

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64269 ; File No. SR-ISE-2011-21)

April 8, 2011

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

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 April 6, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange 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 the Exchange's API or login fees. The text of the proposed rule change is available on the Exchange's website (<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 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 ISE is proposing to amend its Schedule of Fees regarding the Exchange's API or login fees. ISE currently charges its members a fee for each login that a Member utilizes for quoting or order entry, with a lesser charge for logins used for the limited purpose of "listening" to broadcast messages.³ The Exchange currently has the following categories of authorized logins: (1) quoting, order entry and listening (allowing the user to enter quotes, orders, and perform all other miscellaneous functions, such as setting parameters and pulling quotes); (2) order entry and listening (allowing the user to enter orders and perform all other miscellaneous functions, such as setting parameters and pulling quotes (but not quoting)); and (3) listening (allowing the user only to query the system and to respond to broadcast messages).⁴ The Exchange notes that quoting, order entry and listening are functionalities available only to Exchange market makers, i.e., Primary Market Makers and Competitive Market Makers, while order entry and listening are functionalities available only to non-market makers, i.e., Electronic Access Members.

³ See Exchange Act Release No. 53522 (March 20, 2006), 71 FR 14975 (March 24, 2006) (SR-ISE-2006-09).

⁴ Id.

ISE market makers currently receive an allocation of 1,300,000 quotes per day per user.⁵ If a market maker submits more quotes than those allocated, i.e., 1,300,000 quotes per day per user as measured on average in a single month, the market maker is charged for additional users depending upon the number of quotes submitted. Each month, the total number of quotes submitted by a market maker across all bins (i.e., group of options to which the market maker is appointed), is divided by the number of trading days, resulting in the average quotes per day. This number is then divided by 1,300,000 and rounded up to the nearest whole number, resulting in an implied number of users based on quotes. Market makers are invoiced on a monthly basis for the greater of a) the greatest number of users that logged into the system, or b) the number of implied users based on quotes.

The Exchange also has an additional category of login known as a “High Throughput User.”⁶ A High Throughput User is a market maker who is allocated up to 2,600,000 quotes per day in a month.⁷ A High Throughput User is able to enter quotes, orders, and perform all other miscellaneous functions, such as setting parameters and pulling quotes.⁸

ISE currently charges market makers \$950 per month for each quoting session for up to 1,300,000 quotes per day, on average for a month. Market makers are charged an

⁵ See Exchange Act Release No. 56721 (October 30, 2007), 72 FR 62502 (November 5, 2007) (SR-ISE-2007-91).

⁶ See Securities Exchange Act Release No. 55941 (June 21, 2007), 72 FR 35535 (June 28, 2007) (SR-ISE-2007-36).

⁷ See supra note 3.

⁸ Id.

additional user fee of \$950 for each incremental usage of up to 1,300,000 quotes per day per user. For High Throughput Users, ISE charges a fee of \$1,900 per month. High Throughput Users are charged an additional user fee of \$1,900 for each incremental usage of up to 2,600,000 quotes per day per user.

The Exchange is scheduled to launch an enhanced trading system called Optimise on April 11, 2011. In anticipation of the launch of the Optimise trading platform, the Exchange proposes to amend its API quote fees. Specifically, ISE proposes to increase the monthly fee and quote allowance for non-High Throughput Users to \$1,200 and 1,800,000 quotes per day per user, respectively. Members that quote in excess of 1,800,000 quotes per day average in a month will be charged an additional login of \$950 per month for each subsequent usage of 1,800,000 quotes per day in a month. For example, a market maker who uses four million quotes per day would be charged as follows: \$1,200 for the initial session with an allowance of 1,800,000 quotes per day plus \$1,900 for two additional quoting sessions, each with an allowance of 1,800,000 quotes per day.

For “High Throughput Users,” ISE proposes to increase the monthly fee and quote allowance to \$2,400 and 3,600,000 quotes per day, respectively. Members that quote in excess of 3,600,000 quotes per day in a month will be charged an additional login of \$1,900 per month for each subsequent usage of 3,600,000 quotes per day in a month.

As the Exchange migrates from its current trading platform to Optimise, Members will undoubtedly be required to login to access both trading systems and thus could be

charged for accessing both systems. The Exchange does not intend to charge members for logging in to both systems simultaneously. Members will be charged a single login fee regardless of whether they use their quote allocation for the current trading system or for the Optimise trading system instead of charging for quote allocation separately for each of the trading systems. Therefore, until the Exchange fully migrates to the Optimise trading system, ISE proposes to waive any API fees that are duplicative.

ISE represents that the proposed increase in the allocation of quotes per day per user will not have an adverse effect on capacity on the Exchange.

The Exchange has designated this proposal to be operative on April 11, 2011.

2. Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated Members will be subject to the same fee structure, and access to the Exchange's market is offered on fair and non-discriminatory terms. In other words, the proposed rule change will treat similarly situated Members in the same manner by assessing the same fees to all Members based on their quoting needs. The Exchange also believes that it is equitable to assess different access fee based on the type of logins as long as the same access fee is assessed to all Members that are similarly

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

situated. The Exchange also believes that the proposal is reasonable because during the transition period to the Optimise trading platform the Exchange will waive any API fees that are duplicative to ensure Members are not burdened by having to pay fees to login in to both the current trading platform and the Optimise platform.

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)(ii) of the Act.¹¹ At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2011-21 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISE-2011-21. 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 Commissions Internet website <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 website viewing and printing 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-2011-21 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 Trading and Markets, pursuant to delegated authority.¹²

Cathy H. Ahn
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).