

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53532; File No. SR-ISE-2005-56)

March 21, 2006

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Establish Fees for Enhanced Sentiment Market Data

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 1, 2005, the International Securities Exchange, Inc. ("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 ISE. On March 14, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange is proposing to amend its Schedule of Fees to establish fees for enhanced sentiment market data. The text of the proposed rule change is available at the Commission's Public Reference Room, at the Exchange and at the Exchange's Web site (http://www.iseoptions.com/legal/proposed_rule_changes.asp).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the ISE added an unlimited queries subscription level, and explained in the purpose section of the proposed rule change the amount of the proposed fees, the impact of the Broker Marketing Alliance (described below) on the proposed fees, and the tier system adopted by the Exchange to facilitate the participation by all member firms for a bonus rebate.

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 as amended 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 Exchange 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 ISE currently creates market data that consists of options quotes and orders that are generated by its members and all trades that are executed on the Exchange. The ISE also produces a Best Bid/Offer, or BBO, with the aggregate size from all outstanding quotes and orders at the top price level, or the “top of the book.” This data is formatted according to Options Price Reporting Authority (“OPRA”) specification and sent to OPRA for redistribution. OPRA processes the ISE’s data along with the same data sets from the other five options exchanges and creates a National BBO, or “NBBO,” from all six options exchanges.

The ISE also creates data that is not disseminated by OPRA. One example of such data is the ISE Sentiment Index®, or ISEE®, a calculation that represents an overall view of market sentiment. The ISEE provides an intra-day picture of how investors view stock prices by assessing customers’ option trading activity. Unlike the traditional put/call ratio, which makes no distinction between customer, market maker or firm

transactions, the ISEE measures only opening long customer transactions on the ISE. The ISE updates the current ISEE value hourly during market hours and posts it for free on its Web site.⁴ The ISEE is the basis for the enhanced sentiment market data, for which the Exchange is proposing to establish the fees in this proposed rule change.

The ISE believes the enhanced sentiment data offering will allow subscribers to identify bullish and bearish investor sentiment for nearly any issue traded on the Exchange using the same formula that is used for the ISEE calculation. Where the ISEE is a single value for the overall market sentiment, the enhanced sentiment data offering will provide more specific information that will allow an end user to retrieve a sentiment value for an individual symbol using a query tool, which is an intuitive Web browser interface. For example, an end user may be interested in the sentiment value for only the Nasdaq 100 Tracking Stock (symbol QQQQ). The user would just enter that symbol into the query tool interface to retrieve the sentiment value. In addition to the enhanced sentiment data query tool, there will also be a sentiment scanning tool that will comb the market for sentiment levels that meet pre-defined parameters. For example, an end user of a pre-defined query for the scanning tool would be able to determine which three stocks are most bullish in the oil sector based on sentiment values. The enhanced sentiment data will include sentiment values for particular indices, industry sectors or individual stocks and will be calculated three times per hour versus only one time per hour for the ISEE.

The enhanced sentiment data will be available to on-line investors on a subscription basis. The Exchange proposes four subscription levels: (i) 100 queries for

⁴ http://www.iseoptions.com/marketplace/statistics/sentiment_index.asp.

\$11.95 per month; (ii) 200 queries for \$14.95 per month; (iii) unlimited queries for \$19.95 per month; and (iv) unlimited pre-defined queries for \$11.95 per month. This enhanced sentiment data will also be offered by some broker-dealers that participate in the ISE Broker Marketing Alliance program. A Broker Marketing Alliance is an arrangement between ISE and a participating US broker-dealer who markets the enhanced sentiment offering to its customers. Clients of participating brokers will be able to take advantage of a discounted price for the same four subscription levels: (i) 100 queries for \$9.95 per month; (ii) 200 queries for \$11.95 per month; (iii) unlimited queries for \$15.95 per month; and (iv) unlimited pre-defined queries for \$9.95 per month.

Under a Broker Marketing Alliance, participating U.S. broker-dealers will participate in a revenue sharing arrangement with the Exchange for each of their referred customers that subscribes to the enhanced sentiment offering. Participating broker-dealers will receive a rebate of 35% of the subscription fee collected from subscribers. An additional bonus rebate will be paid to broker-dealers that achieve a subscription level based on the size of their firm and the number of clients that subscribe to the service. The Exchange believes that a tier system, as reflected in the Notes section of the proposed Schedule of Fees, is the most equitable method by which all member firms, regardless of their size, will be able to participate in the rebate program. Accordingly, the Exchange proposes a bonus rebate payable as follows: \$500 per month for 500 subscribers at firms with 10,000-25,000 customers; \$750 per month for 750 subscribers at firms with 25,001-100,000 customers; and \$1,000 per month for 1,000 subscribers at firms with 100,001 or more customers. The Exchange believes that firms with a customer base of 10,000-25,000 accounts will be able to achieve 500 subscriptions with

relatively the same ease as firms with a customer base of 25,001-100,000 accounts and 100,001 or more accounts, each of which are expected to achieve 750 and 1000 subscriptions, respectively, in order to qualify for the additional bonus rebate. The proposed additional bonus amounts paid to the brokers are all equal to 10.05% of the subscription revenue based on a subscription fee of \$9.95 per month. For example, 500 subscribers at \$9.95 is equal to \$4,975 and the \$500 bonus is equal to 10.05% of the \$4,975; 750 subscribers at \$9.95 is equal to \$7,462.50 and the \$750 bonus is equal to 10.05% of the \$7,462.50; and 1,000 subscribers at \$9.95 is equal to \$9,950 and the \$1,000 bonus is equal to 10.05% of the \$9,950.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁵ which requires that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The ISE developed and conducted a comprehensive survey of a cross-section of participants in the financial services industry regarding their level of interest in a number of proprietary market data offerings and, based on the results of that survey, the Exchange developed a business plan to create and offer a number of proprietary market data products targeted to potential user groups, e.g., individual investors, institutional investors, broker-dealers, etc. The Exchange also retained a consultant to validate the business plan and to provide advice on the structure and amount of fees to charge for these products. The ISE established a tiered pricing structure for enhanced sentiment data based on all of this information. The ISE believes that, under the tiered pricing

⁵ 15 U.S.C. 78(f)(b)(4).

structure, it is able to charge a lower fee to users who subscribe through the Broker Marketing Alliance because the Exchange will save on advertising costs associated with that user. Conversely, the Exchange believes it must charge a higher fee to users who subscribe directly on its Web site because it must incur advertising costs associated with that user. The Exchange believes the tiered levels and prices offered for the proposed market data offering provide investors with an ability to choose a plan that best suits their needs, from an annual subscription that is discounted, to a one-time subscription, regardless of whether an investor subscribes directly through the ISE's Web site or through a Broker Marketing Alliance. Further, the Exchange believes the proposed rule filing provides market participants with an opportunity to obtain enhanced sentiment market data in furtherance of their investment decisions.

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

The Exchange believes that the proposed rule change would 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 written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule

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 No. SR-ISE-2005-56 on the subject line.

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-2005-56. 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. 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-2005-56 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Nancy M. Morris
Secretary

⁶ 17 CFR 200.30-3(a)(12).