competitors, all of whom access the same trading services.

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. Moreover, the Exchange believes that failing to adopt the proposed rule change would impose a burden on competition by requiring the Exchange Members to subsidize the trading of their competitors.

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. 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. 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*. Please include File Number SR–ISE–2005–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–ISE–2005–32. 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 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–2005–32 and should be submitted on or before August 26, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[9] and, in particular, the requirements of section 6(b) of the Act [10] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with section 6(b)(4) of the Act,[11] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2006, will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause pursuant to section 19(b)(2) of the Act,[12] for approving the proposed rule change prior to the 30th day after publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Exchange and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–ISE–2005–32), as amended, is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4195 Filed 8–4–05; 8:45 am]

BILLING CODE 8010–01–P

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15.U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(2).

[13] *Id.*

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52174; File No. SR–ISE–2005–33]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to the Exchange's Trade-Through and Locked Markets Rules

July 29, 2005.

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 July 8, 2005, the International Securities Exchange, Inc. (''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 ISE. 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 rules governing the operation of the intermarket option linkage (''Linkage''). Specifically, the ISE is proposing to amend the trade-through and locked markets rules to allow a member to ''trade and ship'' or ''book and ship'' an order. The text of the proposed rule change is available on the ISE's Web site (*http://www.iseoptions.com*), at the ISE's Office of the Secretary, 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 ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 ISE proposes to amend its rules governing Linkage trading with respect to trade-throughs and locked markets. Specifically, the amendment will provide that an ISE member: (i) May trade an order at a price that is one minimum quoting increment inferior to the national best bid or offer (''NBBO'') if the member contemporaneously transmits to the market(s) disseminating the NBBO Linkage Orders [3] to satisfy all interest at the NBBO price (''trade and ship''); and (ii) may enter an order on the ISE that would lock another exchange if the member contemporaneously sends a Linkage Order to such other exchange to satisfy all interest at the lock price (''book and ship'').[4] Under the trade and ship proposal, pursuant to agency obligations, any execution the member receives from the NBBO market must be reassigned to any customer order underlying the Linkage Order that was transmitted to trade against the market disseminating the NBBO. Below are examples illustrating the applications of these concepts:

- Trade and Ship Example. The ISE is disseminating an offer of $2.00 for 100 contracts. Exchange B is disseminating the national best offer of $1.95 for 10 contracts. No other market is at $1.95. An ISE market maker receives a 100-contract customer buy order to pay $2.00. Under this proposal, the ISE market maker could execute 90 contracts (or 100 contracts) of the customer order at $2.00 provided the ISE market maker contemporaneously transmits a 10-contract Principal Acting as Agent (''P/A'') Order [5] to Exchange B to pay $1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10-contract fill at $1.95 and 90 contracts at $2.00 (if the customer order was originally filled in its entirety at $2.00, an adjustment would be required to provide the customer with the $1.95 price for 10 contracts reflecting the P/A Order execution). As proposed, this would not be deemed a Trade-Through.
- Book and Ship Example. The ISE is disseminating a $1.85–$2.00 market. Exchange B is disseminating a $1.80–$1.95 market. The $1.95 offer is for 10 contracts. No other market is at $1.95. An ISE market maker receives a customer order to buy 100 contracts at $1.95. Under this proposal, the ISE market maker could book 90 contracts of the customer buy order at $1.95 provided the ISE market maker contemporaneously transmits a 10-contract P/A Order to Exchange B to pay $1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10-contract fill and the rest of the customer's order will be displayed as a $1.95 bid on the ISE. The national best offer would likely be $2.00. As proposed, this would not be deemed a ''locked'' market for purposes of the Linkage Plan.

2. Statutory Basis

The ISE believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5) [6] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change will help implement the Linkage Plan by facilitating the ability of market makers to execute their customer orders.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The ISE has not solicited, and does not intend to solicit, comments on this proposed rule change. The ISE 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 ISE 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.* Please include File Number SR–ISE–2005–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–ISE–2005–33. 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

[3] The ISE defines ''Linkage Order'' in ISE Rule 1900(10).

[4] At the request of the ISE, the Commission staff has changed the wording in item (ii) to be consistent with the rule text. Telephone conversation between Michael Simon, General Counsel and Secretary, ISE, Kim Allen, Attorney, Division of Market Regulation (''Division''), and Kate Robbins, Attorney, Division, on July 20, 2005.

