mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

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

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

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

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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*. Please include File No. SR–DTC–2008–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–DTC–2008–13. 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. to 3 p.m. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at *http://www.dtcc.com/legal/rule_filings/dtc/2008.php*. 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 No. SR–DTC–2008–13 and should be submitted on or before January 7, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–29900 Filed 12–16–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59072; File No. SR–ISE–2008–92]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Cancellation Fees

December 10, 2008.

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 November 28, 2008, 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 prepared by the ISE. On December 9, 2008, the ISE filed Amendment No. 1 to the proposed rule change. 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 ISE is proposing to amend its Schedule of Fees regarding its cancellation fee. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, 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 self-regulatory organization 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 self-regulatory organization 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 this proposed rule change is to amend the ISE's cancellation fee. The Exchange currently has a cancellation fee of $2.00 that applies to Electronic Access Members ("EAMs") that cancelled at least 500 orders in a month, for each order cancellation in excess of the total number of orders such member executed that month. Further, all orders from the same clearing EAM executed in the same underlying symbol at the same price within a 30 second period are aggregated and counted as one executed order for purposes of this fee. This fee is currently charged only to customer orders; broker-dealer orders, including non-member market maker (FARMM) orders, are excluded from this fee.

Historically, some customers sought to avoid the cancellation fee by executing large quantities of small orders in inexpensive, out of the money options to offset their cancellation

[8] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

activity in actively traded, at the money strikes where they conduct the majority of their profitable business. In response, the Exchange adopted a 30 second aggregation window when calculating the fee, wherein all orders executed by the same clearing customer of a Member firm, in the same underlying symbol and at the same price within 30 seconds are aggregated and counted as one execution.[3] While adopting the 30 second window reduced the incentive for these customers to enter multiple orders in rapid succession at the same price and, at that time, in the same series,[4] cancelled orders continued to be an issue. Additionally, the recent downturn in the market has resulted in thousands of out of the money options across hundreds of symbols, creating new opportunities for some customers to enter small orders at different price levels during the 30 second time period, allowing for more cancellation activity in at the money strikes.

Recognizing that order cancels and trades often happen in large numbers, the purpose of this fee is to focus on activity that is truly excessive and uses bandwidth and system capacity while fairly allocating costs among Members. The Exchange has made efforts in the past to recover system capacity and bandwidth costs relative to the level of cancel and order entry activity by periodically raising its cancellation fee.[5] Despite these efforts, the level of canceled orders continues to remain high, being offset by small order activity in deep out of the money options. This in turn has further increased capacity and bandwidth demands. As a result, ISE's receipt of cancel fees has been reduced to a level where they no longer represent a fair share of the Exchange's capacity costs.

In order to ease system congestion caused by cancelled orders, the Exchange proposes to amend the manner by which it calculates its current cancel fee by extending the current 30 second window to 300 seconds. ISE believes that extending the aggregation window to five minutes will result in a reduction in the number of orders that are sent to the Exchange to create offsetting trades.

The Exchange believes this proposed fee change is justified to address the level of cancellation activity and its effect on system congestion. This proposed fee change will be operative on December 1, 2008.

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 Exchange believes amending the 30 second window to 300 seconds is necessary to address the current level of cancellation activity and its effect on system congestion.

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

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(2)[7] thereunder. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed 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.[8]

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–2008–92 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2008–92. 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 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–2008–92 and should be submitted on or before January 7, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Acting Secretary.

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[3] *See* Securities Exchange Act Release No. 53862 (May 24, 2006), 71 FR 31244 (June 1, 2006).

[4] Earlier this year, in SR–ISE–2008–81, ISE amended the manner in which it calculates the fee by aggregating orders in the same underlying symbol in place of aggregating orders in the same series. *See* Securities Exchange Act Release No. 58898 (November 4, 2008), 73 FR 67238 (November 13, 2008).

[5] *See* Securities Exchange Act Release Nos. 54321 (August 15, 2006), 71 FR 49496 (August 23, 2006); 55422 (March 8, 2007), 72 FR 12645 (March 16, 2007); 57467 (March 11, 2008), 73 FR 14291 (March 17, 2008); and 58692 (September 30, 2008), 73 FR 59006 (October 8, 2008).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(f)(2).

[8] For purposes of calculating the sixty-day abrogation period, the Commission considers the period to commence on December 9, 2008, the date on which the Exchange filed Amendment No. 1.

[9] 17 CFR 200.30–3(a)(12).