

As proposed, subscribers may obtain additional ID codes for \$500 per three months, or \$2000 per year. Silver and gold subscribers may obtain additional scans, silver in blocks of 2 million scans for \$500, and gold in blocks of 6 million scans for \$750. *Ibid.*

#### *Proposed Classification Changes*

The Postal Service proposes to amend the DMCS to include new sections 990 and 991, which, among other things, define the service, and describe its availability and customer requirements. A new fee schedule, 991, is also proposed. Request at attachments A and B.

#### *Conditional Motion for Waiver*

In addition to attachment F, the Postal Service submitted a separate statement concerning its compliance with the filing requirements. This statement was coupled with a conditional motion for waiver. See statement of United States Postal Service concerning compliance with filing requirements and conditional motion for waiver (statement). The Postal Service indicates that it has supplemented materials developed specifically to support its request by incorporating testimony and documentation submitted in the recently concluded omnibus rate case, docket no. R2001-1. Statement at 1. The Postal Service suggests that this approach is justified for several reasons, including, among others, congruent test years (FY 2003) and a substantial overlap between the information required by the general filing requirements and that already provided in docket no. R2001-1. *Id.* at 2-3. Further, the Postal Service asserts that its compliance should be assessed in light of the nature of Confirm<sup>®</sup> service and the minor extent that total cost-revenue relationships will be affected by its implementation. *Id.* at 3. The Postal Service, therefore, contends that it is in compliance with the Commission's filing requirements. Alternatively, however, the Postal Service requests a waiver of the filing requirements pursuant to 39 CFR 3001.22, 3001.54(r), and 3001.64(h)(3).

#### *Request for Expedition*

The Postal Service accompanied its filing with a precatory request for expedition. See United States Postal Service request for expedition. In support, the Postal Service states its belief that an early recommended decision will benefit mailers and facilitate an orderly transition to the proposed service and fees. The Postal Service emphasizes, however, that it is not advocating any schedule that would

compromise any participants' opportunity to be heard consistent with due process requirements or that would otherwise limit the Commission's ability to develop a record on which to make its recommendations. Further, the Postal Service suggests that this proceeding warrants expeditious procedures, noting its optimism on the possibility that it may be settled. The Postal Service concludes with a request that "due consideration be given to taking measures that would expedite proceedings and lead to an early Recommended Decision." United States Postal Service request for expedition at 2.

#### *Intervention*

Each interested person wishing to be heard in this matter is directed to file a notice of intervention with Steven W. Williams, secretary of the Commission, 1333 H Street NW., suite 300, Washington, DC 20268-0001, on or before May 16, 2002. Each party should specify whether the party seeks to participate on a full or limited basis. See 39 CFR 3001.20 and 3001.20a. Written discovery pursuant to rules 25-28 may be undertaken upon intervention.

#### *Representation of Interests of the General Public*

The Commission designates Shelley S. Dreifuss, acting director of the Commission's office of the consumer advocate, to represent the interests of the general public in this proceeding, pursuant to 39 U.S.C. 3624(a). Ms. Dreifuss shall direct the activities of Commission personnel assigned to assist her and, at an appropriate time, provide the names of these employees for the record. Neither Ms. Dreifuss nor the assigned personnel shall participate in or advise as to any Commission decision in this proceeding, other than in their designated capacity. Participants shall serve the OCA separately with three copies of all filings in addition to, and at the same time, as they effect service on the Commission.

#### *Prehearing Conference Date; Informal Settlement Discussion*

The Commission will hold a prehearing conference on May 20, 2002, at 1:00 p.m. in the Commission's hearing room, 1333 H Street NW., suite 300, Washington, DC 20268-0001. In light of the Postal Service's statement concerning the prospects of settling this proceeding, the Commission will make its hearing room available at 9:30 a.m. on May 20, 2002 for the participants to engage in informal settlement discussions. If such discussions are scheduled, the Postal Service should

provide notice to all participants. At the prehearing conference, the Postal Service shall present a status report concerning settlement discussions, if any.

#### *Ordering Paragraphs*

##### *It is ordered:*

1. Docket no. MC2002-1 is established to consider the Postal Service's request for a recommended decision on classification and fees for Confirm<sup>®</sup> service.
2. The Commission will sit en banc in this proceeding.
3. Notices of intervention are due no later than May 16, 2002.
4. A prehearing conference will be held May 20, 2002 at 1:00 p.m. in the Commission's hearing room.
5. Answers to the Postal Service's conditional motion for waiver are due May 23, 2002.
6. Shelley S. Dreifuss, acting director of the Commission's office of the consumer advocate, is designated to represent the interests of the general public.
7. The Secretary shall cause this notice and order to be published in the **Federal Register**.

Dated: April 29, 2002.

**Steven W. Williams,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45816; File No. SR-ISE-2002-11]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC Relating to a Market Maker Inactivity Fee

April 24, 2002.

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 April 16, 2002, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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.

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

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

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

The ISE proposes to adopt a \$25,000 per month fee on Competitive Market

Makers ("CMMs") if their membership is not actively trading. Below is the text of the proposed rule change. Additions are italicized.

\* \* \* \* \*

**ISE SCHEDULE OF FEES**

Electronic Market Place	Amount	Billable unit	Frequency
Inactive PMM Fee .....	\$100,000	Membership <sup>3</sup> ...	Monthly
Minimum PMM Fee .....	\$50,000	Membership <sup>4</sup> ...	Monthly
Inactive CMM Fee .....	\$25,000	Membership <sup>5</sup> ...	Monthly

<sup>3</sup>Effective January 1, 2001, if a group has not been open for trading, the PMM appointed to that group will be subject to an "inactive" fee of \$100,000 per month; provided that, for an entity that owns a PMM membership and that is not itself a registered broker-dealer, the fee will become effective on May 7, 2001.

