

amended to provide greater safeguards against the possibility that a CBOE Arbitration could proceed with an appointed arbitrator who should, by rule, not be hearing and resolving the arbitration. These amendments would be substantially similar to those recently proposed by the NASD.¹²

Rule 18.13(a)–(c) currently outlines the disclosures that a CBOE arbitrator must make that help to assess whether the arbitrator would be precluded from rendering an objective and impartial decision in a CBOE Arbitration.¹³ Proposed Rules 18.13(d)(1) and 18.13(d)(2) provide that the Director of Arbitration may remove an arbitrator based on the disclosures made under Rule 18.13(a)–(c) and information not known to the parties when the arbitrator was selected. The Exchange also proposes to amend Rule 18.13(d), in proposed Rule 18.13(d)(3), to clarify that the Director of Arbitration will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the CBOE Arbitration. Such interest or bias must be direct, definite, and capable of reasonable demonstration, rather than being remote or speculative. In addition, proposed Rule 18.13(d)(4) would help to ensure that parties to a CBOE Arbitration are informed of the disclosure of any new information that is required to be disclosed by an arbitrator under Rule 18.13 unless either the Director of Arbitration removes the arbitrator or the arbitrator withdraws voluntarily as soon as the arbitrator learns of any interest, relationship, or circumstances described under Rule 18.13(a) that might preclude the arbitrator from rendering an objective and impartial determination in the CBOE Arbitration. These proposed changes are substantially similar to the standards proposed by NASD.¹⁴

Also, this proposal would amend CBOE Rule 18.14, which currently provides the process by which the Exchange fills vacancies of an arbitrator, who for any reason, is unable to perform

as an arbitrator.¹⁵ The Exchange proposes to provide within Rule 18.14 a more detailed process by which the Director of Arbitration may remove or disqualify an arbitrator based on: (1) Conflicts of interest or bias involving an arbitrator; (2) challenges for cause; and (3) information required to be disclosed pursuant to Rule 18.13 and that was not previously disclosed.¹⁶ These proposed changes are also substantially similar to proposed NASD arbitration rules governing the same subject matter.¹⁷

III. Discussion and Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5) of the Act.¹⁸ Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed rule change furthers the objectives of Section 6(b)(5), in that it is designed to protect investors and the public interest by strengthening the integrity of the CBOE Arbitration program. The proposed rule change does so by limiting the possibility of conflicts of interest: (1) By restricting members of the Committee from representing parties to an arbitration while serving on the Committee and for six months after ceasing to be a member of the Committee, and (2) by adopting new rules governing the process for removing or disqualifying arbitrators when the appointed arbitrator has conflicts of interest with the parties or subject matter or if there is evidence of arbitrator bias, as well as for failing to comply with arbitrator disclosure requirements.

IV. Conclusions

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR–CBOE–2004–

65), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority:²⁰

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53634; File No. SR–ISE–2006–16]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Regulatory Fees

April 12, 2006.

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 April 3, 2006, the International Securities Exchange, Inc. (the “Exchange” or the “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 Exchange. The Exchange 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)(ii) of the Act³ 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 is proposing to amend its Schedule of Fees to change its Regulatory Fees. The text of the proposed rule change is available at the Exchange, at the Commission's Public Reference Room, and at the Exchange's Web site: http://www.iseoptions.com/legal/proposed_rule_changes.asp.

¹² See Securities Exchange Act Release No. 51856 (June 15, 2005); 70 FR 36442 (June 23, 2005) (proposing new NASD Code of Arbitration Procedure for Customer Disputes (“Proposed Customer Code”)); Securities Exchange Act Release No. 51857 (June 15, 2005); 70 FR 36430 (June 23, 2005) (proposing new NASD Code of Arbitration Procedure for Industry Disputes (“Proposed Industry Code”)).

¹³ See CBOE Rule 18.13(a)–(c).

¹⁴ See Proposed Customer Code and Proposed Industry Code, *supra* note 11.

¹⁵ Such reasons include the disqualification, resignation, death, disability, or withdrawal of the arbitrator.

¹⁶ Proposed Rule 18.14(c) also would provide standards to be used in deciding challenges for cause, which standards are identical to those provided under proposed Rule 18.13(d).

¹⁷ See Proposed Customer Code and Proposed Industry Code, *supra* note 12.

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30–3(a)(12).

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 Exchange 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 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

ISE currently charges a uniform regulatory fee of \$3,500 on an annual basis to all its members regardless of whether they are a Primary Market Maker ("PMM"), a Competitive Market Maker ("CMM") or an Electronic Access Member ("EAM"). The Exchange has determined that the cost of surveilling its members far exceeds the amount that is generated by the current fees. In order to partially bridge this gap, the Exchange proposes to increase these fees as follows: for PMMs, ISE proposes a fee of \$7,500 for the first PMM membership; \$1,500 for each additional PMM membership; and \$1,000 for each CMM membership. For CMMs (who are not also PMMs), ISE proposes a fee of \$5,000 for the first CMM membership and \$1,000 for each additional CMM membership. Finally, for EAMs, ISE proposes a fee of \$5,000 for each EAM membership. The Exchange estimates that its largest members will be impacted by a nominal increase in the range of \$15,000–\$18,000 per year. And while some members will be affected more than others, the Exchange believes the increase is justified as it enables ISE to partially recoup the expense incurred in fulfilling its regulatory responsibilities with respect to its members.

Under the proposed fee change, the amount of the regulatory fee is tiered, depending on whether the member is a PMM, a CMM or an EAM. The reason for the tiered structure is that the resources dedicated to surveilling the activities of a member vary on the type of membership. For example, the Exchange has rules that apply to a PMM that do not apply to a CMM or an EAM. These rules necessitate surveillance activities. Generally, PMMs are subject to more rules than CMMs are and CMMs

are subject to more rules than EAMs are. As such, the Exchange believes that a tiered fee system is the most equitable method of assessing these fees.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(4) of the Act⁵ which requires that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, these fees would permit the Exchange to partially recoup the expense incurred in fulfilling its regulatory responsibilities with respect to its members.

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.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and subparagraph (f)(2) of Rule 19b-4⁷ thereunder. 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.⁸

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 Comment

- 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-2006-16 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 No. SR-ISE-2006-16. 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. 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 No. SR-ISE-2006-16 and should be submitted on or before May 10, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Nancy M. Morris,
Secretary.

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⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ *Id.*

⁹ 17 CFR 200.30-3(a)(12).