

training will be provided via the same delivery method, except with more certainty both as to when the FMCE Program will be delivered and the total cost.

In the past, the Exchange has sought to assess the FMCE Program fee to recoup development and delivery costs, crediting revenues exceeding a year's actual development and delivery costs to the succeeding year's budgeted costs. Now that FINRA develops and administers the FMCE Program on the Exchange's behalf, the FINRA costs are subsumed in the larger fee paid to FINRA for the provision of regulatory services. The Exchange continues to incur costs related to configuration, maintenance and hosting associated with FMCE delivery and billing. In balancing the costs to the Exchange, the Exchange also weighs the increasing burden on Floor members to absorb those costs. At the time the fee was last assessed in 2009, the number of qualified members subject to the FMCE Program requirement was 524. That number is now 467. In view of these declining membership numbers, the Exchange believes that the full costs associated with the FMCE Program should not be shifted to the Floor members. The Exchange believes that the proposed \$300 annual fee strikes the appropriate balance between recouping certain costs associated with the FMCE Program from Floor members, without burdening a shrinking population with the full costs.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),<sup>3</sup> in general, and Section 6(b)(4) of the Act,<sup>4</sup> in particular, in that it is designed to provide 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 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**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>5</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>6</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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-NYSE-2011-37 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSE-2011-37. 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 Web site viewing and printing 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 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-NYSE-2011-37 and should be submitted on or before August 26, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. 2011-19853 Filed 8-4-11; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65000; File No. SR-ISE-2011-44]

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Two Market Data Feeds**

August 1, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 1, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

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

The Exchange proposes to adopt two new market data offerings, the ISE Top Quote Feed and the ISE Spread Book Feed. 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 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 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

ISE proposes to adopt two new market data offerings, the ISE Top Quote Feed and the ISE Spread Book Feed. These two new data feeds were created as part of the Exchange's transition to its new trading platform called Optimise. The Exchange expects to fully transition to the Optimise trading platform by the end of July 2011. Thus, the Exchange proposes to implement both new market data offerings on August 1, 2011.

##### ISE Top Quote Feed

ISE currently produces a real-time data feed with the Best Bid/Offer, or BBO, that includes the aggregate size from all outstanding quotes and orders at the top price level, or the "top of book" and all trades that are executed on the Exchange. This "core"<sup>3</sup> data is formatted according to Options Price Reporting Authority ("OPRA") specification and sent to OPRA for redistribution to the public.

The Exchange now proposes to offer a non-core data feed, called the ISE Top Quote Feed ("Top Quote"). Top Quote

<sup>3</sup> "Core" data refers to the best-priced quotations and comprehensive last sale reports of all markets that the Commission requires a central processor to consolidate and distribute to the public pursuant to joint-SRO plans. "Non-core" data refers to products other than the consolidated products that markets offer collectively under joint industry plans.

is a real-time feed that aggregates all quotes and orders at the top price level on the Exchange, on both the bid and offer side of the market. Top Quote provides subscribers with a consolidated view of tradable prices at the BBO, the same data that is displayed on the OPRA feed. Top Quote shows bid/ask quote size for Customer and Professional Customer option orders for ISE traded options that are not currently distinguishable through the OPRA feed.<sup>4</sup> The identification of Customer orders is useful for market makers and market participants generally since Customer orders take precedence over all other order types on the ISE. The Exchange believes it is not discriminatory or a burden on competition for these orders to be identified because doing so increases the likelihood that these orders will be executed as they have priority on the ISE while Professional Customers, *i.e.*, persons or entities that (i) are not a broker or dealer in securities, and (ii) place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), do not have priority on the Exchange.

Top Quote is currently imbedded in the Exchange's Depth of Market data feed offering and is available to subscribers of the Depth of Market data feed offering. With this proposal, the Exchange is offering Top Quote as a separate data feed. Top Quote will be available to members and non-members, and to both professionals and non-professionals.

