

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58147; File No. SR-ISE-2008-53)

July 11, 2008

Self-Regulatory Organizations; International Securities Exchange, 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 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 27, 2008, the International Securities Exchange (“Exchange” or “ISE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change. On July 7, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, is described in Items I, II, and III below, which Items have been prepared by ISE. ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by ISE under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 modified by Amendment No. 1, 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 with respect to transactions executed in securities reported to Tape B. 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.

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

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

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

<sup>4</sup> 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, 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 Exchange's current equity fee schedule consists of a tiered rebate structure: the first five million maker shares executed on an average daily volume (ADV) basis receive a rebate of \$0.0032 per share, with an increase in the rebate to \$0.0035 for each maker share executed above five million ADV. For shares executed on an order delivery basis, the Exchange currently rebates \$0.0027 for maker shares executed. The Exchange proposes to retain this fee structure for transactions executed in securities reported to Tape A and Tape C (hereinafter referred to as Tape A and Tape C securities), but to change the fee structure for transactions executed in securities reported to Tape B (hereinafter, referred to as Tape B securities).

Effective July 1, 2008, the Exchange proposes to adopt a fee structure for Tape B securities (excluding both order delivery and MidPoint Match orders) whereby the maker receives a per share rebate of \$0.0017 and the taker fee is lowered from \$0.003 to \$0.0015 on all shares. The execution fee for equities priced under \$1.00, regardless of which tape they are reported to, is 0.3% of trade value with no rebates for adding liquidity. For order delivery orders executed in Tape B securities, the Exchange proposes

to provide a rebate of \$0.0015 for maker shares. The Exchange is lowering these fees in an effort to increase the trading volume in Tape B securities.<sup>5</sup>

The Exchange proposes to add a note to the Schedule of Fees to clarify that Tape B securities maker transactions count towards ADV totals for the purpose of calculating Tape A and Tape C securities rebates.<sup>6</sup> Additionally, the Exchange proposes to clarify that the routing fee of \$0.003 continues to apply on a per share basis for all securities routed to another market center, including Tape B securities.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) of the Act<sup>7</sup> that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

### 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>5</sup> See Amendment No. 1.

<sup>6</sup> Equity EAMs receive a rebate of \$0.0035 per share in Tape A and Tape C securities for the maker shares exceeding the monthly ADV of 5 million. The first 5 million shares per day will continue to receive a rebate of \$0.0032 per share.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</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 No. SR-ISE-2008-53 on the subject line.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 19b-4(f)(2).

Paper comments:

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

All submissions should refer to File Number SR-ISE-2008-53. 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 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-2008-53 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>10</sup>

Florence E. Harmon  
Acting Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).