

## **Regulatory Information Circular – 2002-09**

**To:** All ISE Members

**Date:** June 18, 2002

**Re: Notice of Proposed Rule Change – CMM Inactivity Fee**

On June 18, 2002, the ISE filed a proposed amendment to its CMM "inactivity fee" with the Securities and Exchange Commission that would implement a CMM "inactivity fee."<sup>1</sup> The amendment: (i) makes a number of non-substantive language changes to the proposal; (ii) clarifies the application of the fee as between owners and lessees; and extends the effective date of the rule from July 1, 2002 to **August 1, 2002**. A copy of the proposed fee, as amended, is attached.

As to the application of the fee to owners and lessees, with one exception the fee will apply to the owner of the membership. While lessors and lessees always have the ability to contract between themselves as to who will bear the economic effects of the fee, the ISE will look only to the owner/lessor for payment. The one exception is with respect to leases entered into prior to the effective date of the rule. In that case, the parties to the lease may not have contemplated this fee at the time they entered into their contract. Thus, the owner could face liability for the fee while neither having control over the initiation of trading nor having provided for the allocation of the financial liability. In this instance, the ISE will apply the fee to the lessee, but only if the lessee has been approved to operate the membership.

Implementation of this new fee on August 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.

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<sup>1</sup> See Regulatory Information Circular 2002-4 for a description of the CMM Inactivity Fee.

Attachment

Text of the Proposed Fee Change

Underlining indicates additions; [brackets] indicate deletions.

**ISE Schedule of Fees**

	<b>Amount</b>	<b>Billable Unit</b>	<b>Frequency</b>
<b>Electronic Market Place</b>			
	* * *		
Inactive PMM Fee	\$100,000	Membership <sup>1</sup>	Monthly
Minimum PMM Fee	\$50,000	Membership <sup>2</sup>	Monthly
Inactive CMM Fee	\$25,000	Membership <sup>3</sup>	Monthly

<sup>1</sup> [Effective January 1, 2001, if] 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].

<sup>2</sup> [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.

<sup>3</sup> Effective August 1, 2002, inactive CMM Memberships are subject to an "inactive" fee of \$25,000 per month. This fee shall apply to the owner of the Series B-2 Stock associated with the Membership unless the Exchange has approved a lease of the Membership to a CMM Member prior to the effective date of this fee, in which case the fee shall apply to such CMM Member. This fee shall not apply to any CMM Membership that is owned by or leased to a Member during any time in which that Member also is leasing a PMM Membership assigned to the same options group as the CMM Membership. If a CMM Member is actively trading with respect to one or more CMM Memberships, an Exchange official designated by the Board may grant the CMM Member an exemption from this fee for one or more additional inactive CMM Memberships with respect to which the CMM Member has been approved if the CMM Member presents a business plan that an Exchange official designated by the Board determines will lead to active trading with respect to such inactive Membership(s) within a reasonable period of time.