

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58143; File No. SR-ISE-2008-52]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Linkage Fees

July 11, 2008.

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 June 24, 2008, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. 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 extend through July 31, 2009 the current pilot program regarding transaction fees charged for trades executed through the intermarket options linkage ("Linkage"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.ise.com>.

#### 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.

#### 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 extend for one year the pilot program establishing ISE fees for Principal Orders ("P Orders") and Principal Acting as Agent Orders ("P/A Orders") sent through Linkage and executed on the ISE. The fees currently are effective for a pilot period scheduled to expire on July 31, 2008.<sup>3</sup> This filing would extend the pilot program for another year, through July 31, 2009. The ISE fees affected by this filing are: The Linkage P Order fee of \$0.24 per contract; the Linkage P/A Order fee of \$0.15 per contract; a surcharge fee of between \$0.05 and \$0.15 for trading certain licensed products; and a \$0.03 comparison fee (collectively "linkage fees").<sup>4</sup> These are the same fees that all ISE Members pay for non-customer transactions executed on the Exchange.<sup>5</sup> The ISE does not charge for the execution of Satisfaction Orders sent through Linkage and is not proposing to charge for such orders.

The Exchange believes it is appropriate to charge fees for P Orders and P/A Orders executed through Linkage. Notably, while market makers on competing exchanges always can match a better price on the ISE, they never are obligated to send orders to the ISE through Linkage. However, if such market makers do seek the ISE's liquidity, whether through conventional orders or through the use of P Orders or P/A Orders, ISE believes it is appropriate to charge its Members the same fees levied on other non-customer orders. ISE appreciates that there has been limited experience with Linkage and that the Commission is continuing to study Linkage in general and the effect of fees on Linkage trading. Thus, this filing would extend the status quo with Linkage fees for an additional year. The Exchange is making no substantive changes to the way the pilot is currently operating, other than to extend the date of operation through July 31, 2009.

<sup>3</sup> See Securities Exchange Act Release No. 56128 (July 24, 2007), 72 FR 42161 (August 1, 2007) (SR-ISE-2007-55) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Linkage Fees).

<sup>4</sup> Pursuant to other pilot programs, certain linkage fees may not apply during the Linkage pilot program.

<sup>5</sup> The ISE charges these fees only to its Members, generally firms who clear P Orders and P/A Orders for market makers on the other linked exchanges.

##### 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. As discussed above, the ISE believes that this proposed rule change will equitably allocate fees by having all non-customer users of ISE transaction services pay the same fees. The Exchange believes that, if it were not to charge Linkage fees, the Exchange's fee would not be equitable, in that ISE Members would be subsidizing the trading of their competitors, all of whom access the same trading services.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Moreover, failing to adopt the proposed rule change would impose a burden on competition by requiring ISE Members to subsidize the trading of their competitors.

#### 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>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

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.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

#### 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-2008-52 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-ISE-2008-52. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such 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 File Number SR-ISE-2008-52 and should be submitted on or before August 8, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58147; File No. SR-ISE-2008-53]

#### Self-Regulatory Organizations; International Securities Exchange, Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

July 11, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 27, 2008, the International Securities Exchange ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. On July 7, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, is described in Items I, II, and III below, which Items have been prepared by ISE. ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by ISE under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 modified by Amendment No. 1, 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 with respect to transactions executed in securities reported to Tape B. 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.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

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

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

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 Exchange's current equity fee schedule consists of a tiered rebate structure: the first five million maker shares executed on an average daily volume (ADV) basis receive a rebate of \$0.0032 per share, with an increase in the rebate to \$0.0035 for each maker share executed above five million ADV. For shares executed on an order delivery basis, the Exchange currently rebates \$0.0027 for maker shares executed. The Exchange proposes to retain this fee structure for transactions executed in securities reported to Tape A and Tape C (hereinafter referred to as Tape A and Tape C securities), but to change the fee structure for transactions executed in securities reported to Tape B (hereinafter, referred to as Tape B securities).

Effective July 1, 2008, the Exchange proposes to adopt a fee structure for Tape B securities (excluding both order delivery and MidPoint Match orders) whereby the maker receives a per share rebate of \$0.0017 and the taker fee is lowered from \$0.003 to \$0.0015 on all shares. The execution fee for equities priced under \$1.00, regardless of which tape they are reported to, is 0.3% of trade value with no rebates for adding liquidity. For order delivery orders executed in Tape B securities, the Exchange proposes to provide a rebate of \$0.0015 for maker shares. The Exchange is lowering these fees in an effort to increase the trading volume in Tape B securities.<sup>5</sup>

The Exchange proposes to add a note to the Schedule of Fees to clarify that Tape B securities maker transactions count towards ADV totals for the purpose of calculating Tape A and Tape

<sup>5</sup> See Amendment No. 1.