

its costs in providing a faster form of connectivity by members to the Exchange.

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

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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and paragraph (f) of Rule 19b-4<sup>7</sup> 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 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 No. SR-ISE-2007-04 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-ISE-2007-04. 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 such filing also will be available for inspection and copying at the principal office of the 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 Number SR-ISE-2007-04 and should be submitted on or before March 16, 2007.

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

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

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**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-55288; File No. SR-ISE-2007-09]**

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, To Establish Fee Discounts for Its Enhanced Sentiment Market Data Offering**

February 13, 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 January 26, 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 and II below, which Items have

been substantially prepared by the ISE. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. On February 9, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend its Schedule of Fees to adopt a discounted fee for a multi-product subscription of its enhanced sentiment market data offering ("ISEE Select<sup>TM</sup>"). The text of the proposed rule change is available at the Exchange, on the Exchange's Web site at [http://www.iseoptions.com/legal/proposed\\_rule\\_changes.asp](http://www.iseoptions.com/legal/proposed_rule_changes.asp), and at the Commission's Public Reference Room.

### **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**

Pursuant to a filing previously approved by the Commission, the Exchange currently sells on a subscription basis, to both members and non-members, ISEE Select.<sup>6</sup> ISEE Select

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> In Amendment No. 1, the Exchange more clearly identifies the text it proposes to add to its Schedule of Fees, adds an explanation of certain of that proposed new language, and clarifies its description of the proposed discount.

<sup>6</sup> See Securities Exchange Act Release Nos. 53532 (March 21, 2006), 71 FR 15501 (March 28, 2006) (SR-ISE-2005-56) (Notice of Filing of Proposed Rule Change to Establish Fees for Enhanced Sentiment Market Data); 53756 (May 3, 2006), 71 FR 27526 (May 11, 2006) (SR-ISE-2005-56) (Order Approving Proposed Rule Change to Establish Fees for Enhanced Sentiment Market Data) ("Initial Filing").

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 19b-4(f).

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

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

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

is based on the ISE Sentiment Index®, or ISEE®, a calculation that represents an overall view of market sentiment. The ISEE provides an intra-day picture of how investors view stock prices by assessing customers' option trading activity. Unlike the traditional put/call ratio, which makes no distinction between customer, market maker or firm transactions, the ISEE measures only opening long customer transactions on the ISE. The ISE updates the current ISEE value hourly during market hours and posts it for free on its Web site.<sup>7</sup>

Pursuant to the Initial Filing, ISEE Select allows subscribers to identify bullish and bearish investor sentiment for nearly any issue traded on the Exchange using the same formula that is used for the ISEE calculation. Where the ISEE is a single value for the overall market sentiment, ISEE Select provides specific information to allow an end user to retrieve a sentiment value for an individual symbol via a user-defined query tool. In addition to the user-defined query tool, ISE also offers a pre-defined scanning tool that combs the market for sentiment levels that meet pre-defined parameters. ISEE Select provides sentiment values for particular indices, industry sectors or individual stocks and is calculated three times per hour versus only one time per hour for the ISEE.

ISEE Select is currently available to on-line investors on a subscription basis as follows: (i) 100 user-defined queries for \$11.95 per month; (ii) 200 user-defined queries for \$14.95 per month; (iii) unlimited user-defined queries for \$19.95 per month; and (iv) unlimited pre-defined queries for \$11.95 per month. ISEE Select is also offered by third-parties that participate in the Exchange's Marketing Alliance program.<sup>8</sup> Customers of participating third-parties are able to take advantage

of a discounted price for the same four subscription levels. The discounted rates for these subscribers are as follows: (i) 100 user-defined queries for \$9.95 per month; (ii) 200 user-defined queries for \$11.95 per month; (iii) unlimited user-defined queries for \$15.95 per month; and (iv) unlimited pre-defined queries for \$9.95 per month.

