

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60861; File No. SR-ISE-2009-77)

October 22, 2009

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

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 October 1, 2009, International Securities Exchange, LLC (“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 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 adopt a fee for certain customer orders executed in the Exchange’s Facilitation, Solicitation and Price Improvement Mechanisms. 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.

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 Exchange has prepared summaries, set forth in Sections A, B, and C

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

As of October 1, 2009, the Exchange has implemented a new order type, Professional Orders.³ For competitive reasons, the Exchange has determined to charge the same execution fees for all customer orders, i.e., for all orders that are not for the account of a broker-dealer, including Professional Orders.⁴ ISE, however, believes that trading in the Exchange's Facilitation, Solicitation and Price Improvement Mechanisms is primarily activity that is conducted by broker-dealers. Thus, it is reasonable for the Exchange to charge non-broker-dealer orders that conduct a Professional Order business the same fee the Exchange charges broker-dealer orders. Accordingly, the Exchange now proposes to adopt a fee for Professional Orders that are executed in the Exchange's Facilitation, Solicitation and Price Improvement Mechanisms. Specifically, the Exchange proposes to charge a fee of \$0.20 per contract for Professional Orders for their crossing activity, i.e., their interaction in the Exchange's Facilitation, Solicitation and Price Improvement Mechanism.

ISE proposes to implement this fee change on October 1, 2009.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Exchange Act") for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an

³ A "Professional Order" is defined by the Exchange to mean an order that is for the account of a person or entity that is not a Priority Customer. A "Priority Customer" is defined by the Exchange to mean a person or entity that is (i) not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

⁴ See Exchange Act Release No. 34-60334 [sic] (July 17, 2009), 74 FR 36802 (July 24, 2009).

equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the proposed rule change will allow the Exchange to charge a similar fee to both broker-dealer orders and non-broker-dealer orders that interact in the Exchange's Facilitation, Solicitation and Price Improvement Mechanisms.

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) of the Act⁵ and Rule 19b-4(f)(2)⁶ thereunder. 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:

⁵ 15 U.S.C. 78s(b)(3)(A) [sic].

⁶ 17 CFR 19b-4(f)(2).

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 Number SR-ISE-2009-77 on the subject line.

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-2009-77. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also 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 No. SR-ISE-2009-77 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Elizabeth M. Murphy
Secretary

⁷ 17 CFR 200.30-3(a)(12).