

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60859; File No. SR-ISE-2009-64)

October 21, 2009

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving a Proposed Rule Change Relating to Historical ISE Open/Close Trade Profile Fees

On August 25, 2009, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its Schedule of Fees to adopt reduced subscription fees for academic institutions for the sale of historical open and close volume data on ISE listed options. Notice of the proposed rule change was published for comment in the Federal Register on September 17, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

ISE currently sells a market data offering comprised of the entire opening and closing trade data of ISE listed options of both customers and firms ("ISE Open/Close Trade Profile").⁴ The ISE Open/Close Trade Profile enables subscribers to create their own proprietary put/call calculations. The data is compiled and formatted by ISE as an end of day file. This market data offering is currently available to both members and non-members on annual subscription basis.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 60654 (September 17, 2009), 74 FR 47848 ("Notice").

⁴ See Securities Exchange Act Release No. 56254 (August 15, 2007), 72 FR 47104 (August 22, 2007) (approving SR-ISE-2007-70).

⁵ The current subscription rate for both members and non-members is \$600 per month.

ISE also sells to both members and non-members historical ISE Open/Close Trade Profile, a market data offering comprised of the entire opening and closing trade data of both customers and firms that dates back to May 2005 (on an ad-hoc basis or as a complete set that dates back to May 2005). Ad-hoc subscribers can purchase this data for any number of months, beginning from May 2005 through the current month. Alternatively, subscribers can purchase the entire set of this data, beginning from May 2005 through the current month. The historical ISE Open/Close Trade Profile is compiled and formatted by ISE and sold as a zipped file. ISE charges ad-hoc subscribers \$600 per request for each month of data and a discounted fee of \$500 per request per month for subscribers that want the complete set, i.e., from May 2005 to the present month.

The Exchange now proposes to adopt reduced fees for subscriptions to historical ISE Open/Close Trade Profile by academic institutions for their research purposes.⁶ In order to encourage and promote academic studies of its market data, ISE proposes to charge a flat rate of \$500 for up to 12 months of data or \$1,000 for the complete data set. Academic institutions may not use the data in support of actual securities trading. The proposed discount applies only to the market data fees and does not cover any access or telecommunication charges that may be incurred by an academic institution. In addition, with the adoption of reduced fees for academic institutions, ISE is not waiving any of its contractual rights and all academic institutions that subscribe to this data will be required to execute the appropriate subscriber agreement.

After careful review, 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

⁶ The Exchange stated that occasionally, academic institutions inquire with the Exchange about subscribing to the historical ISE Open/Close Trade Profile for research purposes but are not inclined to pay the full price.

securities exchange.⁷ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(4) of the Act,⁸ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities, and Section 6(b)(5) of the Act,⁹ which requires, among other things, that the rules of an exchange be designed 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; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange proposes to reduce fees for subscriptions to its historical ISE Open/Close Trade Profile by academic institutions only if they use the data for their research purposes. The proposed fees will apply equally to all academic institutions. The proposed rule change should promote academic research, which can benefit all market participants. Further, the Commission notes that Options Price Reporting Authority (“OPRA”) has in place a similar Academic Waiver Policy, pursuant to which OPRA waives its fees for universities that wish to use its data for research and educational instruction purposes.¹⁰

⁷ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ See Securities Exchange Act Release 58424 (August 26, 2008), 73 FR 51545 (September 3, 2008) (Notice of Filing and Immediate Effectiveness of Proposed Amendment to the Options Price Reporting Authority’s Academic Waiver Policy).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-ISE-2009-64), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Elizabeth M. Murphy
Secretary

¹¹ 17 CFR 200.30-3(a)(12).