

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52168; File No. SR-ISE-2005-32)

July 29, 2005

Self-Regulatory Organizations; International Securities Exchange Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 2 Thereto to Extend the Linkage Fee Pilot Program

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 July 7, 2005, the International Securities Exchange, Inc. (“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 prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on July 26, 2005 and withdrew Amendment No. 1 on July 28, 2005. The Exchange filed Amendment No. 2 to proposed rule change on July 28, 2005.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis for a pilot period through July 31, 2006.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend until July 31, 2006, the current pilot program regarding transaction fees charged for trades executed through the intermarket option linkage (“Linkage”).

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

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

<sup>3</sup> Amendment No. 2 makes technical corrections to the proposed rule text and clarifies the purpose of the proposed rule change.

Currently pending before the Commission is a filing to make such fees permanent.<sup>4</sup> The text of the proposed fee schedule is available on the Exchange's Web site (<http://www.iseoptions.com>), at the Exchange's principal office, 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 III 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 extend for one year the pilot program establishing Exchange fees for Principal Orders and Principal Acting as Agent ("P/A") Orders sent through Linkage and executed on the Exchange. The fees currently are effective for a pilot program scheduled to expire on July 31, 2005,<sup>5</sup> and the proposed rule change would extend the fees through July 31, 2006. The three fees the Exchange charges for these orders are: the Market Maker and Firm Proprietary execution fees for trading on the Exchange, which range from \$.12 to \$.21 depending on average daily trading volume on the Exchange; a surcharge

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<sup>4</sup> See SR-ISE-2003-30 ("Permanent Fee Filing").

<sup>5</sup> See Securities Exchange Act Release No. 50010 (July 13, 2004); 69 FR 43649 (July 21, 2004) (Order extending the Linkage fee pilot program to July 31, 2005).

of between \$.05 and \$.15 for trading certain licensed products; and a \$.03 comparison fee (collectively “linkage fees”).<sup>6</sup> These are the same fees that all Exchange Members pay for non-customer transactions executed on the Exchange.<sup>7</sup> The Exchange does not charge for the execution of Satisfaction Orders sent through Linkage and is not proposing to charge for such orders.

In the Permanent Fee Filing, the Exchange discusses in detail the reasoning why it believes it is appropriate to charge fees for Principal and P/A Orders sent through Linkage and executed on the Exchange. Basically, market makers on competing exchanges always can match a better price on the Exchange; they never are obligated to send orders to the Exchange through Linkage. However, if such market makers do seek the Exchange’s liquidity, whether through conventional orders or through the use of Principal Orders or P/A Orders, the Exchange believes it is appropriate to charge its Members the same fees levied on other non-customer orders. The Exchange appreciates that there has been limited experience with Linkage and that the Commission is continuing to study Linkage, in general, and the effect of fees on Linkage trading. Thus, this filing would extend the status quo with Linkage fees for one year while the Commission considers the Permanent Fee Filing.

## 2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the

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<sup>6</sup> Pursuant to other pilot programs, certain linkage fees may not apply during the Linkage pilot program.

<sup>7</sup> The Exchange charges these fees only to its Members, generally firms who clear Principal and P/A Orders for market makers on the other linked exchanges.

requirement under Section 6(b)(4)<sup>8</sup> that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. As discussed in more detail above, the Exchange believes that this proposed rule change will equitably allocate fees by having all non-customer users of Exchange transaction services pay the same fees. If the Exchange were not to charge Linkage fees, the Exchange's fee would not be equitable in that Exchange Members would be subsidizing the trading of their competitors, all of whom access the same trading services.

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. Moreover, the Exchange believes that failing to adopt the proposed rule change would impose a burden on competition by requiring the Exchange Members to subsidize the trading of their competitors.

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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

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<sup>8</sup> 15 U.S.C. 78f(b)(4).

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-2005-32 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-ISE-2005-32. 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 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-2005-32 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>9</sup> and, in particular, the requirements of Section 6(b) of the Act<sup>10</sup> and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>11</sup> which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2006 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause pursuant to Section 19(b)(2) of the Act,<sup>12</sup> for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the Federal Register. The Commission believes that granting accelerated approval of the proposed rule change will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Exchange and the Commission further consider the appropriateness of Linkage fees.

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<sup>9</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-ISE-2005-32), as amended, is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>13</sup> Id.

<sup>14</sup> 17 CFR 200.30-3(a)(12).