

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56721; File No. SR-ISE-2007-91)

October 30, 2007

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, Relating to API Fees

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 October 1, 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 Exchange. On October 29, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.³ ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 made clarifying changes to the original filing and attached a revised Exhibit 5, to reflect intervening changes to the Exchange’s Schedule of Fees that were made between the filing of the original proposed rule change and the submission of Amendment No. 1.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE proposes to amend its Schedule of Fees regarding the Exchange's API or login fees.

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <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, ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. 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

ISE charges its market makers a fee for each login that a member utilizes for quoting or order entry, with a lesser charge for logins used for the limited purpose of "listening" to system broadcasts.⁶ ISE currently has the following categories of authorized logins: (1) quoting, order entry and listening (allowing the user to enter quotes, orders, and perform all other miscellaneous functions, such as setting parameters, pulling quotes and performing linkage functions (e.g., sending and receiving P and P/A orders, laying off orders, etc.)); (2) order entry and listening (allowing the user to enter orders and perform all other miscellaneous functions, such as setting

⁶ See Securities Exchange Act Release No. 53522 (March 20, 2006), 71 FR 14975 (March 24, 2006) (SR-ISE-2006-09).

parameters, pulling quotes and performing linkage functions (but not quote)); and (3) listening (allowing the user only to query the system and to respond to other broadcasts).⁷

An ISE market maker currently receives an allocation of 1,000,000 quotes per day per user. If a firm submits more quotes than those allocated, i.e., 1,000,000 quotes per day per user as measured on an average in a single month, the firm is charged for additional users depending upon the number of quotes submitted. Each month, the total number of quotes submitted by a market maker firm across all bins (i.e., group of options to which the market maker is appointed), is divided by the number of trading days, resulting in the average quotes per day. This number is then divided by 1,000,000 and rounded up to the nearest whole number, resulting in an implied number of users based on quotes. Members are invoiced on a monthly basis for the greater of a) the greatest number of users authorized to login into the system, or b) the number of implied users based on quotes.

The Exchange also previously adopted an additional category, a “High Throughput User,” that permits a market maker to quote up to 2,000,000 quotes per day in a month.⁸ A High Throughput User is able to enter quotes, orders, and perform all other miscellaneous functions, such as setting parameters, pulling quotes and performing linkage functions (e.g., sending and receiving P and P/A orders, laying-off orders, etc.).⁹

ISE currently charges market makers \$950 per month for each quoting session for up to 1,000,000 quotes per day, on average for a month. Market makers are charged an additional user fee of \$950 for each incremental usage of up to 1,000,000 quotes per day per user. For High

⁷ Id.

⁸ See Securities Exchange Act Release No. 55941 (June 21, 2007), 72 FR 35535 (June 28, 2007) (SR-ISE-2007-36).

⁹ Id.

Throughput Users, ISE charges a fee of \$1,900 per month. High Throughput User market makers are charged an additional user fee of \$1,900 for each incremental usage of up to 2,000,000 quotes per day per user.

The Exchange now proposes to increase the allocation of quotes per day per user from 1,000,000 to 1,300,000 for non-High Throughput Users and from 2,000,000 to 2,600,000 for High Throughput Users. As a result, under this proposed rule change, market makers will continue to be charged \$950 per month for each quoting session for up to 1,300,000 quotes per day, with an additional user fee of \$950 for each incremental usage of up to 1,300,000 quotes per day per user. For High Throughput Users, the fee will continue to be \$1,900 per month for each quoting session for up to 2,600,000 quotes per day, with an additional user fee of \$1,900 for each incremental usage of up to 2,600,000 quotes per day per user. Finally, ISE represents that the proposed increase in the allocation of quotes per day per user will not have an adverse effect on capacity on the Exchange.

2. Statutory Basis

The basis under Section 6(b) of the Act¹⁰ for this proposed rule change is the requirement under Section 6(b)(4)¹¹ that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange has had numerous conversations with its market makers and believes that, in light of the increased number of quotes as a result of the penny pilot, an increase in the allocation of quotes per day per user is necessary and warranted.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

ISE does not believe that the proposed rule change will 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

No written comments were solicited or received with respect to the proposed rule change.

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)(ii) of the Act¹² and subparagraph (f)(2) of Rule 19b-4 thereunder,¹³ since it establishes or changes a due, fee or other charge 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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.¹⁴

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

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on October 29, 2007, the date on which ISE filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2007-91 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-2007-91. 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 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 No. SR-ISE-2007-91 and should be submitted on or before [insert date 21 days from date of 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).