[5] The ISE defines ''Principal Acting as Agent (''P/A'') Order'' in ISE Rule 1900(10)(i).

[6] 15 U.S.C. 78f(b)(5).

the Commission's Public Reference Room. Copies of the 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–2005–33 and should be submitted on or before August 26, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4226 Filed 8–4–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52177; File No. SR–ISE–2005–31]

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

July 29, 2005.

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 June 29, 2005, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change concerning its cancellation fee as described in items I, II, and II below, which items have been prepared by the ISE. The ISE has filed the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the ISE under section 19(b)(3)(A)(ii) of the Act[3] 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.[5]

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

The purpose of the proposed rule change is to amend the ISE's cancellation fee. The text of the proposed rule change is available on the Exchange's Internet Web site (*http://www.iseoptions.com/legal/proposed_rule_changes.asp*), at the principal office of the ISE, 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 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 ISE proposes to amend its Schedule of Fees regarding its cancellation fee. Since the inception of the cancellation fee, the Exchange has charged Electronic Access Members (''EAMs'') $1 per order canceled in excess of the number of orders executed.[6] Recognizing that order cancellations often happen in large numbers, the purpose of the fee was to ease congestion in the ISE Order Routing System (''IORS'') and to fairly allocate costs among members according to system use. The Exchange states that experience shows that two limitations are preventing the fee from fully achieving its intended effect. First, the ISE applies the fee to the aggregate number of orders a clearing EAM cancels on behalf of itself and its customers, which tends to mask the activity of the EAM's particular customers who are responsible for the cancellations. Second, because the Exchange applies the fee on a per order basis, firms have adjusted trading activity solely to avoid this fee by executing small orders to offset the cancellation of larger orders. The ISE states that, if anything, this increases message traffic as firms enter more small orders to mask their order cancellations.

To address these concerns, the ISE first proposes to charge a clearing EAM based on the cancellation activity of each of its customers (including itself when it self-clears). The Exchange has enhanced its systems so that it now can identify the specific broker-dealer customers of a clearing EAM who enters and cancels orders. This will allow the Exchange to identify and charge for cancellation activity beyond aggregate numbers. The ISE similarly will be able to provide clearing EAMs with the information necessary for them to pass through resulting cancellation charges to their customers.[7]

The ISE further proposes to apply the fee to contracts canceled, not orders canceled. Specifically, the Exchange would charge $.10 for a canceled contract, compared to the current $1.00 fee for each canceled order. Similarly, the Exchange proposes to charge the fee only if the member or customer canceled at least 5,000 contracts in a month, compared to the current rule's allowance of 500 canceled orders. The Exchange believes that this will help address the problem of firms executing multiple small orders to avoid the per-order fee. The Exchange also believes that this will result in an effective fee increase since its current average order size is approximately 17 contracts, resulting in an average fee of $1.70 per canceled order. The ISE believes this increase is justified due to a continued increase in cancellation activity and its effect on IORS congestion.

To ensure that the Exchange covers only activity that is truly excessive and inappropriately uses bandwidth and system capacity, it proposes to charge the fee only if canceled contracts are in excess of five times the total number of contracts executed. If this five-to-one ratio is exceeded, as is the case today with orders, the Exchange will impose the fee only on the excess cancellations over executions.

The following example shows how the ISE proposes to apply this fee: Assume that Firm A, a customer of Clearing EAM, cancels orders representing an aggregate of 13,000 contracts in a month. Further assume that Firm A executed orders representing 2,500 contracts. Because

[7] 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)

[5] The Commission received eleven comment letters on the proposal as of the date of this notice. The ISE subsequently filed a proposed rule change under Section 19(b)(3)(A) of the Act (File No. SR–ISE–2005–36) to reinstate the Exchange's cancellation fee as in effect prior to the filing of the instant proposed rule change. In addition, the ISE filed a proposed rule change pursuant to Section 19(b)(2) under the Act (File No. SR–ISE–2005–37) that would base its cancellation fee on canceled contracts and that responds to the comment letters submitted on the instant proposed rule change.

[6] *See* Securities Exchange Act Release No. 46189 (July 11, 2002), 67 FR 47587 (July 19, 2002) (SR–ISE–2002–16).

[7] The ISE notes that this feature is similar to how the Pacific Exchange now imposes its cancellation fee. *See* Securities Exchange Act Release No. 49802 (June 3, 2004), 69 FR 32391 (June 9, 2004) (SR–PCX–2004–31).