

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53522; File No. SR-ISE-2006-09)

March 20, 2006

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Session/API Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 1, 2006, the International Securities Exchange, Inc. (“ISE” or “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 ISE. On March 15, 2006, ISE filed Amendment No. 1 to the proposed rule change.³ The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act,⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 added clarifying language to the purpose section of the filing and made a technical change to the text of Exhibit 5 (ISE’s Schedule of Fees). The correction to Exhibit 5 does not affect the fees covered by this filing.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

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 new method for charging Session/API Fees. The text of the proposed rule change, as amended, is available on the ISE’s Web site (http://www.iseoptions.com/legal/proposed_rule_changes.asp), at the principal office of the ISE, 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 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 purpose of this proposed rule change is to establish a new method for charging Session/API (“login”) fees to members.⁶ ISE currently charges members a fee for each authorized login that a member utilizes for quoting or order entry, with a lesser charge for

⁶ ISE represents that the fees proposed in this filing only apply to ISE members. The ISE Central Exchange System uses an open Application Programming Interface (API). ISE Members program to ISE’s API in order to develop applications that send trading commands and/or queries to and receive broadcasts and/or transactions from the trading system. The ISE Central Exchange System is the heart of ISE’s marketplace, processing quotes from market makers, receiving orders from Electronic Access Members, tracking activity in the underlying markets, executing trades in the matching engine, and broadcasting trade details to the participating members.

authorized logins used for the limited purpose of “listening” to system broadcasts.⁷ This proposed rule change seeks to further differentiate authorized logins in an effort to promote and encourage more efficient quoting. The Exchange proposes the following three categories of authorized logins: (1) quoting, order entry and listening (allowing the user to enter quotes, orders, and perform all other miscellaneous functions, such as setting parameters, pulling quotes and performing linkage functions (e.g., sending and receiving P and P/A orders, laying off orders, etc.)); (2) order entry and listening (allowing the user to enter orders and perform all other miscellaneous functions, such as setting parameters, pulling quotes and performing linkage functions (but not quote)); and (3) listening (allowing the user only to query the system and to respond to other broadcasts).⁸

Under the proposed rule change, each ISE market maker will receive an allocation of 1,000,000 quotes per day per user. If a firm submits more quotes than those allocated, i.e., 1,000,000 quotes per user as measured on an average in a single month, the firm will be charged for additional users depending upon the number of quotes submitted. Each month, the total number of quotes submitted by a market maker firm across all bins will be divided by the number of trading days, resulting in the average quotes per day. This number will then be divided by 1,000,000 and rounded up to the nearest whole number, resulting in an implied number of users based on quotes. Members will be invoiced for the greater of (a) the greatest

⁷ Prior to this filing, members were charged a fee of \$250 to “listen” to system broadcasts. This fee as it applied to market makers, which was previously listed under “EAM / Trade Review Terminal,” now appears under “Market Makers” – “Listening.”

⁸ The Exchange issued a Market Information Circular and a Technical Bulletin on February 3, 2006 and February 9, 2006, respectively, to notify members of the change that is the subject of this filing. The Exchange further notes that this filing was considered and approved by the ISE’s Market Maker Advisory Committee. The Exchange believes that the proposed fee changes are reasonable in that they are closely tailored to ISE’s technology costs.

number of users authorized to login into the system, or (b) the number of implied users based on quotes. For example, a firm with 20 users has an allocation of 20 million quotes per day. If that firm submits an average of 18 million quotes per day during a single month then the firm will be invoiced for all 20 users. If that firm submits an average of 21.3 million quotes per day during a single month, it will be invoiced for 22 users (21.3 users rounded up).

In order to facilitate maximum utilization of a firm's quote allocation, firms that submit more quotes than the allocated 1,000,000 quotes per day will receive an email on a daily basis informing them that they will incur additional fees if they continue to submit in excess of the 1,000,000 daily quote allocation per user.

ISE proposes to charge \$950 per month for each quoting session for up to 1,000,000 quotes per day, on average for a month. Members will be charged an additional user fee of \$950 for each incremental usage of up to 1,000,000 quotes per day per user. The Exchange further proposes to charge members a fixed fee of \$750 per month for each order entry session and a fixed fee of \$175 per month for each listening session, regardless of the number of quotes submitted.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, 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. In particular, the Exchange believes these fees will encourage and promote efficient quoting among the Exchange's market making firms.

⁹ 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange believes that 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)(A) of the Act¹⁰ and Rule 19b-4(f)(2)¹¹ thereunder because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of such amended 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.¹²

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 19b-4(f)(2).

¹² The effective date of the original proposed rule is February 1, 2006. The effective date of Amendment No. 1 is March 15, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on March 15, 2006, the date on which the ISE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 No. SR-ISE-2006-09 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISE-2006-09. 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. 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-2006-09 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Nancy M. Morris
Secretary

¹³ 17 CFR 200.30-3(a)(12).