

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]  
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**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.

\*\*\* All API Session/API fees associated with a second and subsequent Click terminals are waived through May 31, 2003 [May 31, 2002]. Thereafter, such fees are waived for third and subsequent Session/API associated with an incremental Click terminal for EAMs 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.

\* \* \* \* \*

## 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

The ISE proposes to amend three aspects of its current fee schedule. First, the ISE proposes to extend the waiver of customer transaction fees. While the ISE currently waives customer transaction and comparison fees, this waiver will expire on May 26, 2002. The ISE proposes to extend this waiver through June 30, 2003 for competitive reasons.

Second, the ISE proposes to extend the waiver of the Click terminal fee and the API fee associated with the use of Click terminals for an additional year. "Clicks" are ISE order-entry terminals, and the waiver applies to a member's second and subsequent Click terminals. By its terms, this waiver will expire on May 31, 2002. Because this fee waiver has worked well to encourage firms to install and use multiple Clicks, the ISE proposes to extend the program for an additional year.

Third, the ISE proposes to delete the "Torque" fees from our fee schedule. ISE market makers can use either the Torque application or any other application of their choice to support their trading. Recently, the ISE ceased to provide Torque directly to market makers. Instead, market makers using Torque currently contract directly with the supplier of that application, and pay all fees directly to that supplier. Thus, the ISE believes that Torque fees are no longer relevant and proposes to delete these fees from its fee schedule.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>5</sup> in general, and Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it provides for the 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

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

The foregoing rule change, as amended, has become effective as of the date of filing of Amendment No. 2, on April 25, 2002, pursuant to Section 19(b)(3)(A)<sup>7</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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.<sup>9</sup>

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

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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on April 25, 2002, the date the ISE filed Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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, as amended, 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 will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR-ISE-2002-08 and should be submitted by May 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Margaret H. McFarland,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45847; File No. SR-Phlx-2002-30]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Adoption of a Fee for Construction of Kiosks

April 30, 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 24, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the

<sup>10</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.