##### ISE Spread Book Feed

The Exchange also proposes to offer another non-core data feed, called the ISE Spread Book Feed ("Spread Feed"). The Spread Feed is a real-time feed that consists of options quotes and orders for all complex orders (*i.e.*, spreads, buy-writes, delta neutral strategies, etc.) aggregated at the top price level on both the bid and offer side of the market as well as all aggregated quotes and orders for complex orders at the top five price levels on both the bid and offer side of the market. In addition, the Spread Feed

<sup>4</sup> Customer and Professional Customer orders are identified in a number of market data offerings currently sold by other options exchanges. See Securities Exchange Act Release No. 63351 (November 10, 2010), 75 FR 73140 (November 29, 2010) (SR-PHLX-2010-154) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for the PHOTO Historical Data Product). See also Securities Exchange Act Release No. 63997 (March 1, 2011), 76 FR 12388 (March 7, 2011) (SR-CBOE-2011-014) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify a Fee Schedule for the Sale by Market Data Express, LLC, of a BBO Data Feed for CBOE Listed Options).

provides real-time updates every time a new complex limit order that is not immediately executable at the BBO is placed on the ISE complex order book. The Spread Feed shows bid/ask quote size for Customer and Professional Customer option orders for ISE traded options. As noted above, since Customer orders take precedence over all other order types, the identification of these orders in the Spread Feed is useful information for market makers and market participants generally. Again, the Exchange believes it is not discriminatory or a burden on competition for these orders to be identified because doing so increases the likelihood that these orders will be executed as they have priority on the ISE while Professional Customers, *i.e.*, persons or entities that (i) are not a broker or dealer in securities, and (ii) place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), do not have priority on the Exchange.

The Exchange further notes that ISE Market Makers currently receive a spread book data feed as part of their membership. The Spread Feed will be available to members and non-members and to both professionals and non-professionals.

##### 2. Basis

ISE believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),<sup>5</sup> in general and with Section 6(b)(5) of the Act,<sup>6</sup> in particular in that it is 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 adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. ISE believes that this proposal is in keeping with those principles by promoting increased

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

transparency through the dissemination of more useful proprietary data and also by clarifying its availability to market participants.

Additionally, ISE is making a voluntary decision to make this data available. ISE is not required by the Act in the first instance to make the data available, unlike the best bid and offer which must be made available under the Act. ISE chooses to make the data available as proposed in order to improve market quality, to attract order flow, and to increase transparency.

#### *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. The Exchange believes that Top Quote and Spread Feed will help attract new users and new order flow to the Exchange, thereby improving the Exchange's ability to compete in the market for options order flow and executions.

#### *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**

Pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6)<sup>8</sup> thereunder, the Exchange has designated this proposal as one that effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Rule 19b-4(f)(6)<sup>9</sup> requires a self-regulatory organization to give the Commission written notice of its intent to file 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 Exchange has satisfied this requirement.

Under Rule 19b-4(f)(6) of the Act,<sup>10</sup> a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30 day operative period for this filing so that it may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A)<sup>11</sup> of the Act and subparagraph (f)(6) thereunder. The Exchange believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest as the waiver will allow the Exchange to provide equal access to the Spread Feed to all market participants on equal and non-discriminatory terms. Currently, only market makers receive a spread book data feed from the Exchange's legacy trading system; no other market participant has access to the legacy trading system's spread book data feed.<sup>12</sup> In the absence of the waiver, only market makers will be able to access the Spread Feed, albeit a subset of the feed, *i.e.*, the top of book, whereas all other market participants will not have any access to the Spread Feed.

Further, the Exchange notes that without access to Top Quote once the Exchange has fully transitioned to its new trading system, the likelihood that retail orders, who receive priority on the Exchange over other orders, being executed will be adversely affected as the existence of these orders will not be known to market participants who seek to interact with them. While market participants will be able to access the data in Top Quote by subscribing to the Exchange's Depth of Market data feed, they are unlikely to do so due to the cost of the Depth of Market data feed.

Additionally, waiver of the 30-day operative delay will allow the Exchange to compete for order flow with those exchanges that already sell market data offerings that compete with Top Quote and Spread Feed.<sup>13</sup>

<sup>10</sup> *Id.*

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> The Spread Feed and the spread book data feed are essentially the same feed offered on different platforms.

<sup>13</sup> For example, NASDAQ Stock Market ("NASDAQ") and NASDAQ OMX PHLX ("Phlx") each offer a market data product that is similar to Top Quote. NASDAQ's Best of NASDAQ Options ("BONO<sup>SM</sup>") offering is a data feed that shows the top of the market. Phlx's Top of Phlx Options ("TOPO") shows orders and quotes at the top of the market, as well as trades. Market Data Express, LLC, a subsidiary of the Chicago Board Options Exchange, Inc. ("CBOE"), offers a market data product that is similar to Spread Feed. The CBOE

For the reasons stated above, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposal as operative upon filing.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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-2011-44 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-ISE-2011-44. 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

BBO Data Feed includes, among other things, customer versus non-customer contracts at the BBO and BBO data and last sale data for complex strategies (*e.g.*, spreads, straddles, buy-writes, *etc.*).

