

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73276; File No. SR-ISE-2014-41)

October 1, 2014

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 17, 2014, 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 and II 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 is proposing to amend the Schedule of Fees. 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 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 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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 6, 2013 the ISE implemented a temporary Managed Data Access Service program that established a new pricing and distribution model for the sale of a number of real-time market data products.<sup>3</sup> On December 20, 2013, the Exchange extended this program until May 30, 2014, and the program lapsed on that date.<sup>4</sup> The Exchange now proposes to institute another temporary Managed Data Access Service program on the same terms, for an additional one year period ending August 31, 2015, so that the Exchange can continue to provide this alternative delivery option for ISE data feeds.<sup>5</sup> Managed Data Access Service is a pricing and administrative option whereby the ISE assesses fees to Managed Data Access Distributors,<sup>6</sup> who redistribute market data to Managed Data Access Recipients.<sup>7</sup> Managed Data Access Distributors

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<sup>3</sup> See Securities Exchange Act Release No. 69806 (June 20, 2013), 78 FR 38424 (June 26, 2013) (ISE-2013-39). The Exchange also offers a similar Managed Data Access Service program for its Implied Volatility and Greeks Feed. See Securities Exchange Act Release No. 65678 (November 3, 2011), 76 FR 70178 (November 10, 2011) (ISE-2011-67). This filing does not apply to the Managed Data Access Service program for the Implied Volatility and Greeks Feed, which is a permanent program.

<sup>4</sup> See Securities Exchange Act Release No. 71230 (January 2, 2014), 79 FR 1405 (January 8, 2014) (ISE-2013-74).

<sup>5</sup> The Managed Data Access Service program provides an alternative delivery option for the Real-time Depth of Market Raw Data Feed (“Depth Feed”), the Order Feed, the Top Quote Feed, and the Spread Feed.

<sup>6</sup> A Managed Data Access Distributor redistributes ISE data feeds and permits access to the information in those data feeds through a controlled device. A Managed Data Access Distributor can also redistribute a data feed solution to specific IP addresses, including an Application Programming Interface (“API”) or similar automated delivery solutions, with only limited entitlement controls (*e.g.*, usernames and/or passwords) to a recipient of the information.

<sup>7</sup> A Managed Data Access Recipient is a subscriber to the Managed Data Access Distributor who receives a reformatted data feed in a controlled device or at a specific IP address. Market Data Access Recipients may be Professional or Non-Professional users.

are required to monitor the delivery of the data retransmitted to their clients, and must agree to reformat, redisplay and/or alter the data feeds prior to retransmission without affecting the integrity of the data feeds and without rendering any of the feeds inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory.

The proposed fees for the Managed Data Access Service are as follows:

The Exchange proposes to charge a fee to each Managed Data Access Distributor of \$2,500 per month for the Depth Feed, \$1,500 for each of the Top Quote Feed and Spread Feed, and \$1,000 per month for the Order Feed. The Exchange also proposes to charge a fee for each IP address at Managed Data Access Recipients that receive market data redistributed by a Managed Data Access Distributor, which is \$750 per month for the Depth Feed, \$500 per month for each of the Top Quote Feed and Spread Feed, and \$350 per month for the Order Feed.<sup>8</sup> In addition, the Exchange proposes to charge a controlled device fee for each controlled device permitted to access market data redistributed by a Managed Data Access Distributor to a Market Data Access Recipient that is a Professional user,<sup>9</sup> which is \$50 per month for the Depth Feed, \$20 per month for the Top Quote Feed, \$25 per month for the Spread Feed, and \$10 per month for the Order Feed.<sup>10</sup> Finally, the Exchange proposes to charge a controlled device fee of \$5 per month for each controlled device permitted to access information in the Depth Feed redistributed by a Managed Data Access Distributor to a Market Data Access Recipient that is a

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<sup>8</sup> This fee is charged per IP address, which covers both primary and back-up IP addresses at a Managed Data Access Recipient.

