

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58898; File No. SR-ISE-2008-81)

November 4, 2008

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

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 October 31, 2008, International Securities Exchange, LLC (the “ISE” or the “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 Exchange. The ISE filed the proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) 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 regarding its cancellation fee. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.ise.com>), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

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, 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's cancellation fee. The Exchange currently has a cancellation fee of \$2.00 that applies to Electronic Access Members ("EAMs") that cancelled at least 500 orders in a month, for each order cancellation in excess of the total number of orders such member executed that month. Further, all orders from the same clearing EAM executed in the same series on the same side of the market at the same price within a 30 second period are aggregated and counted as one executed order for purposes of this fee. This fee is currently charged only to customer orders; broker-dealer orders, including non-member market maker (FARMM) orders, are excluded from this fee.

Recognizing that order cancellations often happen in large numbers, the purpose of this fee is to ease system congestion and to fairly allocate costs among members according to system use. Some members recently have sought to circumvent the fee by breaking up their orders into a range of deep out of the money options series in the same underlying name that trade at the same premium; in another [sic] words, executing multiple orders within 30 seconds, but in related – not the same – series of options. As noted above, ISE currently aggregates executions

only in the same series, not related series. In order to prevent market participants from circumventing this fee, ISE proposes to amend the current execution-offset provision of the cancellation fee. Specifically, in calculating this fee, the Exchange will aggregate together and count as one cancelled order orders that are entered and traded within 30 seconds, at the same price, in the same underlying symbol. The Exchange believes this proposed fee change is justified to counter the level of cancellation activity and its effect on congestion.

This proposed fee change will be operative on November 3, 2008.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) 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 amending the manner by which its cancellation fees are calculated is necessary to allow the Exchange to target cancellations that do not have a valid justification.

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 rule change has become effective pursuant to Section 19(b)(3) of the Act⁵ and Rule 19b-4(f)(2)⁶ thereunder. 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. Please include File Number SR-ISE-2008-81 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-2008-81. 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

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 19b-4(f)(2) [sic].

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 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2008-81 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.⁷

Florence E. Harmon
Acting Secretary

⁷ 17 CFR 200.30-3(a)(12).