

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49853; File No. SR-ISE-2004-15)

June 14, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange, Inc., Relating to Fee Changes

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 May 18, 2004, the International Securities Exchange, Inc. (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which items have been prepared by the ISE. On June 4, 2004, the ISE submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the amended 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 extend waiver reductions on certain fees, and to amend the fee for use of the Facilitation Mechanism. The text of the amended proposed rule change is available at the Commission and the ISE.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 3, 2004 (“Amendment No. 1”). Amendment No. 1 replaces and supersedes the Exchange’s original filing in its entirety. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on June 4, 2004, the date the ISE filed Amendment No. 1.

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 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 proposed rule change is to amend the ISE Schedule of Fees as follows, as well as to remove references to fee waivers that have expired:

- Waiver of Customer Transaction and Comparison Fees: The Exchange currently waives customer transaction and comparison fees, with such waivers scheduled to expire on June 30, 2004.⁴ In order to remain competitive in the market place, the ISE proposes to extend these waivers through June 30, 2005.
- Waiver of the CLICK Terminal and Session Fees: “CLICK” is the front-end order-entry terminal the ISE provides to members. Currently, the Exchange waives software license and maintenance fees, as well as API/Session fees (based on member log-ins), for a member's second and subsequent CLICK terminals.

⁴ See Securities Exchange Act Release Nos. 42473 (February 29, 2000), 65 FR 11818 (March 6, 2000), and 48129 (July 3, 2003), 68 FR 41409 (July 11, 2003).

These waivers also are scheduled to expire on June 30, 2004.⁵ The Exchange believes that these waiver programs encourage firms to install and use multiple CLICKs and thus the Exchange proposes to extend these waivers for an additional year through June 30, 2005.

- Discount on QQQ Fees: In November of 2003, the ISE instituted a six-month discount program in order to attract order flow in the Nasdaq 100 Tracking Stock (“QQQ”), according to the Exchange, the most actively-traded equity option.⁶ The Exchange triggers the discount based on two progressive milestones for firms entering non customer orders (since customer orders already are fee-exempt). Attaining the first milestone, a monthly average daily trading volume (“ADV”) of 8,000, enables the firm to receive a \$0.10 reduction in transaction fees for contracts traded above this amount and up to the next target ADV. Surpassing the second milestone, a monthly ADV of 10,000, entitles the market makers to trade all additional volume with no transaction or comparison fee. In order to continue the marketing efforts to attract order flow in the QQQ's, the ISE proposes extending this discount until November 30, 2004.
- Facilitation Fee: The Exchange currently charges transaction fees on a sliding scale, depending on the Exchange’s overall trading volume. These fees range from \$.21 a contract to \$.12 a contract.⁷ As an alternative, the ISE also imposes a

⁵ See Securities Exchange Act Release Nos. 45840 (April 29, 2002), 67 FR 30408 (May 6, 2002), and 48129 (July 3, 2003), 68 FR 41409 (July 11, 2003).

⁶ See Securities Exchange Act Release No. 49147 (January 29, 2004), 69 FR 5629 (February 5, 2004).

⁷ The Commission notes that the fee is based on the Exchange’s ADV, with the transaction fees decreasing as ADV increases.

flat \$.15 a contract fee for use of the Facilitation Mechanism (when firms provide liquidity for the customers' block-sized orders). The Exchange originally established the \$.15 fee to be a discount from the standard transaction fee charge. However, as volume has increased, there are months in which the standard transaction fee is less than the Facilitation fee. Thus, the Exchange proposes to amend the fee schedule to establish the charge for Facilitation trades as the lesser of the prevailing transaction fee or \$.15.⁸

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,⁹ in general and Section 6(b)(4) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the Exchange believes that the amended proposed rule change would generally extend current waivers or otherwise lower fees.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁸ The Commission notes that the proposal also removes references in its Schedule of Fees to certain index option fee waivers that have already expired. See Exhibit A of the proposed rule change.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

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 with respect to the proposed rule change.

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

The foregoing amended proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹¹ and Rule 19b-4(f)(2) thereunder,¹² because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of the amended 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 amended 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-2004-15 on the subject line.

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-ISE-2004-15. 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 Section, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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

¹² 17 CFR 240.19b-4(f)(2).

publicly. All submissions should refer to File Number SR-ISE-2004-15 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.¹³

Margaret H. McFarland
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).