

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67955; File No. SR-ISE-2012-76)

October 1, 2012

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Reduced Fees for Historical ISE Open/Close Trade Profile Intraday Market Data Offering

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 September 20, 2012, 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 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees to adopt reduced subscription fees for academics for the sale of historical ISE Open/Close Trade Profile Intraday market data offering. The text of the proposed rule change is available on the Exchange's Web site 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 currently sells the ISE Open/Close Trade Profile Intraday, a market data offering comprised of the entire opening and closing trade data of ISE listed options of both customers and firms updated at 10-minute intervals throughout the trading day.³ The ISE Open/Close Trade Profile Intraday offering is subdivided by origin code (i.e., customer or firm) and the customer data is then further subdivided by order size. The volume data is summarized by day and series (i.e., symbol, expiration date, strike price, call or put). The ISE Open/Close Trade Profile Intraday enables subscribers to create their own proprietary put/call calculations. This market data offering is currently available to both members and non-members on annual subscription basis. The current subscription rate for both members and non-members is \$2,000 per month.

ISE also sells historical ISE Open/Close Trade Profile Intraday. The historical ISE Open/Close Trade Profile Intraday offering is a compilation of the ISE Open/Close Trade Profile Intraday files. ISE sells historical ISE Open/Close Trade Profile Intraday on an ad-hoc basis. An ad-hoc request can be for any number of months, quarters or years for which the data is available. Members and non-members are currently able to purchase this data by paying a one-time fee of \$1,000 per month, \$2,000 per quarter or \$8,000 per year. For example, a subscriber

³ See Securities Exchange Act Release No. 61317 (January 8, 2010), 75 FR 2915 (January 19, 2010) (SR-ISE-2009-103).

that wants to purchase data for August 2012 will pay \$1,000; a subscriber that wants to purchase data for July, August and September of 2012 will pay \$2,000; a subscriber that wants to purchase data for all twelve months of 2011 will pay \$8,000.

The Exchange now proposes to adopt reduced fees for subscriptions to historical ISE Open/Close Trade Profile Intraday by academic institutions.⁴ Occasionally, academic institutions inquire with the Exchange about subscribing to the historical ISE Open/Close Trade Profile Intraday for research purposes but are not inclined to pay the full price. In order to encourage and promote academic studies of its market data, ISE proposes to charge a flat rate of \$1,000 for an ad-hoc request of up to 12 months of data or \$2,000 for the complete data set. Academic institutions may use this data for academic purposes only and not for actual securities trading. The proposed discount applies only to the market data fees and does not cover any access or telecommunication charges that may be incurred by an academic institution. Moreover, with the adoption of reduced fees for academic institutions, ISE is not waiving any of its contractual rights and all academic institutions that subscribe to this data will be required to execute the appropriate subscriber agreement.

Further, the Exchange will apply a credit towards the purchase of historical ISE Open/Close Trade Profile Intraday data by an academic institution or academic author if such academic institution or academic author has previously purchased historical ISE Open/Close Trade Profile End of Day data and if the academic institution and/or academic author provides

⁴ The Exchange currently has reduced subscription fees for academic institutions that want to purchase historical ISE Open/Close Trade Profile End of Day market data offering. Academic institutions are able to purchase a complete set of the data or on an ad-hoc basis for up to 12 months of data. See Securities Exchange Act Release No. 60859 (October 21, 2009), 74 FR 55610 (October 28, 2009) (SR-ISE-2009-64).

ISE with a link to published research papers on the use of the ISE Open/Close data that can be posted on the Exchange's website. For example, a university that previously purchased a complete set of the ISE Open/Close Trade Profile End of Day data and paid the Exchange \$1,000 for that data will pay an incremental \$1,000 for a complete set of the ISE Open/Close Trade Profile Intraday data instead of paying \$2,000 for the complete set.

2. Basis

The basis under the Securities Exchange Act of 1934 (the "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. The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Section 6(b)(4) of the Act,⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which ISE operates or controls. The Exchange notes that the proposed fees are reasonable and equitable in that they are deeply discounted and apply equally to all academic institutions as long as the purpose for subscribing to the data is educational and not vocational. Further, the Exchange believes the proposed rule filing will promote academic research of market data which can be of benefit to all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISE 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. The

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

Exchange believes that the proposed rule change will further promote and encourage academic studies of the ISE Open/Close Trade data for the benefit of all market participants.

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 Act⁷ and Rule 19b-4(f)(2)⁸ thereunder. At any time within 60 days of the filing of the 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 change should be approved or disapproved.

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:

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-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-2012-76 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-2012-76. 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 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 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 offices 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 Number SR-ISE-2012-76, 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.⁹

Kevin M. O'Neill
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).