

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58676; File No. SR-ISE-2008-69)

September 29, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, LLC Relating to Amending the Fee Schedule

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 22, 2008, 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 with respect to transactions executed in securities reported to Tape B. The text of the proposed rule change is available on the Exchange's Internet website at <http://www.ise.com>.

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

On July 1, 2008, the Exchange adopted a fee structure for transactions in securities priced at or above \$1.00 that are reported to Tape B (hereinafter, referred to as 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 \$0.0015 on all Tape B shares.<sup>3</sup> For transactions in securities priced at or above \$1.00 that are reported to Tape A and Tape C (hereinafter referred to as Tape A and Tape C securities), the Exchange applies a tiered rebate structure, averaged across an entire month, whereby 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 order delivery orders in securities priced at or above \$1.00, the Exchange provides a rebate of \$0.0015 for maker shares executed in Tape B securities and a rebate of \$0.0027 for maker shares executed in Tape A and Tape C securities. The Exchange is proposing to amend the equity fee schedule to apply equity fees consistently across all securities, regardless of which Tape they are reported to. The Exchange is proposing to implement these fee changes on October 1, 2008. Specifically, the Exchange proposes to implement a tiered rebate structure for securities priced at or above \$1.00 across all Tapes, averaged across an entire month, where 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. Additionally, the Exchange proposes to reinstate a single

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<sup>3</sup> See Securities and Exchange Commission Release No. 58147 (July 11, 2008); 73 FR 41389 (July 18, 2008) (SR-ISE-2008-53) [sic].

taker fee for securities priced at or above \$1.00 of \$0.0030 for executions on all securities, regardless of which Tape they are reported to.

For shares executed on an order delivery basis in securities priced at or above \$1.00, the Exchange proposes to rebate \$0.0027 for all maker shares executed, regardless of which Tape they are reported to.

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 the avoidance of doubt, the Exchange proposes to add a note to the fee schedule stating that fees are based on ADV per member, per month.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>5</sup> in particular, in that it is designed to provide for the 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>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

### 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>6</sup> and Rule 19b-4(f)(2)<sup>7</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 Number SR-ISE-2008-69 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-2008-69. 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

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 19b-4(f)(2).

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 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

available publicly. All submissions should refer to File Number SR-ISE-2008-69 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>8</sup>

Florence E. Harmon  
Acting Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).