

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53630; File No. SR-ISE-2006-18)

April 11, 2006

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Non-ISE Market Maker Orders

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 3, 2006, 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, II and III below, which Items have been prepared by the ISE. The ISE has designated this proposal as one changing a fee imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) 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 parties.

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

The ISE proposes to amend its Schedule of Fees to adopt a fee for non-ISE market maker orders. The text of the proposed rule change is available on the Exchange’s Web site ([http://www.iseoptions.com/legal/proposed\\_rule\\_changes.asp](http://www.iseoptions.com/legal/proposed_rule_changes.asp)) and at the Commission’s Public Reference Room. Below is the text of the proposed rule change. Proposed new language is underlined.

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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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

	Amount	Billable Unit	Frequency	Notes
<b>Electronic Market Place</b>				
Execution Fees				
		* * *		
• <u>ISE Market Maker</u>				For Complex Orders, fee charged only for the leg of the trade consisting of the most contracts. For a pilot period ending November 30, 2006 in transactions in QQQQ, this fee (i) is reduced by \$.10 per Member for monthly A.D.V. above 8,000 contracts/sides and (ii) is waived entirely per Member for monthly A.D.V. above 10,000 contracts/sides.
	A.D.V. Less Than 300,000	\$0.21 contract/side	Transaction	Based on Exchange A.D.V.
	A.D.V. From 300,001 to 500,000	\$0.17 contract/side	Transaction	Based on Exchange A.D.V.
	A.D.V. From 500,001 to 1,000,000	\$0.14 contract/side	Transaction	Based on Exchange A.D.V.
	A.D.V. Over 1,000,000	\$0.12 contract/side	Transaction	Based on Exchange A.D.V.
• <u>Non-ISE Market Maker</u>	<u>\$0.16</u>	<u>contract/side</u>	<u>Transaction</u>	<u>The term “Non-ISE Market Maker” means a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934 registered in the same options class on another</u>

options exchange.

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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 regarding 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 establish a fee for FARMM orders. FARMM orders are orders that are sent to the Exchange for execution by an Electronic Access Member, an ISE member, on behalf of a non-ISE market maker. FARMM orders do not include Linkage Orders. Under ISE's Schedule of Fees, the Exchange currently treats FARMM orders as Firm Proprietary orders. As such, both these order types are charged an execution fee and a comparison fee of \$0.15 and \$0.03 per contract, respectively. The ISE represents that non-ISE market makers that trade on the Exchange do not pay all of the same fees that ISE market makers pay, such as membership and regulatory fees. Thus, ISE market makers are subsidizing non-ISE market makers' trading on the Exchange. Accordingly, for competitive reasons, the Exchange proposes to create a new fee of \$0.19 per contract for all FARMM orders, comprised of an execution fee and a comparison fee of \$0.16 and \$0.03 per contract, respectively. The Exchange notes that other options exchanges currently assess a per contract surcharge on non-Linkage trades executed for the account of a non-member market maker. For example, the Exchange

believes that the Chicago Board Options Exchange (“CBOE”), the American Stock Exchange (“Amex”), and the Philadelphia Stock Exchange (“Phlx”) currently charge FARMM orders \$0.26,<sup>5</sup> \$0.21,<sup>6</sup> and \$0.24,<sup>7</sup> per contract, respectively. The Exchange believes that the proposed increase by the Exchange of \$0.01 per contract from the current fees paid by non-ISE market makers will still leave ISE as the least expensive venue for executing FARMM orders.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>8</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among the ISE’s members and other persons using its facilities.

### 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.

### 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.

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<sup>5</sup> See CBOE Fees Schedule, dated March 1, 2006, at <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>.

<sup>6</sup> See Amex Price List, dated March 15, 2006, at [http://www.amex.com/atamex/constitutionRules/at\\_feeSched.pdf](http://www.amex.com/atamex/constitutionRules/at_feeSched.pdf).

<sup>7</sup> See Phlx Fee Schedule, dated February 2006, at <http://www.phlx.com/exchange/memberservices/feesched.pdf>.

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

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(2) thereunder,<sup>10</sup> because it establishes or changes a due, fee or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. 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-2006-18 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 Number SR-ISE-2006-18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

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 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 publicly. All submissions should refer to File Number SR-ISE-2006-18 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.<sup>11</sup>

Nancy M. Morris  
Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).