

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57632; File No. SR-ISE-2008-29)

April 8, 2008

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to the Price Improvement Mechanism

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 March 20, 2008, the International Securities Exchange, LLC (“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 substantially 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 allow members to enter orders into the Price Improvement Mechanism (“PIM”) at a price that matches the national best bid or offer (“NBBO”) when the ISE market is inferior to the NBBO. The text of the proposed rule change is available on the ISE’s Web site (<http://www.iseoptions.com>), 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

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

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

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

Several options exchanges have adopted a fee structure in which firms receive a rebate for the execution of orders resting on the limit order book (i.e., posting liquidity) and pay a fee for the execution of orders that trade against liquidity resting on the limit order book (i.e., taking liquidity). The taker fees currently range up to \$0.50 per contract, and this fee is charged without consideration of the client category, thus applying to the execution of public customer orders. In contrast, ISE does not charge a fee for the execution of public customer orders.

The effective price paid by a customer who is purchasing an option can be considerably higher on an exchange that charges a taker fee. For example, a customer that enters a marketable limit order to buy 10 contracts for \$0.10 will pay \$100 on the ISE, whereas the cost of the same transaction will be \$105 if executed on an exchange with a \$.50 taker fee. This represents an effective 5% increase for the customer. Because public customer orders cannot be executed at prices that are inferior to the NBBO, members are effectively forced to pay taker fees when an exchange with a taker fee structure is at the NBBO. This is because they either route their public customer orders directly to such exchange or the taker fee is passed through when another exchange accesses the NBBO on behalf of their customer through linkage.

In order to provide broker-dealers with an alternative method of achieving an execution at the NBBO for their customers without having to pay taker fees, the Exchange proposes to

expand the applicability of its PIM.<sup>3</sup> The PIM currently allows members to enter two-sided orders for execution at a price that improves upon the NBBO. The customer side of these orders is then exposed to all market participants to give them an opportunity to participate in the trade at the proposed cross price or better. This provides an opportunity for the customer order to receive additional price improvement. The Exchanges proposes to extend the application of the PIM to permit a member to enter an order into the PIM at a price that is equal to the NBBO when the ISE's best bid or offer ("ISE BBO") is inferior to the NBBO. This will allow members to guarantee execution of their customer orders on the ISE at a price that is at least as good as the NBBO, thus providing customers with an opportunity for price improvement over the NBBO while also allowing members to avoid paying taker fees.

## 2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is found in Section 6(b)(5),<sup>4</sup> in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Allowing members to guarantee their customers an execution at the NBBO on an exchange that does not charge a taker fee will lower the cost of trading and promote a more efficient marketplace for public customer orders. In addition, using the PIM to guarantee the price of the execution on the ISE will give public customer orders an opportunity to receive price improvement over the NBBO.

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<sup>3</sup> See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (approving rules implementing the PIM).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

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.

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 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.

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-2008-29 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-2008-29. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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-2008-29 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>5</sup> 17 CFR 200.30-3(a)(12).