

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56379; File No. SR-ISE-2007-79)

September 10, 2007

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 August 31, 2007, 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 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 proposes to amend the Schedule of Fees to clarify and amend its Trading Application Software Fees with respect to FIX and API sessions. The text of the proposed rule change is available on the ISE’s Web site (<http://www.ise.com>), at the principal office of the ISE, 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 proposes to amend the Schedule of Fees with respect to Electronic Access Member ("EAM") Trading Application Software Fees. A member can connect via an Application Programming Interface ("API") session or a Financial Information eXchange ("FIX") session. The ISE uses an open API which members program to in order to develop applications that send trading commands and/or queries to and receive broadcasts and/or transactions from the trading system. The API processes quotes, receives orders from EAMs, tracks activity in the underlying markets, when applicable, executes trades in the matching engine, and broadcasts trade details to the participating members. The ISE pays a licensing fee for the use of the options API, whereas ISE owns the proprietary rights to the equity API. Accordingly, fees are higher for options API sessions than they are for equity API sessions. FIX is an industry-wide messaging standard protocol. While the FIX specification is open and free, implementing FIX requires planning, software, and network services that ISE provides.

On December 5, 2006, the Exchange filed to adopt fees related to the trading of equity securities on the ISE Stock Exchange, LLC, a facility of ISE. In ISE-2006-76, the Exchange

proposed to charge a Session/API⁵ fee of \$250 per month to connect to the ISE Stock Exchange, with a waiver until June 30, 2007 for second and subsequent connections.⁶ The Exchange allowed this waiver to expire on June 30, 2007, at which time the fee to connect to the ISE Stock Exchange, on a monthly basis, became \$250 per session, i.e., for each connection to the ISE Stock Exchange, regardless of whether the Equity EAM is connected via FIX or API. Subsequent to the fee increase, the Exchange analyzed the impact of the fee increase on Equity EAMs and determined that the disparity between the increase in fees and the additional work required to assist the Equity EAMs in maintaining additional lines to the Exchange was not accurately correlated. Accordingly, the Exchange has decided to reduce the fee for third and subsequent connections to the ISE Stock Exchange.⁷ The Exchange proposes to assess the following fees for Equity EAMs: \$250 each for the first and second connection and \$50 for each additional connection, regardless of whether the Equity EAM is connected via FIX or API.⁸

Historically, the Exchange charged options members the following Session/API fee to connect to the Exchange: \$250 per month for the first five CLICK terminals and \$100 per month for six or more terminals. Further, under a pilot program previously adopted by the Exchange, all Session/API fees associated with a second and any subsequent CLICK terminals were

⁵ Historically, the Schedule of Fees referred to “FIX” as “Session.” However, in this filing the Exchange is proposing to clarify this by defining session fees as either FIX or API.

⁶ See Securities Exchange Act Release No. 54897 (December 8, 2006), 71 FR 75593 (December 15, 2006) (SR-ISE-2007-76) (Notice of filing and immediate effectiveness of proposed rule change relating to ISE Stock Exchange fees).

⁷ Telephone conference between Laura Clare, Assistant General Counsel, ISE, and Jan Woo, Special Counsel, Division of Market Regulation, Commission, on September 7, 2007 (“Telephone conference on September 7, 2007”) (correcting the filing to state that the Exchange is proposing to reduce the fee increase for the third and subsequent connections (whether they are API or FIX) to the ISE Stock Exchange for Equity EAMs).

waived. As a result, members were only charged a \$250 per month Session/API fee to connect to the Exchange. Earlier this year, once all existing CLICK terminals were decommissioned, the Exchange submitted a fee filing that, among other things, proposed to remove all references to CLICK terminals from its fee schedule.⁹ In doing so, and after conducting an internal analysis of the impact of fees to members, the Exchange notes that the CLICK Fee Filing actually raised the Session/API fees for members, contrary to what the Exchange intended. Thus, this filing seeks to remedy the mistake the CLICK Fee Filing has caused.

Accordingly, the Exchange proposes to reinstate the tiered session fee for EAM Options API, as it was never the intent of the Exchange to eliminate this fee reduction on sixth and additional sessions.¹⁰ For Options EAMs that connect via the API the proposed fee is \$250 for each of the first five connections and \$100 for each additional connection.¹¹ With respect to the FIX fees, the Exchange proposes to charge EAMs one fee for FIX sessions, regardless of whether the EAM is an Options EAM or an Equity EAM. As discussed above, the Exchange proposes a \$250 fee for the first FIX connection and an additional \$250 for the second FIX connection and \$50 for each additional connection thereafter.

⁸ Telephone conference on September 7, 2007 (clarifying that the \$250 charge will be assessed for each of the first two connections made by Equity EAMs that connect via the API or FIX).

⁹ See Securities Exchange Act Release No. 55960 (June 26, 2007), 72 FR 36531 (July 3, 2007) (the “CLICK Fee Filing”).

¹⁰ Telephone conference between Laura Clare, Assistant General Counsel, ISE, and Jan Woo, Special Counsel, Division of Market Regulation, Commission, on September 10, 2007 (clarifying that the proposed rule change is to reinstate a tiered session fee for EAM Options API including a fee reduction for sixth and additional sessions).

¹¹ Telephone conference on September 7, 2007 (clarifying that the \$250 charge will be assessed for each of the first five connections made by Options EAMs that connect via the API).

Further, the Exchange proposes to rearrange and add clarifying language to this section of the Schedule of Fees to delineate specifically which fees apply to FIX sessions and which fees apply to API sessions, and which fees apply to Options EAMs and which fees apply to Equity EAMs.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) of the Act¹² 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 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(2)¹⁴ thereunder because it changes a fee imposed by the Exchange. 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

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 19b-4(f)(2).

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. Please include File Number SR-ISE-2007-79 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-2007-79. 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-2007-79 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).