

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52983; File No. SR-ISE-2005-047)

December 20, 2005

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Adopt a Flat Execution Fee For Public Customer Orders In “Premium Products” and Firm Proprietary Orders, and To Incorporate the Current Facilitation Mechanism Fee Into the Flat Execution Fee For Firm Proprietary Orders

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 December 1, 2005, the International Securities Exchange, Inc. (“ISE” or “Exchange”) 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 ISE. On December 7, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ The ISE filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) 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, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, ISE explained further its basis for the proposed flat execution fee and its reason for eliminating the Facilitation Mechanism fee. Amendment No. 1 also corrected several minor errors. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change the Commission considers the period to commence on December 7, 2005, the date on which the ISE filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(f)(2).

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 to (i) adopt a flat execution fee for Public Customer Orders⁶ in "Premium Products" (as defined in the Schedule of Fees) and firm proprietary orders; and (ii) incorporate the current Facilitation Mechanism fee into the flat execution fee for firm proprietary orders. The text of the proposed rule change is available at the Exchange and at the Commission's Public Reference Room, and at the Exchange's Web site (http://www.iseoptions.com/legal/proposed_rule_changes.asp).

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 proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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 Exchange's Schedule of Fees currently contains a formula that determines the amount of the execution fee to be charged to all order types, i.e., Public Customer (for certain index-based products), firm proprietary and market maker, based on the Exchange's average daily volume during the previous month. Under the current formula, the execution fee can range

⁶ A Public Customer Order is defined in ISE Rule 100(a)(33) as an order for the account of a Public Customer. A Public Customer is defined in ISE Rule 100(a)(32) as a person that is not a broker or dealer in securities.

anywhere between \$0.12 per contract to \$0.21 per contract, depending on the Exchange's average daily volume during the previous month. The Exchange proposes to change this structure so that Public Customer Orders in "Premium Products"⁷ and firm proprietary orders pay a flat execution fee of \$0.15 per contract.⁸ Public Customer Orders in products other than Premium Products will continue to be subject to a flat execution fee of \$0.05, although that fee is currently waived until June 30, 2006. ISE market makers will continue to be charged the variable fee under the current formula. A \$0.03 per contract comparison fee shall continue to apply to all these order types, unless specifically waived in the Schedule of Fees.

Additionally, the Exchange proposes to delete the separate Facilitation Mechanism fee line item. Previously, there was a separate line item in the Schedule of Fees for orders executed in that mechanism: orders executed in the Facilitation Mechanism were charged the lower of the standard execution fee or \$0.15 per contract. Historically, fees charged for trades executed in the Facilitation Mechanism were carved out on the Schedule of Fees as a separate line item because, as a matter of inducement for members to transact in the Facilitation Mechanism, these fees were lower than the standard execution fees. Over time, as the standard execution fees decreased, as a result of increased volume, the two fees became identical. Accordingly, the Exchange now proposes to eliminate the separate line item for orders executed in the Facilitation Mechanism because it is no longer necessary when there is a flat \$0.15 fee for firm proprietary order and public customer orders in Premium Products.

⁷ The ISE proposes to define the term "Premium Products" in the Schedule of Fees as options on DIA, IBB, IEF, IJH, IJR, IWM, IWN, IWO, NYC, NY, OEF, OIH, SHY, SMH, SPY, TLT, XLB, XLE, XLF, XLI, XLU, BYT, HSX, HVY, IXK, IXX, IXZ, JLO, MID, MNX, MSH, NDX, OOG, RMN, RND, RUF, RUI, RUT, SIN, and SML.

⁸ These fees will be charged only to Exchange members.

As a matter of “housekeeping,” in addition to using “Premium Products” as a defined word throughout the Schedule of Fees, the Exchange proposes to identify each product that appears on the Schedule of Fees by its ticker symbol alone rather than by its name and ticker symbol.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(4) of the Act,⁹ which requires 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 the proposed fees are reasonable because they closely correlate to the variable execution fees charged to market maker and firm proprietary orders over the course of the last 12 months. For example, for nine months during 2005, the variable execution fees charged to market maker and firm proprietary orders were \$0.15 per contract, and for 3 months during 2005, these same fees were \$0.14 per contract. The Exchange further believes that the proposed fee changes will enable the ISE to continue offering competitively priced products and services.

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

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁹ 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change. The ISE 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁰ and paragraph (f)(2) of Rule 19b-4 thereunder¹¹ because it establishes or changes a due, fee, or other charge. At any time within 60-days of the filing of the 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.¹²

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 Number SR-ISE-2005-047 on the subject line.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² See footnote 3, supra.

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 File Number SR-ISE-2005-047. 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 inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at 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-2005-047 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.¹³

Jonathan G. Katz
Secretary

¹³ 17 CFR 200.30-3(a)(12).