

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57128; File No. SR-ISE-2008-02)

January 10, 2008

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

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 2, 2008, the International Securities Exchange, LLC (“Exchange” or “ISE”) 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 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,³ and Rule 19b-4(f)(2) thereunder,⁴ 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 increase the surcharge fee for transactions in options on the Nasdaq-100[®] Stock Index. The text of the proposed rule change is available on the Exchange’s Web site (www.ise.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 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, 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 Exchange is proposing to amend its Schedule of Fees to increase the surcharge fee for transactions in options on the Nasdaq-100 Stock Index, both full value ("NDX") and 1/10 value ("MNX").⁵ The Exchange currently charges an execution fee and a comparison fee for all transactions in options on NDX and MNX.⁶ Specifically, the amount of the execution fee and comparison fee for transactions in options on NDX and MNX is \$0.15 and \$0.03 per contract, respectively, for all Public Customer Orders⁷ and Firm Proprietary orders. The current amount of the execution fee and comparison fee for

⁵ See Securities Exchange Act Release No. 51121 (February 1, 2005), 70 FR 6476 (February 7, 2005), (SR-ISE-2005-01) (Order approving the trading of options on full and reduced values of the Nasdaq-100 Stock Index).

⁶ See Securities Exchange Act Release No. 51397 (March 18, 2005), 70 FR 15372 (March 25, 2005), (SR-ISE-2005-13) (Notice of Filing and Immediate Effectiveness of proposed fee changes related to NDX and MNX options). These fees are charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2008, these fees will also be charged to Linkage Orders (as defined in ISE Rule 1900). See Securities Exchange Act Release No. 56128 (July 24, 2007), 72 FR 42161 (August 1, 2007) (SR-ISE-2007-55).

⁷ Public Customer Order is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(38) as a person that is not a broker or dealer in securities.

all ISE Market Maker transactions in options on NDX and MNX is equal to the execution fee and comparison fee currently charged by the Exchange for ISE Market Maker transactions in equity options.⁸ Finally, the current amount of the execution fee and comparison fee for all non-ISE Market Maker transactions is \$0.37 and \$0.03 per contract, respectively.⁹

Pursuant to a license agreement between the Exchange and the Nasdaq Stock Market, Inc., (“Nasdaq”), the Exchange currently charges a surcharge fee of \$0.15 per contract for trading in options on NDX and MNX. The Exchange recently renewed its license agreement with Nasdaq pursuant to which the Exchange is now being charged a higher license fee. Accordingly, to defray the increased licensing costs, the Exchange proposes to increase the surcharge fee by \$0.01 per contract to \$0.16 per contract for trading in options on NDX and MNX. The Exchange believes charging the participants that trade these instruments is the most equitable means of recovering the costs of the license. However, because of competitive pressures in the industry, the Exchange proposes to continue excluding Public Customer Orders¹⁰ from this surcharge fee. Accordingly, this surcharge fee will only be charged to Exchange members with respect to non-Public Customer Orders (*i.e.*, Market Maker, Non-ISE Market Maker and Firm Proprietary orders).

⁸ The execution fee is currently between \$.21 and \$.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently \$.03 per contract side.

⁹ The amount of the execution and comparison fee for non-ISE Market Maker transactions executed in the Exchange’s Facilitation and Solicitation Mechanisms is \$0.16 and \$0.03 per contract, respectively.

¹⁰ Public Customer Order is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(38) as a person that is not a broker or dealer in securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(4),¹² in particular, in that it is designed to provide for the 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 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 Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(2)¹⁴ 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

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 19b-4(f)(2).

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. Please include File No. SR-ISE-2008-02 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-2008-02. 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-2008-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).