

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61131; File No. SR-ISE-2009-101)

December 8, 2009

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 24, 2009, the International Securities Exchange, LLC (the “Exchange” or the “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 the self-regulatory organization. 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 is proposing to amend its Schedule of Fees regarding its Competitive Market Maker (“CMM”) Inactivity Fee. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.ise.com>), on the Commission’s Web site at <http://www.sec.gov>, 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 self-regulatory organization 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

ISE proposes to amend its Schedule of Fees regarding its CMM Inactivity Fee.

Specifically, the Exchange proposes to amend its current CMM Inactivity Fee for any member who is not currently a market maker and acquires one or more CMM Trading Right by providing the Exchange the ability to waive this fee for up to three full calendar months.

ISE currently charges the owner³ of a CMM membership an Inactivity Fee of \$25,000 a month per trading right if the owner does not (i) itself operate the CMM membership, (ii) lease the CMM trading right to another member which operates the CMM membership, or (iii) avail itself to one of the exemptions specifically authorized in the Notes to the CMM Inactivity Fee on the Schedule of Fees.

The purpose of the CMM Inactivity Fee has always been to promote greater trading activity on the Exchange. The Exchange believes that anything short of full utilization of its trading rights has adverse consequences. Not only does the Exchange lose fee revenues that these trading rights would generate, the ISE market place loses liquidity that additional market making would provide. The Exchange, however, also recognizes that firms, and in particular firms that are new members of the Exchange, need time to ramp up their operations to the point where they are able to efficiently operate as a market maker. Under the Exchange's current fee schedule, a new market maker would be subject to an inactivity fee of \$25,000 per Trading Right

³ The Note to the CMM Inactivity Fee on the Schedule of Fees provides that the fee applies to the owner of the CMM membership, unless the inactive CMM membership is subject

per month if that market maker is not able to commence operations immediately after purchasing the Trading Rights. The Exchange believes assessing this fee is a strong disincentive for any new member to acquire Trading Rights and become a market maker on the Exchange.

Thus, the Exchange proposes to amend its current CMM Inactivity Fee with respect to any member who acquires one or more CMM Trading Right by providing the Exchange the ability to waive this fee for up to three full calendar months. The waiver, which would be granted by an Exchange official designated by the Exchange's Board of Directors, would only apply if the member purchasing the Trading Rights is not currently an ISE market maker and needs additional time to commence its operations on the Exchange as a market maker. The Exchange believes granting the waiver will provide new market makers sufficient time to become operationally ready.

This proposed fee change will be operative on December 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 equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the proposed fee change will allow the Exchange to recoup lost revenue and encourage the timely operation of its CMM Trading Rights.

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.

to a lease that was approved by the Exchange prior to the effective date of the fee, in which case the fee would apply to the lessee.

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 Act⁴ and Rule 19b-4(f)(2)⁵ 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 proposal 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-2009-101 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.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 19b-4(f)(2).

All submissions should refer to File No. SR-ISE-2009-101. 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 changes 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 am and 3:00 pm. 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 available publicly. All submissions should refer to File No. SR-ISE-2009-101 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.⁶

Florence E. Harmon
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).