

The interested person should address this request for a hearing to: Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. At any time after November 14, 2007, the Commission may issue an order granting the application, unless the Commission orders a hearing.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56662; File No. SR-ISE-2007-71]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of a Proposed Rule Change Relating to Fee Changes on a Retroactive Basis

October 16, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 2, 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. 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 proposes to retroactively apply the fee reduction that was implemented on September 4, 2007 to the time period of July 1, 2007 to August 31, 2007 ("Retroactive Period"). The text of the proposed rule change is available at the Commission's Public Reference Room, at the Exchange, and at [www.ise.com](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, 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

On September 4, 2007, the Exchange implemented a fee reduction to the Schedule of Fees with respect to Electronic Access Member ("EAM") Trading Application Software Fees ("Software Fees").<sup>3</sup> Consequently, the Software Fees are as follows:

- Equity EAMs are charged \$250 for each of the first and second connections and \$50 for each additional connection thereafter, regardless of whether the Equity EAM is connected via Financial Information eXchange ("FIX") or Application Programming Interface ("API").<sup>4</sup>
- Options EAMs that connect via API are charged \$250 for each of the first five connections and \$100 for each additional connection.
- Options EAMs that connect via FIX are charged \$250 for each of the first and second connections and \$50 for each additional connection thereafter.

In this filing, the Exchange proposes to retroactively apply the above-mentioned reduced fees during the Retroactive Period. The Exchange believes that retroactive application is appropriate for Equity EAMs because prior to July 1, 2007, Equity EAMs were charged a fee of \$250 per month to connect to the ISE Stock Exchange, and fees on second and subsequent connections were waived, regardless of whether the Equity EAM connected via FIX or API.<sup>5</sup> 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 connection.

<sup>3</sup> See Securities Exchange Act Release No. 56379 (September 10, 2007), 72 FR 52591 (September 14, 2007) (SR-ISE-2007-79) (notice of filing and immediate effectiveness of a proposed rule change relating to fee changes).

<sup>4</sup> 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. FIX is an industry-wide messaging standard protocol.

<sup>5</sup> See Securities Exchange Act Release No. 54897 (December 8, 2006), 71 FR 75593 (December 15, 2006) (SR-ISE-2006-76) (notice of filing and immediate effectiveness of a proposed rule change relating to ISE Stock Exchange fees).

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 believes it is appropriate to retroactively apply this reduction to the Schedule of Fees.

The Exchange believes that retroactive application is appropriate for Options EAMs because originally Options EAMs were charged \$250 per month for each of the first five CLICK terminals, and \$100 per month for each additional terminal. However, under a now expired pilot program previously adopted by the Exchange, Options EAMs' fees associated with a second and any subsequent CLICK terminals were waived. As a result, Options EAMs were only charged a \$250 per month 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.<sup>6</sup> 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 connection fees for Options EAMs, contrary to what the Exchange intended. Thus, this filing seeks to remedy the mistake the CLICK Fee Filing has caused during the Retroactive Period by retroactively applying this reduction to the Schedule of Fees during the Retroactive Period.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>7</sup> 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.

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

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>6</sup> See Securities Exchange Act Release No. 55960 (June 26, 2007), 72 FR 36531 (July 3, 2007) (SR-ISE-2007-42) (the "CLICK fee filing").

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

*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**

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 self-regulatory organization consents, the Commission will:

- A. By order approve such 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2007-71 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-2007-71. 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 a.m. and 3 p.m. Copies of such 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 Number SR-ISE-2007-71 and should be submitted on or before November 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-20783 Filed 10-19-07; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-56667; File No. SR-NFA-2007-04]

**Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Compliance Rule 2-4: Misuse of Trade Secrets and Proprietary Information**

October 17, 2007.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-7 under the Exchange Act,<sup>2</sup> notice is hereby given that on August 20, 2007, National Futures Association ("NFA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which Items have been substantially prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA also has filed the proposed rule change with the

Commodity Futures Trading Commission ("CFTC").

NFA, on August 17, 2007, submitted the proposed rule change to the CFTC for approval and invoked the "ten-day" provision of section 17(j) of the Commodity Exchange Act ("CEA").<sup>3</sup> By letter dated September 5, 2007, the CFTC notified NFA of its determination not to review the proposed rule change.<sup>4</sup>

**I. Self-Regulatory Organization's Description of the Proposed Rule Change**

*Text of Proposed Rule Changes*  
*Interpretive Notice NFA Compliance Rule 2-4: Misuse of Trade Secrets And Proprietary Information*

National Futures Association ("NFA") Compliance Rule 2-4 provides that Members and Associates shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their commodity futures business. Over the years, NFA's Board of Directors ("Board") has provided guidance on certain issues to ensure that Members and Associates understand their responsibilities to observe just and equitable principles of trade and to act honestly, fairly, and in the best interests of customers.

Compliance Rule 2-4 prohibits Members and Associates from knowingly obtaining or seeking to obtain another Member's or Associate's confidential information or trade secrets without that person's permission. It also prohibits Members and Associates from knowingly or recklessly misusing confidential information or trade secrets in their possession. Although that rule does not seek to regulate business disputes between Members or to extend beyond commodity futures activities, it does reach conduct that could potentially harm customers.

Conduct that may violate Compliance Rule 2-4 includes:

- Misusing customer information, such as misappropriating social security numbers or purposefully violating the firm's privacy statement;
- Disclosing customer orders prior to execution (except as permitted by exchange rules); or
- Obtaining or attempting to obtain information disclosing a CTA's historical trading positions without the CTA's permission.

These are merely examples of conduct that could potentially harm customers. Any Member or Associate that knowingly obtains or seeks to obtain

<sup>3</sup> 7 U.S.C. 21(j).

<sup>4</sup> See letter from Lawrence B. Patent, Deputy Director, CFTC, to Thomas W. Sexton, III, General Counsel, NFA ("Letter").

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.