

Regulatory Information Circular – 2002-04

To: All ISE Members

Date: April 18, 2002

Re: Notice of Proposed Rule Change – CMM Inactivity Fee

On April 16, 2002, the ISE filed a proposed fee change with the Securities and Exchange Commission that would implement a CMM "inactivity fee." The purpose of the proposed fee is for the ISE to recoup a portion of the revenue it loses when a CMM owns or leases one or more memberships that are not open for trading. The Exchange has proposed that the fee be effective on **July 1, 2002**, in order to give members a reasonable period of time to commence trading in inactive memberships. The fee would apply to all CMM memberships that a member owns or leases, but which membership is not open for actively trading. A copy of the proposed fee is attached.

The fee would not apply if a member holds an inactive CMM membership in a bin in which it also is operating the PMM membership pursuant to a lease. The proposal also would authorize the Exchange staff to grant exemptions if a member holds multiple inactive CMM memberships. In that situation, upon the request of a member, the ISE could grant exemptions for all but one such membership as long as the member presents a business plan to have trading commence in the inactive memberships in a reasonable time period.

Implementation of this new fee on July 1, 2002, is contingent on receiving SEC approval by that date.

Any questions regarding the foregoing may be directed to the attention of Michael Simon, Senior Vice President and General Counsel, at (212) 897-0230.

Attachment

Text of the Proposed Fee Change

Underlining indicates additions.

ISE Schedule of Fees

| | Amount | Billable Unit | Frequency |
|--------------------------------|---------------|-------------------------|------------------|
| Electronic Market Place | | | |
| | * * * | | |
| Inactive PMM Fee | \$100,000 | Membership ¹ | Monthly |
| Minimum PMM Fee | \$50,000 | Membership ² | Monthly |
| Inactive CMM Fee | \$25,000 | Membership ³ | Monthly |

¹ Effective January 1, 2001, if a group has not been open for trading, the PMM appointed to that group will be subject to an "inactive" fee of \$100,000 per month; provided that, for an entity that owns a PMM membership and that is not itself a registered broker-dealer, the fee will become effective on May 7, 2001.

² Effective January 1, 2001, PMMs are subject to a minimum fee of \$50,000 per options group. To the extent that aggregate execution fees in a group do not total at least \$50,000 per month, the PMM for that group must pay a fee representing the difference between \$50,000 and the aggregate actual execution fees.

³ Effective July 1, 2002, CMMs are subject to a minimum fee of \$25,000 per CMM membership that is not actively trading. In applying this fee: (1) this fee shall not apply to any CMM membership in an options group for which the CMM also is leasing a PMM membership; and (2) if a CMM is approved with respect to more than one CMM membership that is not actively trading (any such inactive CMM membership in addition to one inactive membership referred to as "additional inactive memberships"), an Exchange official designated by the Board may grant the CMM an exemption from this fee for any or all additional inactive memberships if the CMM presents a business plan that an Exchange official designated by the Board determines will lead to active trading in such additional inactive membership(s) within a reasonable period of time.