

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58671; File No. SR-ISE-2008-71)

September 29, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, LLC Relating to Fee Changes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 23, 2008, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. 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 by (1) raising the fee for Firm Proprietary orders, and (2) adopting a sliding scale-based fee credit for the Exchange's Electronic Access Members ("EAMs"). The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.ise.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 self-regulatory organization 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,

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

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

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

(a) Purpose – The Exchange proposes to amend its Schedule of Fees by increasing the firm proprietary transaction fee charged to members, currently set at \$0.18 per contract, to \$0.20 per contract. In connection with the proposed increase to the firm proprietary transaction fee, the Exchange also proposes to adopt a sliding scale-based fee credit for EAMs. Specifically, the Exchange proposes to create a sliding scale-based fee credit that rewards EAMs for the total amount of order flow sent to ISE, as follows (all volume figures are aggregate volume for a member per calendar month):

- For the first 500,000 contracts traded on the Exchange during a calendar month, EAMs will not receive any credit
- For the next 2,500,000 contracts traded, EAMs will receive a credit of \$0.005 per contract
- For the next 1,000,000 contracts traded, EAMs will receive a credit of \$0.01 per contract
- Thereafter, EAMs will receive an incremental credit of \$0.005 per contract per each 1,000,000 incremental contracts traded on the Exchange during a calendar month.

The sliding scale will apply to all customer and firm proprietary orders in all products and will be calculated on a member firm basis,<sup>3</sup> and will apply to non-discounted volume only, that is, it will not apply to orders previously discounted by other

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<sup>3</sup> If a member firm operates more than one EAM membership, the Exchange will aggregate the trading activity of firms for purposes of the sliding scale based on common ownership between firms as reflected on each firm's Form BD.

pricing incentives that currently appear on the Exchange's Schedule of Fees. Under the proposal, credits will be capped at 100% of transaction charges. The Exchange believes the proposed fee credits will benefit order flow providers who send substantial non-market maker order flow to ISE while providing an incentive to those that do not currently send their non-market maker order flow to ISE to do so.

The proposed fee changes will be operative on October 1, 2008.

(b) Basis – The Exchange believes that the proposed rule change is consistent with the objectives of Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>5</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the proposed fee credit will allow the Exchange to compete more effectively with other options exchanges as it will serve as an incentive for order flow providers to send their non-market maker flow to ISE.

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.

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(2)<sup>7</sup> thereunder. At any time within 60 days of the filing of 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.

### 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-2008-71 on the subject line.

#### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2008-71. 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

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

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-2008-71 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Florence E. Harmon  
Acting Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).