

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54152; File No. SR-ISE-2006-36)

July 14, 2006

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Payment for Order Flow Fee Changes

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 July 3, 2006, 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 Exchange. The ISE has designated this proposal as one changing a fee imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 proposes to amend its Schedule of Fees regarding the payment for order flow fees collected by the Exchange. The text of the proposed rule change is available on the ISE's Web site at <http://www.iseoptions.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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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).

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 ISE is proposing to amend its Schedule of Fees regarding the payment for order flow (“PFOF”) fees collected by the Exchange. The Exchange states that it currently operates a PFOF program as approved by the Commission.<sup>5</sup> The PFOF program is funded through a fee, currently set at \$0.55 per contract, paid by Exchange market makers for each customer contract they execute. Currently, all funds collected by the Exchange are administered by specified market makers.<sup>6</sup> PFOF fees collected by the Exchange that are not distributed are rebated back to the market makers.

The Exchange proposes to increase its PFOF fee to \$0.65 per contract to match the fee that the Chicago Board Options Exchange, Incorporated (“CBOE”), under the PFOF program it

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<sup>5</sup> See Securities Exchange Act Release No. 43833 (January 10, 2001), 66 FR 7822 (January 25, 2001) (SR-ISE-00-10).

<sup>6</sup> The Exchange states that initially only Primary Market Makers administered PFOF pools. However, the Exchange recently amended its PFOF program to allow a Competitive Market Maker (“CMM”) to administer the PFOF funds collected by the Exchange with respect to orders in a group of options classes preferenced to that CMM. See Securities Exchange Act Release No. 53127 (January 13, 2006), 71 FR 3582 (January 23, 2006) (SR-ISE-2005-57).

administers, currently charges its members. Additionally, the Exchange states that Complex Orders<sup>7</sup> are currently exempt from the ISE's PFOF fee. The Exchange represents that other options exchanges, however, notably CBOE, do not provide a similar exception. Accordingly, and also for competitive reasons, the Exchange proposes to charge a PFOF fee on Complex Orders traded on the ISE.

The ISE states that it is committed to matching other exchanges' PFOF programs in order to maintain its competitive position. The ISE states that its Board has provided management with delegated authority to increase the ISE's PFOF fee further in the event that increases in the PFOF fee of other exchanges present competitive challenges to the ISE.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>9</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among ISE members and other persons using its facilities.

### 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>7</sup> See Securities Exchange Act Release No. 46646 (October 11, 2002), 67 FR 64428 (October 18, 2002) (Approving SR-ISE-2002-20, ISE's Complex Order Rule, on a permanent basis).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</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 proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. 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-2006-36 on the subject line.

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-ISE-2006-36. 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-2006-36 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>12</sup>

Nancy M. Morris  
Secretary

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