

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55941; File No. SR-ISE-2007-36)

June 21, 2007

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to API Fees

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 17, 2007, the International Securities Exchange, LLC (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 substantially prepared by the Exchange. On June 11, 2007, the ISE submitted Amendment No. 1 to the proposed rule change.³ ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by ISE under Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 makes certain clarifying edits to the purpose section of the proposed rule change and the Schedule of Fees contained in Exhibit 5.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

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

The ISE is proposing to adopt a High Throughput User Session/API fee for ISE market makers.⁶ The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and www.iseoptions.com.

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 purpose of this proposed rule change is to adopt a High Throughput User Session/API fee for members.⁷ ISE currently has three categories of authorized logins: (1) quoting, order entry and listening (allowing the user to enter quotes, orders, and perform all other miscellaneous functions, such as setting parameters, pulling quotes and performing linkage

⁶ See Telephone Conference between Samir Patel, Assistant General Counsel, ISE, and Richard Holley III, Special Counsel, Division of Market Regulation, Commission, dated June 21, 2007 (noting that the proposed fee is applicable to ISE market makers).

⁷ The ISE Central Exchange System uses an open Application Programming Interface (API). ISE Members program to ISE's API in order to develop applications that send trading commands and/or queries to and receive broadcasts and/or transactions from the trading system. The ISE Central Exchange System is the heart of ISE's marketplace, processing quotes from market makers, receiving orders from Electronic Access Members, tracking activity in the underlying markets, executing trades in the matching engine, and broadcasting trade details to the participating members.

functions (e.g., sending and receiving P and P/A orders, laying off orders, etc.)); (2) order entry and listening (allowing the user to enter orders and perform all other miscellaneous functions, such as setting parameters, pulling quotes and performing linkage functions (but not quote)); and (3) listening (allowing the user only to query the system and to respond to other broadcasts).

An ISE market maker currently receives an allocation of 1,000,000 quotes per day per user. If a firm submits more quotes than those allocated, i.e., 1,000,000 quotes per day per user as measured on an average in a single month, the firm is charged for additional users depending upon the number of quotes submitted.⁸ Each month, the total number of quotes submitted by a market maker firm across all bins (i.e., the group of options to which the market maker is appointed) is divided by the number of trading days, resulting in the average quotes per day. This number is then be divided by 1,000,000 and rounded up to the nearest whole number, resulting in an implied number of users based on quotes. Members are invoiced on a monthly basis for the greater of (a) the greatest number of users authorized to login into the system, or (b) the number of implied users based on quotes.

ISE currently charges \$950 per month for each quoting session for up to 1,000,000 quotes per day, on average for a month. Members are charged an additional user fee of \$950 for each incremental usage of up to 1,000,000 quotes per day per user.

There are certain third party vendors used by members to connect to the ISE that currently permit only single logins, thus restricting a member's activity when utilizing these applications. To address this limitation, ISE has created a "High Throughput User" that permits an ISE Market Maker to quote up to 2,000,000 quotes per day in a month. A "High Throughput User" would be able to enter quotes, orders, and perform all other miscellaneous functions, such

⁸ See Securities Exchange Act Release No. 53522 (March 20, 2006), 71 FR 14975 (March 24, 2006) (SR-ISE-2006-09) (providing an example of how the fee is assessed).

as setting parameters, pulling quotes and performing linkage functions (e.g., sending and receiving P and P/A orders, laying off orders, etc.). The Exchange proposes to charge “High Throughput Users” a fee of \$1,900 per month. Members will be charged an additional user fee of \$1,900 for each incremental usage of up to 2,000,000 quotes per day per user.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)⁹ that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the Exchange believes this fee will allow its market making members to maximize their quoting ability.

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 unsolicited written comments from members or other interested parties.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2)¹¹ thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

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.¹²

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-2007-36 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-ISE-2007-36. 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

¹² For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on June 11, 2007, the date on which the Exchange filed Amendment No. 1.

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 10:00 am and 3:00 pm. 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-2007-36 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).