

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51902; File No. SR-ISE-2005-19)

June 22, 2005

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Its Membership Dues Fee

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 April 15, 2005, the International Securities Exchange (“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 Exchange. The proposed rule change has been filed by ISE as establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2)<sup>4</sup> thereunder, which renders the proposal effective upon filing with the Commission. On June 15, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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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).

<sup>5</sup> Amendment No. 1 made minor, non-substantive clarifying changes to the purpose section and Exhibit 5. These changes to the proposed rule change did not affect the fees originally proposed. The effective date of the original proposed rule change is April 15, 2005, and the effective date of the amendment is June 15, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 15, 2005, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its Schedule of Fees to (i) institute a monthly percentage fee for computer gateways provided to members instead of a flat fee, (ii) increase certain computer network fees to cover associated equipment costs, and (iii) delete references to an expired "refresh" program. The text of the proposed rule change is available on the ISE's Web site ([www.iseoptions.com](http://www.iseoptions.com)), at the ISE's Office of the Secretary, 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 amend the Exchange's Schedule of Fees to (i) institute a monthly percentage fee for computer gateways provided to members instead of a flat fee, (ii) increase certain computer network fees to cover associated equipment costs, and (iii) delete references to an expired "refresh" program.

- Gateway Fees: The Exchange provides its members with "gateway" equipment which includes switches, servers and routers that they use to connect to the ISE. The Exchange finances these gateways through a lease with a vendor. The Exchange currently charges its

members a flat monthly fee for these gateways. If a member returns these gateways to ISE early, ISE remains obligated under its lease with the vendor, which results in additional cost to the Exchange. The proposed fee schedule will enable ISE to increase the number of different configurations of gateway equipment available to members. As a result, members will now be able to obtain gateway equipment that best suits their needs. Additionally, the proposed fee schedule will also allow ISE to offset any increased cost that the Exchange may incur in the event a member returns any gateway equipment early and to cover the Exchange's administrative costs. Accordingly, ISE proposes charging members a monthly fee of 4.75 percent of ISE's costs of leasing the gateway equipment from its vendor.<sup>6</sup> The Exchange believes that this proposed change will enable it to maintain control over price fluctuations, technology changes in equipment, and the costs associated with early equipment returns. The Exchange also proposes to add a level of granularity to its equipment installation, change, and removal fees. Rather than applying the fees to cabinets generally, the Exchange proposes to charge per piece of equipment. The Exchange expects the proposed fee change to have minimal impact to its members. For example, the monthly fee for a member that currently leases 2 routers with 2 T-1 lines, 2 switches and 2 gateways will decrease by \$29. Whereas, the monthly fee for a member who leases the same configuration

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<sup>6</sup> The Commission notes that in Amendment No. 1, ISE added language to Exhibit 5 to clarify that the 4.75% fee is based solely on the cost of the specific equipment leased by such member.

above but with 4 gateways will increase by \$86.<sup>7</sup>

- Network Fees. The Exchange proposes to increase its line connection charges for T-1 and T-3 lines to cover the cost of routers that enable members to link with the Exchange and the Exchange to link with its telecommunications provider. Until now, the Exchange had not charged members a fee to cover the cost of these routers. Accordingly, ISE proposes to change the T-1 line connection fee from \$250 to \$300, and the T-3 line connection fee from \$1,250 to \$1,500. Additionally, the Exchange proposes to extend the "megabit fee" charged to members who connect via Ethernet to members who connect via all third-party managed service providers.
- Expired "Refresh" Program. The Exchange is deleting references to an expired member "refresh" program. That program, which was approved by the Commission on November 12, 2004,<sup>8</sup> expired on November 30, 2004.

## 2. Statutory basis

The Exchange believes that the proposed rule change 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 provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

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<sup>7</sup> These are just two examples of fees charged by the Exchange. Members have many options in the gateway equipment they lease from the Exchange based on their business model. The fee charged by the Exchange is entirely dependent on the number and type of gateway equipment leased by a member.

<sup>8</sup> See Securities Exchange Act Release No. 50658 (November 12, 2004), 69 FR 67768 (November 19, 2004).

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

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

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

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>12</sup> because it establishes or changes a due, fee, or other charge imposed by the ISE. At any time within 60 days of the filing of the 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.<sup>13</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2005-19 on

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

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> See supra note 3.

the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-ISE-2005-19. 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 Section, 100 F Street, NE, Washington, DC 20549. Copies of the filing also will be available for inspection and copying at the principal offices 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-2005-19 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

J. Lynn Taylor  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).