

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60654; File No. SR-ISE-2009-64)

September 11, 2009

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to Historical ISE Open/Close Trade Profile 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 August 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 adopt reduced subscription fees for academics for the sale of historical open and close volume data on ISE listed options. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.

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

1. Purpose

ISE currently sells a market data offering comprised of the entire opening and closing trade data of ISE listed options of both customers and firms, referred to by the Exchange as the ISE Open/Close Trade Profile.³ The ISE Open/Close Trade Profile offering is subdivided by origin code (i.e., customer or firm) and the customer data is then further subdivided by order size. The volume data is summarized by day and series (i.e., symbol, expiration date, strike price, call or put). The ISE Open/Close Trade Profile enables subscribers to create their own proprietary put/call calculations. The data is compiled and formatted by ISE as an end of day file. This market data offering is currently available to both members and non-members on annual subscription basis. The current subscription rate for both members and non-members is \$600 per month.

ISE also sells historical ISE Open/Close Trade Profile, a market data offering comprised of the entire opening and closing trade data of both customers and firms that dates back to May 2005, to both members and non-members, on an ad-hoc basis or as a complete set that dates back to May 2005. Ad-hoc subscribers can purchase this data for any number of months, beginning from May 2005 through the current month. Alternatively, subscribers can purchase the entire set of this data, beginning from May 2005 through the current month. The historical ISE Open/Close Trade Profile is compiled and formatted by ISE and sold as a zipped file. ISE

³ See Securities Exchange Act Release No. 56254 (August 15, 2007), 72 FR 47104 (August 22, 2007) (Approving SR-ISE-2007-70).

charges ad-hoc subscribers \$600 per request for each month of data and a discounted fee of \$500 per request per month for subscribers that want the complete set, i.e., from May 2005 to the present month.

The Exchange now proposes to adopt reduced fees for subscriptions to historical ISE Open/Close Trade Profile by academic institutions. Occasionally, academic institutions inquire with the Exchange about subscribing to the historical ISE Open/Close Trade Profile for research purposes but are not inclined to pay the full price. In order to encourage and promote academic studies of its market data, ISE proposes to charge a flat rate of \$500 for up to 12 months of data or \$1,000 for the complete data set. Academic institutions may not use the data in support of actual securities trading. The proposed discount applies only to the market data fees and does not cover any access or telecommunication charges that may be incurred by an academic institution. Moreover, with the adoption of reduced fees for academic institutions, ISE is not waiving any of its contractual rights and all academic institutions that subscribe to this data will be required to execute the appropriate subscriber agreement.

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 equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange notes that the proposed fees are reasonable and equitable in that they are deeply discounted and apply equally to all academic institutions as long as the purpose for subscribing to the data is educational and not vocational. Further, the Exchange believes the proposed rule filing will promote academic research of market data which can be of benefit to all market participants.

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

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) by order approve such proposed rule change; or
- (b) institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-ISE-2009-64 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-2009-64. 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 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 publicly available. All submissions should refer to File Number SR-ISE-2009-64 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.⁴

Florence E. Harmon
Deputy Secretary

⁴ 17 CFR 200.30-3(a)(12).