

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56254; File No. SR-ISE-2007-70)

August 15, 2007

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to ISE Open/Close Trade Profile 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 August 13, 2007, the International Securities Exchange, LLC (“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 substantially prepared by the ISE. The ISE has designated the proposed rule change as “non-controversial” under Section 19(b)(3)(A)(iii)³ of the Act and Rule 19b-4(f)(6) thereunder,⁴ 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 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 subscription fee for the sale of open and close volume data on ISE listed options. As more fully described in Section II(A)(2), this proposal is similar to a product offered by the Chicago Board Options Exchange, Incorporated (“CBOE”). The text of the proposed rule change is available at the ISE, the Commission’s Public Reference Room, and www.ise.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).

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 ISE currently creates volume data for each ISE listed option that consists of opening buys and opening sells and closing buys and closing sells.⁵ The ISE currently uses a subset of this data, the customer "opening only" trade data, for its calculation of investor sentiment, the ISE Sentiment Index[®] (ISEE[®]), and for ISEE Select[®]. The ISE now proposes a broader market data offering comprised of the entire opening and closing trade data of both customers and firms for each ISE listed option. This collective market data offering is referred to by the Exchange as the ISE Open/Close Trade Profile. This new market data offering will be subdivided by origin code (i.e., customer or firm) and the customer data is then further subdivided by order size. The volume data will be summarized by day and series (i.e., symbol, expiration date, strike price, call or put). The ISE Open/Close Trade Profile will be a subscription service, available to both members and non-members, and will enable subscribers to create their own proprietary put/call calculations. The data will be compiled and formatted by the ISE as an end of day file. The

⁵ An opening buy is a transaction that creates or increases a long position and an opening sell is a transaction that creates or increases a short position. A closing buy is a transaction made to close out an existing position. A closing sell is a transaction to reduce or eliminate a long position.

Exchange proposes to charge both members and non-members \$600 per month on a subscription basis for this new market data offering.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)⁶ that an exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. In particular, the proposed rule filing will provide members and non-members with valuable market data. The Exchange has expended considerable resources, *i.e.*, internal development costs, purchase of servers, etc., to bring this offering to market. The Exchange took these costs into account when setting the fees proposed for the ISE Open/Close Trade Profile. The ISE Open/Close Trade Profile offering is similar to one that the CBOE recently introduced to the marketplace called Open/Close Data.⁷ Further, the ISE's proposed fees for this new offering are identical to the fees that CBOE currently charges for its Open/Close Data offering.⁸ Finally, the Exchange notes that the fees proposed by the ISE for this market data offering are not discriminatory in that the Exchange proposes to charge both members and non-members an identical fee to subscribe to this offering.

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.

⁶ 15 U.S.C. 78f(b)(4).

⁷ See Securities Exchange Act Release No. 55062 (January 8, 2007), 72 FR 2048 (January 17, 2007) (SR-CBOE-2006-88) (order granting approval to proposed rule change to codify a fee schedule for the sale of open and close volume data on CBOE listed options by Market Data Express, LLC).

⁸ Id.

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 persons.

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

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰ As required under Rule 19b-4(f)(6)(iii),¹¹ the ISE provided the Commission with 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 of the filing of the proposed rule change.¹²

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹³ However, Rule 19b-4(f)(6)(iii)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The ISE requests that the Commission waive the 30-day operative delay, as specified in

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² The Exchange initially filed this proposal in SR-ISE-2007-63. The Exchange withdrew that proposal and subsequently filed the present proposal pursuant to Rule 19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ Id.

Rule 19b-4(f)(6)(iii),¹⁵ which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that this proposal is substantially similar to SR-CBOE-2006-88¹⁶ previously approved by the Commission for the CBOE. The Commission further notes that the CBOE proposal was noticed for comment and no comments were received. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.¹⁷

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 the 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. Please include File Number SR-ISE-2007-70 on the subject line.

¹⁵ Id.

¹⁶ See supra note 7.

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2007-70. 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, 100 F Street, NE, Washington, DC 20549, 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-2007-70 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.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).