

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2006-37 and should be submitted on or before August 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54121; File No. SR-ISE-2006-31]

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

July 10, 2006.

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 30, 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 ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the 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 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: (i) Adopt PrecISE through VPN fees; (ii) clarify the application of a fee waiver for PrecISE Trade<sup>®</sup> terminals; and (iii) exempt PrecISE through VPN from Session/API fees. The text of the proposed rule change is available on the ISE's Web site ([http://www.iseoptions.com/legal/proposed\\_rule\\_changes.asp](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 Exchange's Schedule of Fees to: (i) Adopt PrecISE through VPN fees; (ii) clarify the application of a fee waiver for PrecISE Trade terminals; and (iii) exempt PrecISE through VPN from Session/API fees.

PrecISE through VPN is a new method for connecting a PrecISE Trade terminal to the Exchange.<sup>5</sup> A PrecISE through VPN connection is available to Electronic Access Members ("EAMs") of the Exchange. PrecISE through VPN consists of PrecISE, a front-end, order entry application that was recently rolled out by the Exchange that will eventually replace the current CLICK trade terminals.<sup>6</sup> PrecISE, in addition to a dedicated network connection, also runs over a secure "virtual private network" (*i.e.*, "VPN") over the Internet. PrecISE through VPN was designed for EAMs that want a lower cost, lower bandwidth connection to the Exchange than the traditional, dedicated network PrecISE connection. The Exchange also envisions that EAMs will use PrecISE through VPN as a back-up or disaster recovery connection to the Exchange. As a result, the Exchange is proposing to establish a monthly fee of \$250 per terminal for PrecISE through VPN to

<sup>5</sup> PrecISE through VPN is similar to CLICK through VPN, for which the Exchange has previously adopted fees. See Securities Exchange Act Release No. 48157 (July 10, 2003), 68 FR 42443 (July 17, 2003) (notice and immediate effectiveness of SR-ISE-2003-14).

<sup>6</sup> The Exchange represents that PrecISE through VPN is merely a different means of connecting to the trading system operated by the Exchange known as PrecISE (*i.e.*, it is a new means of connecting to the Exchange's trading system), and does not require any changes to the Exchange's surveillance or communications rules.

offset the Exchange's costs for maintaining these connections.

Secondly, the Exchange recently adopted a waiver of fees related to the new PrecISE Trade terminals, such that fees for the first two months of a member's use of PrecISE Trade terminals are waived.<sup>7</sup> The Exchange proposes to clarify that the waiver shall only apply to those members that are *concurrently* using both the old CLICK Trade terminals and the new PrecISE Trade terminals. The purpose of the waiver is to allow an existing member to transition from a CLICK Trade terminal to a PrecISE Trade terminal, without being charged both fees. For example, new members who only have PrecISE Trade terminals would not be eligible for this fee waiver.

Finally, the Exchange is proposing that PrecISE through VPN connections be exempt from Session/API fees. As with CLICK through VPN, Session/API fees will not apply for connecting to the Exchange's trading system through a VPN connection.

###### 2. Statutory Basis

The Exchanges believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) of the Act<sup>8</sup> 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 does 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 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 rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to

<sup>7</sup> See Securities Exchange Act Release No. 53788 (May 11, 2006), 71 FR 28728 (May 17, 2006) (notice and immediate effectiveness of SR-ISE-2006-19).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>16</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).

Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder. At any time within 60 days of the filing of such 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.

#### 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 No. SR-ISE-2006-31 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-ISE-2006-31. 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 principal office of 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-2006-31 and should be submitted on or before August 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54124; File No. SR-ISE-2005-49]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Relating to Complex Order Execution

July 11, 2006.

#### I. Introduction

On October 4, 2005, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend ISE Rule 722, "Complex Orders," to allow the legs of an options-only complex order to be executed in penny increments. The ISE filed Amendment Nos. 1 and 2 to the proposal on February 1, 2006, and April 20, 2006, respectively.<sup>3</sup> The proposed rule change, as amended by Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on June 6, 2006.<sup>4</sup> The Commission received no comments regarding the proposal, as amended. This order approves the proposed rule change, as amended.

#### II. Description of the Proposal

ISE Rule 722(b)(1) currently allows the options leg(s) of a stock-option order to be executed in one-cent increments, regardless of the minimum increment otherwise applicable to the individual options leg(s) of the order.<sup>5</sup> The ISE

proposes to amend ISE Rule 722(b)(1) to allow options-only complex orders, as well as stock-option orders, to be executed in one-cent increments. The proposal retains the existing requirement under the ISE's rules that allows a complex order to take priority over established Public Customer interest in the marketplace only if at least one leg of the complex order trades at a price that is better than the corresponding bid or offer in the marketplace by at least one minimum trading increment, as provided in ISE Rule 710.<sup>6</sup>

#### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,<sup>7</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.<sup>8</sup> Specifically, the Commission believes that by allowing options-only complex orders to be executed in one-cent increments, the proposal may facilitate the execution of options-only complex orders by providing a greater number of price points at which such orders may be executed. As noted above, the ISE's rules will continue to require that at least one leg of a complex order trade at a price that is better than the corresponding bid or offer in the marketplace by at least one minimum trading increment, as provided in ISE Rule 710, when any of the established bids or offers in the marketplace consists of a Public Customer limit order.<sup>9</sup>

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-ISE-2005-49), as amended, is approved.

\$3.00 per option and \$.10 for an options contract trading at \$3.00 per option or higher.

<sup>6</sup> See ISE Rule 722(b)(2).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> See ISE Rule 722(b)(2).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</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> Amendment No. 2 replaced the initial filing and Amendment No. 1 in their entirety.

<sup>4</sup> See Securities Exchange Act Release No. 53909 (May 31, 2006), 71 FR 32617.

<sup>5</sup> Under ISE Rule 710, "Minimum Trading Increments," the minimum trading increment is \$.05 for an options contract trading at less than

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 19b-4(f)(2).