The Exchange now proposes to offer to both member and non-member subscribers the following multi-product discounted subscription fees: \$24.95 per month for customers who subscribe directly through ISE to both the unlimited pre-defined query and either 200 user-defined queries or unlimited user-defined queries; or \$19.95 per month for customers of the Marketing Alliance program partners that subscribe to both the unlimited pre-defined query and either 200 user-defined queries or unlimited user-defined queries. The Exchange notes that the multi-product discounts noted above are an actual reduction of the actual subscription fees for the products to which they apply. If not for the multi-product discount that is proposed in this filing, for on-line subscribers directly through the ISE, these fees would be (i) \$26.90 per month for subscribers to both unlimited pre-defined queries and 200 user-defined queries, or (ii) \$31.90 per month for subscribers to both unlimited pre-defined queries and unlimited user-defined queries. For customers of the Marketing Alliance program partners, if not for the multi-product discount, these fees would be (i) \$21.90 per month for subscribers to both unlimited pre-defined queries and 200 user-defined queries, or (ii) \$25.90 per month for subscribers to both unlimited pre-defined queries and unlimited user-defined queries. Finally, the Exchange notes that the addition of the word "user-defined" to its Schedule of Fees is a clarifying change and not a substantive one. The enhanced sentiment market data offering that is currently sold by the Exchange consists of both a user-defined query tool and a pre-defined query tool. The purpose for adding the word "user-defined" is to differentiate it from the "pre-defined" query tool.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4), 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, the proposed rule filing will provide both members and non-members a multi-

product discount for subscription to ISEE Select.

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

The Exchange 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

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

Prior to approving the current fee structure for ISEE Select, the Commission solicited comments from interested people, and no comments were received.<sup>10</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow for immediate implementation of the proposed fee discount for this product, which is available to both members and non-members of the Exchange alike. In addition, this proposed rule change presents no novel issues. For these reasons, the Commission designates the proposed

<sup>7</sup> [http://www.iseoptions.com/marketplace/statistics/sentiment\\_index.asp](http://www.iseoptions.com/marketplace/statistics/sentiment_index.asp).

<sup>8</sup> When the Commission published the Initial Filing, the Marketing Alliance program was known as the ISE Broker Marketing Alliance, and participation in it was limited to broker-dealers. Following the launch of the ISEE Select market data offering, and in response to the interest the Exchange received from many non-broker-dealers wishing to participate in the Marketing Alliance program, the Exchange subsequently expanded the program by eliminating its limitation to only broker-dealers. See Securities Exchange Act Release Nos. 54508 (September 26, 2006) 71 FR 58459 (October 3, 2006) (SR-ISE-2006-44) (Notice of Filing of Proposed Rule Change to Expand the Broker Marketing Alliance to Include Non-Broker-Dealers with Regard to Enhanced Sentiment Market Data Offering); 54704 (November 3, 2006), 71 FR 65859 (November 9, 2006) (SR-ISE-2006-44) (Order Approving Proposed Rule Change to Expand the Broker Marketing Alliance to Include Non-Broker-Dealers with Regard to Enhanced Sentiment Market Data Offering).

<sup>9</sup> In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The ISE satisfied this requirement.

<sup>10</sup> See Securities Exchange Act Release Nos. 54508 and 54704, *supra* at n.8.

rule change to be effective and operative upon filing with the Commission.<sup>11</sup>

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 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-2007-09 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-2007-09. 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 Number SR-ISE-2007-09 and should be submitted on or before March 16, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55309; File No. SR-ISE-2007-11]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Delay in the Implementation of the Trading Phase Date of Regulation NMS

February 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 February 5, 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 ISE. The ISE has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act,<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> 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 remove the reference to "February 5, 2007" from its rules based upon the delay in the implementation of the Trading Phase Date of Regulation NMS under the Act. The text of the proposed rule change is

available at ISE, 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, 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

Based upon the delay in the implementation of the Trading Phase Date of Regulation NMS,<sup>5</sup> the Exchange is proposing to revise rule language to incorporate this delay.

###### 2. Statutory Basis

The ISE believes that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes that this filing will provide investors with more flexibility in entering orders and receiving executions of such orders.

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

The Exchange 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.

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

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

<sup>5</sup> See Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007) (File No. S7-10-04).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).