

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55060; File No. SR-ISE-2006-72)

January 8, 2007

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Special Order Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 1, 2006, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective upon filing with the Commission.⁵ 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 adopt a customer fee for special orders. The text of the proposed rule change is available at ISE, the Commission's Public Reference Room, and www.iseoptions.com.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Exchange has asked the Commission to waive the 30-day operative delay required by Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii). See discussion infra Section III.

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 ISE 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 ISE 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 proposed rule change is to amend ISE's Schedule of Fees to adopt a customer fee for special orders. The Exchange currently waives transaction fees for customers, except for when those transactions occur in Premium Products.⁶ The Exchange has noted an increase in volume in certain customer order transactions, particularly in transactions that result from customer orders that are entered as responses to special order broadcasts. These special order broadcasts are sent to Exchange members when certain types of orders are entered, such as facilitations, solicitations, block orders, and orders entered in the Exchange's Price Improvement Mechanism. Customers, who have access to highly developed trading systems enter orders in response to these special order broadcasts, much like a broker or dealer would. Customers that possess this advanced trading technology are able to quickly receive and process substantial amounts of market-wide and ISE data, thereby allowing them to selectively respond to special order broadcasts.

⁶ Premium Products is defined in the Schedule of Fees as the products enumerated therein.

The advanced trading systems utilized by these customers provide them with the ability to rapidly respond to updates to the special order broadcasts and market-wide data (such as changes to the NBBO and the underlying market) by aggressively submitting orders within the 3 second exposure period. The Exchange thus proposes to charge an execution and comparison fee of \$0.15 and \$0.03 per contract, respectively, for these customer orders to put these customers on more equal footing with ISE members who currently pay a fee for this functionality. The proposed fee will only apply to responses sent by customers during the 3 second exposure period that all special orders are subject to.

The Exchange believes that the proposed fee is necessary to equitably allocate the associated costs amongst ISE market participants that fully utilize the special order broadcasts, a functionality that is available only to ISE members and customers who possess highly developed technology. The development and ongoing maintenance associated with the broadcasts of, and updates to, special orders, is a costly expenditure of ISE resources. ISE believes that the proposed fee is objective in that it is based on the behavior of market participants and the type of orders submitted. As noted above, since the behavior of these public customers is similar to the behavior of an ISE member, it is fair for the Exchange to charge these customers the same fees as those charged to ISE members.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act,⁷ in that it is designed to promote just and equitable principles of trade,

⁷ 15 U.S.C. 78f(b)(5).

to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.⁸

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 written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for thirty 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6)¹⁰ thereunder.¹¹

⁸ The staff of the SEC revised this language to correct an error in the statutory basis proposed rule change. Telephone Conference between Samir Patel, Assistant General Counsel, ISE, and Ronesha A. Butler, Special Counsel, Division of Market Regulation, Commission, on January 5, 2007.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ Pursuant to Rule 19b-4(f)(6)(iii), the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date

A proposed rule change filed under Commission Rule 19b-4(f)(6)¹² normally does not become operative prior to thirty days after the date of filing. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change to become operative immediately because this proposal is substantially similar to a Boston Options Exchange proposed rule change that was recently approved by the Commission.¹³ The Commission hereby grants the request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to allocate reasonable dues, fees, and other charges among its members and other persons using its facilities. For these reasons, the Commission designates the proposed rule change as effective and operative upon filing.¹⁴

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.

on which the Exchange filed the proposed rule change. See 17 CFR 240.19b-4(f)(6)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ See Securities Exchange Act Release No. 54328 (August 16, 2006), 71 FR 49493 (August 23, 2006).

¹⁴ For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 No. SR-ISE-2006-72 on the subject line.

Paper comments:

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

All submissions should refer to File No. SR-ISE-2006-72. 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. 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 No. SR-ISE-2006-72 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).