<sup>4</sup>Effective January 1, 2001, PMMs are subject to a minimum fee of \$50,000 per options group. To the extent that aggregate execution fees in a group do not total at least \$50,000 per month, the PMM for that group must pay a fee representing the difference between \$50,000 and the aggregate actual execution fees.

<sup>5</sup>Effective July 1, 2002, CMMs are subject to an inactivity fee of \$25,000 per CMM membership that is not actively trading. In applying this fee: (1) this fee shall not apply to any CMM membership in an options group for which the CMM also is leasing a PMM membership; and (2) if a CMM is approved with respect to more than one CMM membership that is not actively trading (any such inactive CMM membership in addition to one inactive membership referred to as "additional inactive memberships"), an Exchange official designated by the Board may grant the CMM an exemption from this fee for any or all additional inactive memberships if the CMM presents a business plan that an Exchange official designated by the Board determines will lead to active trading in such additional inactive membership(s) within a reasonable period of time.

**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.

**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 adopt a fee allowing the ISE to recoup a portion of the revenue it loses when a CMM owns or leases one or more memberships that are not open for trading. While the Exchange currently has a Primary Market Maker ("PMM") inactivity fee, there is no similar fee for CMMs. The Exchange proposes that the fee be effective on July 1, 2002, in order to give members a reasonable period of time to begin trading in inactive memberships.

The fee will not apply if a member holds an inactive CMM membership in a group of securities in which it also is operating the PMM membership pursuant to a lease. In that case, the

member cannot operate both the PMM and CMM membership, and the member reasonably may want to retain control of the CMM membership so that it can operate the membership when its PMM lease expires. The proposal also will authorize the Exchange staff to grant exemptions if a member holds multiple inactive CMM memberships. In that situation, the Exchange can grant exemptions for all but one such membership as long as the member presents a business plan establishing that trading will begin in the inactive memberships over a reasonable time period.

The Exchange proposes a \$25,000 fee based on conservative estimates of the revenues lost due to an inactive CMM membership. For the first quarter of 2002, an average CMM membership generated just over \$25,000 in transaction-based fees. This does not include other fees that the Exchange loses, such as session/API fees. The Exchange will periodically reevaluate this fee to maintain the relationship between the amount of the fee and the lost revenue being recouped.

**2. Statutory Basis**

The basis for this proposed rule change is the requirement under section 6(b)(4) of the Act<sup>6</sup> that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

<sup>6</sup>15 U.S.C. 78f(b)(4).

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

The ISE 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**

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**

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 submissions should refer to File No. SR-ISE-2002-11 and should be submitted by May 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**  
Deputy Secretary.  
[FR Doc. 02-11104 Filed 5-3-02; 8:45 am]  
BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-45840; File No. SR-ISE-2002-08]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the International Securities Exchange LLC Relating to Fee Changes**

April 29, 2002.

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 April 15, 2002, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission")

the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. On April 23, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On April 25, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</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 three fee changes: (i) an extension of its waiver of customer transaction and comparison fees for an additional year and one month; (ii) an extension of its waiver of multiple "Click" trading terminal charges for an additional year; and (iii) the deletion of Torque trading application fees.

Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in [brackets].

\* \* \* \* \*

**ISE SCHEDULE OF FEES**

Electronic market place	Amount	Billable unit	Frequency
<b>Execution Fees</b>			
• Customer .....	\$0.05	contract/side .....	Transaction
(Fee waived through <i>June 30, 2003</i> [May 31, 2002])			
* * * * *			
Comparison Fee .....	0.03	contract/side .....	Transaction
(Fee waived for Customer Trades through <i>June 30, 2003</i> [May 31, 2002])			
* * * * *			
<b>Trading Application Software</b>			
* * * * *			
<b>Software License &amp; Maintenance</b>			
• [Torque			
First .....	1,250.00	Terminal .....	Monthly
Second through Fourth .....	750.00	Terminal .....	Monthly
Fifth and More .....	250.00	Terminal .....	Monthly]
• Click/Trade Review Terminal**			
First through Fifth .....	500.00	Terminal.	
Sixth and More .....	250.00	Terminal.	
<b>Session/API Fee</b>			
• EAM/Trade Review Terminal* * *			
First Through Fifth .....	250.00	API .....	Monthly
Sixth and More .....	100.00	API .....	Monthly
* * * * *			

\*\* All Click fees for a second and subsequent terminals are waived through *May 31, 2003* [May 31, 2002]. Thereafter, fees are waived for third and subsequent Click terminals ("incremental Click terminals") if the member executes, on average, at least 500 customer or firm proprietary contracts per day per incremental Click terminal on the Exchange for the month.

<sup>7</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> See letter from Michael J. Simmons, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market

Regulation ("Division"), Commission, dated April 22, 2002 ("Amendment No. 1"). In Amendment No. 1, the ISE amended its proposal to extend a waiver for the API Session fee as it relates to the Click through May 31, 2003.  
<sup>4</sup> See letter from Michael J. Simmons, Senior Vice President and General Counsel, ISE, to Nancy

Sanow, Assistant Director, Division, Commission, dated April 23, 2002 ("Amendment No. 2"). In Amendment No. 2, the ISE amended its proposal to include reasoning for the extended waiver for its API fee associated with Click terminals.