<sup>14</sup> For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f). See also 17 CFR 200.30-3(a)(59).

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

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> *Id.*

provisions of 5 U.S.C. 552, will be available for Web site viewing and printing 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 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-2011-44 and should be submitted by August 26, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2011-19854 Filed 8-4-11; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65002; File No. SR-ISE-2011-50]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Data Fees

August 1, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 1, 2011, the International Securities Exchange, LLC (the "Exchange" or the "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 Exchange. 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 Exchange proposes to amend its Schedule of Fees to adopt subscription fees for the sale of two market data offerings, the ISE Top Quote Feed and the ISE Spread Book Feed. The text of the proposed rule change is available on the Exchange's Web site [http://](http://www.ise.com)

[www.ise.com](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 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 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

ISE proposes to amend its Schedule of Fees to adopt subscription fees for the sale of two market data offerings, the ISE Top Quote Feed and the ISE Spread Book Feed. The Exchange previously submitted a proposed rule change to establish the two data feeds.<sup>3</sup> The Exchange proposes to implement the proposed fees for both market data offerings on August 1, 2011.

###### ISE Top Quote Feed

The ISE Top Quote Feed ("Top Quote") is a real-time feed that aggregates all quotes and orders at the top price level on the Exchange, on both the bid and offer side of the market. Top Quote provides subscribers with a consolidated view of tradable prices at the BBO, the same data that is displayed on the OPRA feed. Top Quote shows bid/ask quote size for Customer and Professional Customer option orders for ISE traded options that are not currently distinguishable through the OPRA feed.<sup>4</sup> The identification of Customer orders is useful for market makers and market participants generally since

<sup>3</sup> See SR-ISE-2011-44.

<sup>4</sup> Customer and Professional Customer orders are identified in a number of market data offerings currently sold by other options exchanges on a subscription basis. See Securities Exchange Act Release No. 63351 (November 10, 2010), 75 FR 73140 (November 29, 2010) (SR-PHLX-2010-154) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for the PHOTO Historical Data Product). See also Securities Exchange Act Release No. 63997 (March 1, 2011), 76 FR 12388 (March 7, 2011) (SR-CBOE-2011-014) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify a Fee Schedule for the Sale by Market Data Express, LLC, of a BBO Data Feed for CBOE Listed Options).

Customer orders take precedence over all other order types on the ISE. The Exchange believes it is not discriminatory or a burden on competition for these orders to be identified because doing so increases the likelihood that these orders will be executed as they have priority on the ISE while Professional Customers, *i.e.*, persons or entities that (i) Are not a broker or dealer in securities, and (ii) place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), do not have priority on the Exchange.

Top Quote is currently imbedded in the Exchange's Depth of Market data feed offering and is available to subscribers of the Depth of Market data feed offering. With this proposed rule change, the Exchange is offering Top Quote as a separate subscription-based data feed. Top Quote will be available to members and non-members, and to both professional and non-professional subscribers.

###### Proposed Fees for Top Quote

The Exchange proposes to charge distributors<sup>5</sup> of Top Quote \$3,000 per month. In addition, the Exchange proposes to charge a monthly controlled device<sup>6</sup> fee of \$20 per controlled device for Professionals at a distributor where the data is for internal and/or external use. There are no monthly controlled device fees proposed for Non-Professionals subscribers to Top Quote. Further, the Exchange proposes to adopt an enterprise license fee, regardless of the number of controlled devices, as follows: (i) \$4,000 for Professionals at a distributor where the data is for internal use only, (ii) \$5,000 for Professionals at a distributor where the data is for internal and/or external use in a controlled device and (iii) \$3,000 per month for Non-Professionals.

###### ISE Spread Book Feed

The ISE Spread Book Feed ("Spread Feed") is a real-time feed that consists

<sup>5</sup> ISE proposes that a "distributor" be defined as any firm that receives a ISE data feed directly from ISE or indirectly through a vendor and then distributes it either internally or externally. Further, ISE proposes that all distributors execute an ISE distributor agreement.

<sup>6</sup> ISE proposes that a "controlled device" be defined as any device that a distributor of the ISE Top Quote Feed permits to: (a) Access the information in the Top Quote Feed offering, or (b) communicate with the distributor so as to cause the distributor to access the information in the Top Quote Feed offering. If a controlled device is part of an electronic network between computers used for investment, trading or order routing activities, the burden will be on the distributor to demonstrate that the particular controlled device should not be subject to the proposed fees.

<sup>15</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.