

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53223; File No. SR-ISE-2006-06)

February 3, 2006

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Competitive Market Maker Inactivity Fees

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 January 23, 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. On January 31, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.³ The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to 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, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the ISE corrected an error in Exhibit 5 of the original rule filing by eliminating certain inadvertent underlining. 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 January 31, 2006, 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)(ii).

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 is proposing to amend its Schedule of Fees to change its Competitive Market Maker ("CMM") Inactivity Fee. 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).

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 charges the owner⁶ of a CMM membership an Inactivity Fee of \$25,000 a month if the owner does not: (i) itself operate the CMM membership, (ii) lease the CMM membership to another member which operates the CMM membership, or (iii) avail itself to one of the exemptions specifically authorized in the Notes to the CMM Inactivity Fee on the Schedule of Fees. The CMM Inactivity Fee was adopted by the Exchange⁷ at a time when there

⁶ The Note to the CMM Inactivity Fee on the Schedule of Fees provides that the fee applies to the owner of the CMM membership, unless the inactive CMM membership is subject to a lease that was approved by the Exchange prior to the effective date of the fee, in which case the fee would apply to the lessee.

⁷ See Securities Exchange Act Release No. 46272 (July 26, 2002), 67 FR 50497 (August 2, 2002) (SR-ISE-2002-11).

was significant demand for CMM memberships and some owners were holding onto inactive memberships. The purpose of the CMM Inactivity Fee was to encourage the timely operation of the memberships to promote greater trading activity on the Exchange.

The Exchange believes the circumstances that lead to the enactment of the CMM Inactivity Fee no longer exist to the same degree that they did in 2002. For one thing, the ISE has created additional CMM memberships to ease demand.⁸ The Exchange has also changed its minimum quoting requirements, allowing CMMs to quote wide markets.⁹ Thus, a new owner of a CMM membership can avoid the CMM Inactivity Fee by continuing to “operate” it by quoting \$5-wide markets, enabling it to “ramp up” its quoting at a reasonable pace. Nevertheless, ISE believes that a CMM Inactivity Fee continues to serve a purpose by encouraging the operation of CMM memberships generally, and prefers to retain the fee. At the same time, the Exchange believes that the amount of the fee -- \$25,000 a month per membership -- is now too high in light of the changed circumstances, imposing an unreasonable burden on firms that hold multiple memberships. Therefore, the Exchange proposes to reduce the amount of the fee to \$5,000 a month per membership, with a cap of \$25,000 on a per-firm basis, *i.e.*, a firm that owns five or more inactive CMMs would pay a maximum CMM Inactivity Fee of \$25,000 per month.

Also, as a matter of “housekeeping,” the Exchange proposes to delete certain language in the Notes to the CMM Inactivity Fee relating to assessing the fee to the lessee if the CMM

⁸ See Securities Exchange Act Release Nos. 47289 (January 30, 2003), 68 FR 5947 (February 3, 2003) (SR-ISE-2002-28) (approving a proposed rule change to increase CMM memberships from 100 to 130); 49195 (February 5, 2004), 69 FR 7061 (February 12, 2004) (SR-ISE-2003-38) (approving a proposed rule change to increase CMM memberships from 130 to 160).

⁹ See Securities Exchange Act Release No. 50015 (July 14, 2004), 69 FR 43872 (July 22, 2004) (SR-ISE-2003-22).

membership was subject to a lease that was approved prior to the effective date of the fee. All such leases have terminated, so there is no longer a need to retain that exception.

2. Statutory Basis

The Exchange states that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)¹⁰ 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 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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹¹ and paragraph (f)(2) of Rule 19b-4 thereunder¹² 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

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2006-06 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-2006-06. 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-2006-06 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

Nancy M. Morris
Secretary

¹³ 17 CFR 200.30-3(a)(12).