

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52203; File No. SR-ISE-2005-36)

August 3, 2005

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Cancellation Fee Changes

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 July 25, 2005, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change concerning the Exchange's cancellation fee as described in Items I, II, and II below, which items have been prepared by the ISE. On July 29, 2005, the ISE submitted an amendment to the proposed rule change ("Amendment No. 1").³ The ISE has filed the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal effective upon filing with the Commission. 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 amend its Schedule of Fees regarding its cancellation fee.

The text of the proposed rule change is available on the Exchange's Internet website

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 clarified that the change in the cancellation fee will take effect on August 1, 2005.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2)

(http://www.iseoptions.com/legal/proposed_rule_changes.asp), at the principal office of the ISE, 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 ISE 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 ISE 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 purpose of this proposed rule change is to amend the ISE's cancellation fee. Through June of 2005 the Exchange charged Electronic Access Members ("EAMs") \$1 per order canceled in excess of the number of orders executed. In File No. SR-ISE-2005-31 ("Fee Amendment"), the Exchange amended that fee in a rule change effective on filing pursuant to Section 19(b)(3)(A) of the Act.⁶ To address problems the Exchange encountered in applying the cancellation fee, the Fee Amendment applied the fee: (1) on the cancellation activity of each of an EAM's customers (including itself when it self-clears), rather than the aggregate activity of all of an EAM's customers; and (2) on a per-contract, rather than a per-order basis.

Upon the Exchange's filing of the Fee Amendment, the Commission received a number of comment letters raising objections to the proposal. Based on those comment letters, the Commission staff told the ISE that it believed that the proposed fee should be

⁶ See Securities Exchange Act Release No. 52177 (July 29, 2005).

subject to formal comment pursuant to Section 19(b)(2) of the Act. Accordingly, this proposed rule change will reinstate the cancellation fee as in effect prior to the submission of the Fee Amendment. The Exchange will be filing a rule change pursuant to Section 19(b)(2) of the Act proposing to implement a revised fee.

2. Statutory Basis

The ISE states that the basis for the proposed rule change is the requirement under Section 6(b)(4) of the Act⁷ that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

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

The ISE states that the proposed rule change does not impose in 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. However, the Commission received comment letters on certain aspects of the current cancellation fee that this filing is amending. The Exchange will address those comment letters in a separate filing specifically repropounding aspects of the fee to which the commenters objected.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, establishes or changes a due, fee, or other charged imposed by the Exchange, it has become effective pursuant to

⁷ 15 U.S.C. 78f(b)(4).

Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(2)⁹ thereunder. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed 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.¹⁰

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 SR-ISE-2005-36 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to SR-ISE-2005-36. 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

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 19b-4(f)(2).

¹⁰ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of Act, the Commission considers the period to commence on July 29, 2005, the date on which the ISE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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. Copies of the filing also will 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 SR-ISE-2005-36 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).