).

<sup>5</sup> See Securities Exchange Act Release No. 56855 (November 28, 2007), 72 FR 68610 (December 5, 2007) (SR-CBOE-2006-90). CBOE Rule 24.9(d)(1) permits it to trade DSOs on any security index approved for options trading on the CBOE.

<sup>6</sup> See Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008)

<sup>16</sup> 17 CFR 200.30-3(a)(12).