

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60767; File No. SR-ISE-2009-67)

October 1, 2009

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change 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 25, 2009, 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 to change its Competitive Market Maker ("CMM") Inactivity 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.

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.

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

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

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE currently charges the owner<sup>3</sup> of a CMM membership an Inactivity Fee of \$5,000 a month per trading right, with a cap of \$25,000 on a per-firm basis,<sup>4</sup> if the owner does not (i) itself operate the CMM membership, (ii) lease the CMM trading right to another member which operates the CMM membership, or (iii) avail itself to one of the exemptions specifically authorized in the Notes to the CMM Inactivity Fee on the Schedule of Fees. The CMM Inactivity Fee was adopted by the Exchange in 2002<sup>5</sup> at a time when there was significant demand for CMM memberships and some owners were holding onto inactive memberships. The purpose of the CMM Inactivity Fee has always been to promote greater trading activity on the Exchange.

The Exchange subsequently lowered this fee because, in the Exchange's opinion, the circumstances that lead to the enactment of the fee no longer existed to the same degree they did in 2002.<sup>6</sup> For one thing, the demand for trading rights had waned. There were a number of other reasons that were taken into consideration by the Exchange when it lowered this fee.<sup>7</sup> With the

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<sup>3</sup> The Note to the CMM Inactivity Fee on the Schedule of Fees provides that the fee applies to the owner of the CMM membership, unless the inactive CMM membership is subject to a lease that was approved by the Exchange prior to the effective date of the fee, in which case the fee would apply to the lessee.

<sup>4</sup> A firm that owns five or more inactive CMMs would pay the \$25,000 maximum fee.

<sup>5</sup> See Securities Exchange Act Release No. 46272 (July 26, 2002); 67 FR 50497 (August 2, 2002).

<sup>6</sup> See Securities Exchange Act Release No. 53223 (February 3, 2006); 71 FR 7098 (February 10, 2006).

<sup>7</sup> Id.

demand for CMM trading rights now much greater, the Exchange proposes to reinstitute the original fee. Specifically, the Exchange proposes to increase the fee to \$25,000 per month per trading right and to eliminate the current cap. The Exchange believes that anything short of full utilization of its trading rights has adverse consequences. Not only does the Exchange lose fee revenues that these trading rights would generate, the ISE market place loses liquidity that additional market making would provide. Further, since this fee was reduced in 2006, the Exchange has relaxed quoting requirements applicable to CMMs thus making the operation of these trading rights more manageable.<sup>8</sup>

The options industry has grown exponentially over the last few years with exchanges notching record trading volumes. The increased trading volume has resulted in additional lost revenue for the Exchange because all of its trading rights are not fully utilized. ISE believes the proposed fee change will allow the Exchange to recoup some lost revenue.<sup>9</sup> This proposed fee change will be operative on October 1, 2009.

Also, as a matter of “housekeeping,” the Exchange proposes to replace certain language in the Notes to the CMM Inactivity Fee with language that accurately reflects CMM memberships as trading rights.

## 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Exchange Act") for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an

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<sup>8</sup> See Securities Exchange Act Release No. 59066 (December 8, 2008), 73 FR 76080 (December 15, 2008).

<sup>9</sup> ISE represents that it based the amount of the fee on a conservative estimate of the revenues lost for an inactive CMM. ISE notes that the amount of the proposed fee is the same as the amount that ISE previously assessed to an inactive CMM. See e-mail from Samir Patel, Assistant General Counsel, Exchange, to Nicholas Shwayri, Law Clerk, Division of Trading and Markets, Commission dated September 30, 2009.

equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the proposed fee change will allow the Exchange to recoup lost revenue because its trading rights are not being fully utilized.

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 Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</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:

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 19b-4(f)(2).

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-2009-67 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISE-2009-67. 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 a.m. and 3:00 p.m. Copies of such 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 publicly available. All submissions should refer to File Number SR-ISE-2009-67 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>12</sup>

Florence E. Harmon  
Deputy Secretary

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