

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58091; File No. SR-ISE-2008-55)

July 3, 2008

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

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 30, 2008, 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 prepared by the Exchange. ISE filed the proposal pursuant to Section 19(b)(3)(A) 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

ISE proposes to amend its Schedule of Fees related to options market maker transaction fees. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.ise.com](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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on

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<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).

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

the proposed rule change. 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

The Exchange proposes to amend its transaction fees applicable to options market makers on the ISE and options market makers on other options exchanges. With respect to ISE market makers, the Exchange proposes to adopt a per contract transaction fee that is based on the number of contracts the ISE market maker trades in a month as follows:

- First 1,000,000 contracts in a month - \$0.18 per contract
- 1,000,001 to 3,000,000 contracts in a month - \$0.16 per contract
- 3,000,001 to 5,000,000 contracts in a month - \$0.13 per contract
- 5,000,001 to 10,000,000 contracts in a month - \$0.03 per contract
- Above 10,000,000 contracts in a month - \$0.01 per contract

The sliding scale applies to all ISE market makers for transactions in all products, is calculated on a member firm basis,<sup>5</sup> and applies to non-discounted volume only; that is, it does not apply to orders previously discounted by other pricing incentives that currently appear on the Exchange's Schedule of Fees. Previously, the Exchange had applied a sliding scale that was based upon the Exchange's overall averaged daily volume ("ADV"). The ADV-based method reduced the ISE market maker transaction fee for all members, regardless of the volume

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<sup>5</sup> If a member firm operates more than one market maker membership, all of the member firm's market maker volume will be aggregated for purposes of the market maker transaction fee.

executed by any individual member. Under this proposal, ISE market maker fees are reduced on the member firm level as a volume discount.

The Exchange also proposes to increase the transaction fee charged to members to execute orders for the account of options market makers on other exchanges. Under this proposal, the “non-ISE market maker fee,” previously set at \$0.40 per contract, has been increased to \$0.45 cents per contract.<sup>6</sup> These changes became operative on July 1, 2008.

## 2. Statutory Basis

The Exchange states that the basis under the Act for this proposed rule change is the requirement of Section 6(b)(4)<sup>7</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 states 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 states that it has not solicited, and does not intend to solicit, comments on this proposed rule change. Additionally, the Exchange states that it has not received any unsolicited written comments from members or other interested parties.

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<sup>6</sup> ISE’s non-ISE market maker fee is currently \$0.37 cents plus a \$0.03 comparison fee. See Securities Exchange Act Release No. 55897 (June 12, 2007), 72 FR 33546 (June 18, 2007) (SR-ISE-2007-41). The Exchange consolidated these two fees in SR-ISE-2008-54, so that the total non-ISE market maker fee is represented as \$0.40 on the Exchange’s schedule of fees.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder,<sup>9</sup> because it establishes or changes a due, fee, or other charge imposed on members by ISE. Accordingly, the proposal is effective upon filing with the Commission. 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.

### 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-2008-55 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.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-ISE-2008-55. 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 a.m. and 3:00 p.m. Copies of the 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-

2008-55 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.<sup>10</sup>

Florence E. Harmon  
Acting Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).