<sup>9</sup> A “Professional user” is an authorized end-user of the ISE data feeds that has not qualified as a Non-Professional user.

<sup>10</sup> A controlled device is any device that a distributor of an ISE data feed permits to access the information in that data feed.

Non-Professional user.<sup>11</sup> For each of the above ISE data feeds, Market Data Access Distributors are subject to a minimum fee, which is \$5,000 per month for the Depth Feed, \$3,000 per month for each of the Top Quote Feed and Spread Feed, and \$2,000 per month for the Order Feed.

These fees are the same as fees previously charged under the lapsed the Managed Data Access Service program.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act,<sup>12</sup> and the rules and regulations thereunder that are applicable to a national securities exchange, including the requirements of Section 6(b) of the Act.<sup>13</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act,<sup>14</sup> because is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule change is consistent with the provisions Section 6(b)(4) of the Act<sup>15</sup> in that it is designed to provide for the equitable allocation of

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<sup>11</sup> There is no controlled device fee for Non-Professional users of the Top Quote Feed, Spread Feed, or Order Feed. A “Non-Professional user” is an authorized end-user of the ISE data feeds who is a natural person and who is neither: (a) registered or qualified with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (b) engaged as an “investment advisor” as that term is defined Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that act); nor (c) employed by a bank or other organization exempt from registration under Federal and/or state securities laws to perform functions that would require him/her to be so registered or qualified if he/she were to perform such functions for an organization not so exempt.

<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> 15 U.S.C. 78f(b)(4).

reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposed program is consistent with the protection of investors and the public interest as the terms of the program are substantially similar to managed data programs offered by other options exchanges,<sup>16</sup> and will provide a competitive fee model for subscribers to ISE market data. The Exchange initially established a managed data program for a six month period, later extended to a year, in order gauge the level of interest in this new pricing and distribution model, and now wishes to institute another temporary program so that it may continue to offer an attractive pricing program that competes with programs offered by other options exchanges. The Managed Data Access Service promotes broader distribution of controlled data, while offering a pricing option that should result in lower fees for subscribers. The Exchange continues to believe that the fees for this program are fair and equitable as they are consistent with fees previously charged under this program, and as explained above are intended to offer a pricing model that should result in lower fees for ISE market data subscribers. The Exchange is constrained in pricing the Managed Data Access Service as these services are entirely optional, and firms may choose whether or not to purchase proprietary ISE market data products or to utilize any specific pricing alternative. Moreover, the program is not unfairly discriminatory because it provides an opportunity for all distributors and subscribers, both Professional and Non-Professional, to access the ISE data feeds at a potentially lower cost.

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

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<sup>16</sup> A number of other exchanges have adopted managed data access services to distribute their proprietary market data. See e.g. Securities Exchange Act Release Nos. 63276 (November 8, 2010), 75 FR 69717 (November 15, 2010) (SR-NASDAQ-2010-138); and 69182 (March 19, 2013), 78 FR 18378 (March 26, 2013) (SR-PHLX-2013-28). ISE also currently offers managed data access service on a permanent basis for the ISE Implied Volatility and Greeks Feed. See supra note 3.

In accordance with Section 6(b)(8) of the Act,<sup>17</sup> the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change will promote competition as it allows the ISE to continue to offer a temporary program that provides an attractive alternative pricing model for ISE market data that is similar to pricing programs in place on other options exchanges. The vigor of competition for market data is significant and the Exchange believes that this proposal clearly evidences such competition. ISE proposes to offer this optional Managed Access Data Service pricing model in order to keep pace with changes in the industry and evolving customer needs.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup>

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<sup>17</sup> 15 U.S.C. 78f(b)(8).

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule

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 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:

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-2014-41 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISE-2014-41. 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

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change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The ISE has satisfied this requirement.

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, 100 F Street, NE, Washington, D.C. 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 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-2014-41, 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>20</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).