

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65916; File No. SR-ISE-2011-80)

December 8, 2011

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to API Fees

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 November 25, 2011, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 regarding the Exchange’s API or login fees. The text of the proposed rule change is available on the Exchange’s website (<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 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

The ISE is proposing to amend its Schedule of Fees regarding the Exchange’s API or login fees. ISE currently charges its Members a fee for each login that a Member utilizes for quoting or order entry, with a lesser charge for logins used for the limited purpose of “listening” to broadcast messages.<sup>3</sup> The Exchange currently has the following 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 and pulling quotes); (2) order entry and listening (allowing the user to enter orders and perform all other miscellaneous functions, such as setting parameters and pulling quotes (but not quoting)); and (3) listening (allowing the user only to query the system and to respond to broadcast messages).<sup>4</sup> The Exchange notes that quoting, order entry and listening are functionalities available only to Exchange Market Makers, i.e., Primary Market Makers and Competitive Market Makers, while order entry and listening are functionalities available only to non-Market Makers, i.e., Electronic Access Members.

ISE Market Makers currently receive an allocation of 1.8 million quotes per day per user.<sup>5</sup> If a Market Maker submits more quotes than those allocated, i.e., 1.8 million quotes per day per user as measured on average in a single month, the Market Maker is charged for additional users depending upon the number of quotes submitted. Each month, the total number

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<sup>3</sup> See Exchange Act Release No. 53522 (March 20, 2006), 71 FR 14975 (March 24, 2006) (SR-ISE-2006-09).

<sup>4</sup> Id.

<sup>5</sup> See Exchange Act Release No. 64269 (April 8, 2011), 76 FR 20752 (April 13, 2011) (SR-ISE-2011-21).

of quotes submitted by a Market Maker is divided by the number of trading days, resulting in the average quotes per day. This number is then divided by 1.8 million and rounded up to the nearest whole number, resulting in an implied number of users based on quotes. Market Makers are charged on a monthly basis for the greater of a) the greatest number of users that logged into the system, or b) the number of implied users based on quotes.

ISE currently charges Market Makers \$1,200 per month for each quoting session for up to 1.8 million quotes per day, on average for a month. Market Makers are charged an additional user fee of \$950 for each incremental usage of up to 1.8 million quotes per day per user. The Exchange now proposes to standardize this fee by charging a flat fee of \$1,000 for each login session. Each login session will continue to permit a Market Maker to enter up to 1.8 million quotes per day. Market Makers who exceed their monthly quoting allowance will also be charged \$1,000 per month for each subsequent usage of 1.8 million quotes per day in a month.

Earlier this year, the Exchange launched an enhanced trading system called Optimise. Under its old trading system, prior to Optimise, the Exchange had an additional category of login known as a “High Throughput User.”<sup>6</sup> A High Throughput User was a Market Maker who was allocated up to 3.6 million quotes per day in a month.<sup>7</sup> A High Throughput User was able to enter quotes, orders, and perform all other miscellaneous functions, such as setting parameters and pulling quotes.<sup>8</sup> High Throughput Users were charged a fee of \$2,400 per month and an additional user fee of \$1,900 for each incremental usage of up to 3.6 million quotes per day per

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<sup>6</sup> See Securities Exchange Act Release No. 55941 (June 21, 2007), 72 FR 35535 (June 28, 2007) (SR-ISE-2007-36).

<sup>7</sup> See supra note 5.

<sup>8</sup> Id.

user. Now that ISE has fully migrated to Optimise, the Exchange no longer has a need for the “High Throughput User” and proposes to remove it from its Schedule of Fees.

Additionally, now that the Exchange has transitioned to Optimise, Members no longer have a need to use their quote allocation across two trading platforms. As such, the Exchange proposes to delete text from its Schedule of Fees that permitted Members to use their quote allocation to access either the old trading system or Optimise.

The Exchange has designated this proposal to be operative on December 1, 2011.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated Members will be subject to the same fee structure, and access to the Exchange’s market is offered on fair and non-discriminatory terms. In other words, the proposed rule change will treat similarly situated Members in the same manner by assessing the same fees to all Members based on their quoting needs. The Exchange further believes that its proposal is both equitable and reasonable as it will standardize the fees charged by the Exchange. With this proposed rule change, all Members will be assessed the same access fee.

### 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.

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

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)(ii) of the Act.<sup>11</sup> At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2011-80 on the subject line.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2011-80. 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 website (<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 website viewing and printing 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 the 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-2011-80 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>12</sup>

Kevin M. O'Neill  
Deputy Secretary

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