

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60778; File No. SR-ISE-2009-72)

October 2, 2009

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Customer Fees for Certain Complex Orders

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 October 1, 2009, the International Securities Exchange, LLC (the “Exchange” or “ISE”) 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 ISE. ISE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change 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 fee schedule for customer fees for certain Complex Orders. 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.

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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).

<sup>4</sup> 17 CFR 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 Exchange 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.

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 ISE's fee schedule for customer fees for certain Complex Orders.<sup>5</sup> The Exchange currently has a fee of \$0.20 per contract applicable to customers that transact in Complex Orders, i.e., customer orders that interact with Complex Orders residing on the complex order book thereby taking liquidity from the complex order book.<sup>6</sup> The Exchange waives this fee for the first 15,000 contracts transacted in a month by a member on behalf of its customers. This fee applies once a member transacts more than 15,000 contracts in a month (whether on behalf of one or more than one of its customers) that take liquidity from the complex order book. This fee generally applies to non-broker-dealer individuals and entities that have access to information and technology that enables them to trade, generally in large volume, in the same manner as a broker-dealer, i.e., these customers are able to quickly hit the bid or lift an offer on the Exchange's complex order book.

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<sup>5</sup> Complex Orders are defined in ISE Rule 722(a).

<sup>6</sup> See Exchange Act Release No. 55247 (February 6, 2007), 72 FR 7099 (February 14, 2007).

The Exchange notes the current fee waiver at times affects retail investor orders. The purpose of the fee is to charge customers that trade like market professionals and are able to take liquidity from the exchange's complex order book in large volume because of their sophisticated trading systems. Therefore, ISE proposes to refine this fee by adopting a threshold of 1,000 orders rather than 15,000 contracts. The Exchange believes switching the threshold from contracts-based to orders-based will capture the trading activity of those customers that intentionally engage in the business of taking liquidity from the Exchange's complex order book. The Exchange believes that retail investors that interact with Complex Orders resident on the complex order book are not likely to exceed 1,000 orders and thus are not likely to be charged this fee.

The Exchange also proposes to increase this fee from \$0.20 per contract to \$0.25 per contract. ISE proposes to implement this fee change on October 1, 2009.

## 2. Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of dues, fees and other charges among its members and other persons using its facilities. In particular, the Exchange believes it is reasonable to charge customers that trade like market professionals and take liquidity from the Exchange's complex order book the same fee that the Exchange charges broker-dealers and market makers for taking liquidity from the Exchange's complex order book.

### 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(2)<sup>8</sup> thereunder because it establishes a due, fee, or other charge imposed by ISE.

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-2009-72 on the subject line.

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<sup>7</sup> 5 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 19b-4(f)(2).

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2009-72. 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-2009-72 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>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).