

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-48955; File No. SR-ISE-2003-31)

December 18, 2003

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, Inc., Extending the Waiver of its Marketing Fee

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 November 20, 2003, the International Securities Exchange, Inc. (“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 prepared by the ISE. 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 Exchange is proposing to extend the waiver of its marketing fee until June 30, 2004.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the ISE's Schedule of Fees to extend the waiver of its marketing fee until June 30, 2004.³ That waiver currently is scheduled to expire on December 31, 2003.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement of Section 6(b)(4) of the Act⁴ 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 believes that by extending the fee waiver it is lessening the cost of trading on the ISE and thus encouraging greater competition between exchanges.

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

The ISE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

³ The Commission notes that the ISE's marketing fee is \$.10 per contract and applies to market makers only for each public customer contract executed. In its filing initially adopting this fee, the ISE stated that the purpose of the fee is to provide the ISE with a source of funding for marketing efforts aimed at increasing order flow from Electronic Access Members to the Exchange. See Securities Exchange Act Release No. 44101 (March 26, 2001), 66 FR 17590 (April 2, 2001) (SR-ISE-01-06) (implementing the marketing fee). The marketing fee was first waived in SR-ISE-2002-16. Securities Exchange Act Release No. 46189 (July 11, 2002), 67 FR 47587 (July 19, 2002). The waiver has subsequently been extended twice. See Securities Exchange Act Release Nos. 46976 (December 9, 2002), 67 FR 77116 (December 16, 2002) (SR-ISE-2002-26); and 48129 (July 3, 2003), 68 FR 41409 (July 11, 2003) (SR-ISE-2003-16).

⁴ 15 U.S.C. 78f(b)(4).

No written comments were either solicited or received.

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 Act⁵ and Rule 19b-4(f)(2)⁶ 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 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 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-2003-31. 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, 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

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 19b-4(f)(2).

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. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. ISE-2003-31 and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).