

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53211; File No. SR-ISE-2006-08)

February 2, 2006

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change Establishing Fees for Historical Options Tick Market Data for Non-Members

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 February 1, 2006, 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. 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 to establish non-member fees for historical options tick market data.³ The text of the proposed rule change is available at the Exchange, at the Commission's Public Reference Room and at the Exchange’s Web site:

http://www.iseoptions.com/legal/proposed_rule_changes.asp.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Historical options tick market data is Options Price Reporting Authority (“OPRA”) tick data, a complete file, tick-by-tick, of all quote and transaction data of all instruments disseminated by OPRA during a trading day. OPRA tick data includes data from all six options exchanges. On any given trading day, OPRA tick data is publicly available and may be stored. The OPRA tick data collected and stored by ISE is neither exclusive nor proprietary to the Exchange.

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

Currently, the ISE creates market data that consists of options quotes and orders that are generated by ISE members and all trades that are executed on the Exchange. The ISE also produces a Best Bid/Offer, or "BBO," with the aggregate size from all outstanding quotes and orders at the top price level, or the "top of the book." This data is formatted according to OPRA specification and sent to OPRA for redistribution. OPRA processes ISE data along with the same data sets from the other five options exchanges and creates a National BBO, or "NBBO," from all six options exchanges.

The ISE also captures the OPRA tick data⁴ and will make it available as an "end of day" file⁵ or as a "historical" file⁶ for ISE members and non-ISE members alike. The instant

⁴ The Exchange collects this data throughout each trading day, and by way of this proposed rule change, intends to market this offering to both ISE members and the investing public. At the end of each trading day, the Exchange compresses the data collected throughout the day and uploads it onto a server. Once the data is loaded onto the server, it will then be made available to subscribers.

⁵ An end of day file refers to OPRA tick data for a trading day that is distributed prior to the opening of the next trading day. An end of day file will be made available to

proposed rule change proposes to establish a fee for non-ISE members only. The Exchange has also filed a separate proposed rule change, SR-ISE-2006-07,⁷ that established fees for ISE members. The proposed fees for both ISE members and non-ISE members are the same.

The Exchange conducted extensive market research to conclude that OPRA tick data is primarily used by market participants in the financial services industry for back-testing trading models, post-trade analysis, compliance purposes and analyzing time and sales information. By this proposed rule change (if approved), and proposed rule change SR-ISE-2006-07,⁸ both non-ISE members and ISE members will have the choice to subscribe to a service that provides a daily file on an on-going basis (end of day file), or simply request data on an ad-hoc basis for a pre-determined date range (historical file).

2. Statutory Basis

The ISE believes the basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)⁹ 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 developed and conducted a comprehensive survey of a cross-section of participants in the financial services industry regarding their level of interest in a number of market data offerings. Based on the results of that survey, the Exchange developed a business plan to create and offer a number of

subscribers as soon as practicable at the end of each trading day on an on-going basis pursuant to an annual subscription or through an ad-hoc request.

⁶ An end of day file that is distributed after the start of the next trading day is called a historical file. A historical file will be available to customers for a pre-determined date range by ad-hoc requests only.

⁷ Securities Exchange Act Release No. 53212 (February 2, 2006).

⁸ See id.

⁹ 15 U.S.C. 78f(b)(4).

market data products targeted to potential user groups, e.g., individual investors, institutional investors, broker-dealers, etc. The Exchange also retained a consultant to validate the business plan and to provide advice on the structure and amount of fees to charge for these products. Based on all of this information, the Exchange established a pricing structure for historical options tick data that is based on both a subscription and a non-subscription basis. With an annual subscription, non-ISE members would pay a flat monthly fee to subscribe to a daily file of OPRA tick data. Alternatively, non-ISE members that want a limited amount of data and do not want an annual subscription would have the ability to submit ad-hoc requests for the limited amount of data that they require based on daily periods. Under the ad-hoc structure, non-ISE members would pay a fixed amount per day plus a processing fee for the hardware and shipping costs associated with these requests. Further, the Exchange believes that these pricing levels for the proposed market data offering would provide non-ISE members with an ability to choose a plan that best suits their needs. The Exchange believes the proposed rule filing would provide market participants with an opportunity to obtain historical options tick data in furtherance of their investment decisions.

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.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

The ISE has requested accelerated approval of the proposed rule change. While the Commission will not grant accelerated approval at this time, the Commission will consider granting accelerated approval of the proposal at the close of the abbreviated comment period of 15 days from the date of publication of the proposal in the Federal Register.

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-2006-08 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISE-2006-08. 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 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 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-2006-08 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Nancy M. Morris
Secretary

¹⁰ 17 CFR 200.30-3(a)(12).