

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54704; File No. SR-ISE-2006-44)

November 3, 2006

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving a Proposed Rule Change to Amend the Schedule of Fees to Expand the Broker Marketing Alliance to Include Non-Broker-Dealers With Regard to the Enhanced Sentiment Market Data Offering

On July 25, 2006, the International Securities Exchange, Inc. (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² to amend its Schedule of Fees regarding its enhanced sentiment market data offering to expand the Broker Marketing Alliance by eliminating its limitation to only broker-dealers. The proposed rule change was published for comment in the Federal Register on October 3, 2006.³ The Commission received no comments on the proposal.

The Exchange offers an enhanced sentiment market data product that allows an end user to identify investor sentiment for individual securities or select industry sectors based on a calculation methodology that utilizes proprietary Exchange opening long option customer trade

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 54508 (September 26, 2006), 71 FR 58459 (“Notice”).

data.⁴ Previously, the Commission approved a fee structure for this product.⁵ The amount that a subscriber is charged depends upon whether the subscription is obtained directly from the Exchange or indirectly through a U.S. broker-dealer participating with the ISE in a Broker Marketing Alliance. A Broker Marketing Alliance is an arrangement between ISE and a participating broker-dealer that allows a participating U.S. broker-dealer to be compensated for enlisting subscribers to the enhanced sentiment market data product. There are four subscription levels of fees based on the number of customer queries. Broker-dealer clients pay lower fees at the four levels than subscribers directly to the Exchange, and broker-dealers receive a rebate of the subscription fees collected. Specifically, the Fee Schedule provides that participating broker-dealers receive: (1) a rebate of 35% of the subscription fee collected from subscribers; and (2) an additional bonus rebate based on (a) the achievement of certain subscription levels; and (b) the size of their firm, as measured by the number of the firm's customers.

With the instant proposed rule change, the Exchange seeks to expand the Broker Marketing Alliance by eliminating its limitation to only broker-dealers.⁶ Under the proposal, the lower level subscription fees billed to broker-dealer clients will now be expanded to apply to subscribers of non-broker-dealers. These non-broker-dealers will also be allowed to receive the

⁴ The enhanced sentiment market data is based on the ISE Sentiment Index or ISEE. The ISEE, which is created by the ISE, provides an intra-day picture of how investors view stock prices by assessing customers' option trading activity. See Securities Exchange Act Release Nos. 53756 (May 3, 2006), 71 FR 27529 (May 11, 2006) (SR-ISE-2005-56) (order approving the prior fee structure for the product) ("Prior Order"); and 53532 (March 21, 2006), 71 FR 15501 (March 28, 2006) (SR-ISE-2005-56).

⁵ See Prior Order, supra at n.4.

⁶ In the ISE's Schedule of Fees, it will now be referred to as a "Subscription through Marketing Alliance."

same rebates and bonus rebates as described above and previously approved for broker-dealers participating in the Broker Marketing Alliance.⁷

In support of its proposal, the Exchange states that, since the introduction of this market data offering, it has received interest from many non-broker-dealers, including firms that provide investors with market commentary, investment tools and educational materials, seeking to sell subscriptions and participate in a revenue sharing arrangement similar to the Broker Marketing Alliance. The Exchange believes that allowing non-broker dealers to market its enhanced sentiment market data offering will increase the number of product subscribers.

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁹ which requires that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. We note that the fee structure for subscribers of non-broker-dealers is identical to the fee structure previously approved for subscribers of participating U.S. broker-dealers in the Broker Marketing Alliance and, as noted above, the rebates and revenue sharing arrangements are the same. Further, as noted in the Prior Order, enhanced sentiment market data is a purely optional product, and it is not necessary to subscribe to this service to trade options on the ISE.

⁷ See Prior Order, supra at n.4.

⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(4).

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act,¹⁰ that the proposed rule change be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris
Secretary

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).