

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49442; File No. SR-ISE-2004-05)

March 17, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange, Inc., Relating to Customized Market Data Reports ("ISEMine")

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 4, 2004, 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 Exchange. 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 its Schedule of Fees to establish fees for preparing customized market data reports for both members and non-members. The text of the proposed rule change is available at the ISE and at the Commission.

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 its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 establish fees in connection with the preparation of customized market data reports for both members and non-members. The Exchange maintains databases that contain information relating to option contracts traded on the Exchange. This information is of interest to Exchange members and non-members (including academics) who seek statistical information on the options markets.

Accordingly, the Exchange is proposing to provide members and non-members with the ability to "mine" this data through the use of customized market data reports. The Exchange refers to this service as "ISEmine."

The ISE is proposing to provide both an initial quarterly report and updates to those reports. The information included in the report will be "data points" selected by the subscriber. Data points consist of information based on "sentiment data" the ISE uses to calculate its ISE Sentiment Index and consists of aggregate cleared volume data, such as opening to buy, opening to sell, close to buy, close to sell. The ISE tracks this data through the information its members provide when opening and closing positions.

ISEmine is a voluntary, optional service provided by the Exchange, meaning members and non-members are neither required nor otherwise obligated to purchase this service.

Neither the data mined nor the reports produced will disclose the identity of any parties to any option contracts traded on the Exchange.

An ISEmine initial report will be a single file consisting of all requested data for a calendar quarter. After receiving such a report, a subscriber can request updates to the data contained in that report as frequently as it desires, such as quarterly, monthly, weekly or even daily. The ISE will not provide data more often than a daily basis. Accordingly, all ISEmine reports will consist of "historical" data that will not reflect current transactions in the market; rather, all ISEmine reports will be historical records of transactions from earlier that day or from previous days. This data service thus will not be competitive with real-time market data services a subscriber can receive through the Options Price Reporting Authority.

The Exchange is proposing fees for the use of ISEmine. Since the reports are customizable, the amount of the fee in each particular instance will be based on the number of data points selected by user, with the fees increasing depending on the number of data points included in the report. The fee for an initial report that includes data for a calendar quarter varies from \$5,000 to \$11,000, depending on the number of data points. For updates of such reports, the price varies from \$7,500 to \$12,000 per calendar quarter, again depending on the number of data points. The higher charge for updates reflects the fact that the initial report is provided on a one-time basis, while subscribers can receive multiple updates during the quarter, as often as daily.

The ISE has structured these fees to recover, in part, the costs of collecting, storing, extracting and processing this market data. The preparation of these reports will require significant programming efforts at the ISE to prepare these customized reports. Moreover, the updated reports will require a continuing processing effort by the ISE. The Exchange also is proposing to discount all stated fees by 25 percent for Exchange

members. This discount recognizes that Exchange members pay transaction fees when trading on the exchange and it is the data from these transactions that forms the database from which the ISE prepares the ISEmine reports. Thus, the ISE believes that charging members the full fee would partially charge them twice for the same data. The ISE believes that the 25 percent discount properly avoids the double-charging issue. However, both members and non-members would pay the ISE's costs of shipping and handling the reports on a non-discounted basis.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the Act in general, and Section 6(b)(5)³ in particular. The proposed rule change establishes fees for a voluntary, optional service provided by the Exchange. Neither members nor non-members are required to purchase this service. The service is intended to provide interested parties with statistical information about options transactions on the Exchange, thus providing an opportunity for greater transparency of options market information.

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.

³ 15 U.S.C. 78(f)(b)(5).

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 ISE consents, the Commission will:

- (A) by order approve the 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 proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-ISE-2004-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-ISE-2004-05 and should be submitted by [insert date 21 days from the date of publication of the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland
Deputy Secretary

⁴ 17 CFR 200.30-3(a)(12).