

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63534; File No. SR-ISE-2010-114)

December 13, 2010

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 1, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, and on December 13, 2010, filed Amendment No. 1 to the proposed rule change, as described in Items I and II below, which items have been prepared by the self-regulatory organization. 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 the Substance of the Proposed Rule Change

The ISE is proposing to amend its transaction fees and rebates for adding and removing liquidity. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 this Amendment No. 1 to SR-ISE-2010-114. The purpose of this amendment is to make clarifying changes to Form 19b-4 and Exhibit 1 of SR-ISE-2010-114. The Exchange currently assesses a per contract transaction charge to market participants that add or remove liquidity from the Exchange ("maker/taker fees") in 100 options classes (the "Select Symbols").³ The Exchange currently charges a take fee of: (i) \$0.25 per contract for Market Maker, Market Maker Plus,⁴ Firm Proprietary and Customer (Professional)⁵ orders; (ii) \$0.35

³ Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees. See Securities Exchange Act Release Nos. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR-ISE-2010-25), 62048 (May 6, 2010), 75 FR 26830 (May 12, 2010) (SR-ISE-2010-43), 62282 (June 11, 2010), 75 FR 34499 (June 17, 2010) (SR-ISE-2010-54), 62319 (June 17, 2010), 75 FR 36134 (June 24, 2010) (SR-ISE-2010-57), 62508 (July 15, 2010), 75 FR 42809 (July 22, 2010) (SR-ISE-2010-65), 62507 (July 15, 2010), 75 FR 42802 (July 22, 2010) (SR-ISE-2010-68), 62665 (August 9, 2010), 75 FR 50015 (August 16, 2010) (SR-ISE-2010-82) and 62805 (August 31, 2010), 75 FR 54682 (September 8, 2010) (SR-ISE-2010-90).

⁴ A Market Maker Plus is a market maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between \$0.03 and \$5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to \$100) and between \$0.10 and \$5.00 (for options whose underlying stock's previous trading day's last sale price was greater than \$100) in premium in each of the front two expiration months and 80% of the time for series trading between \$0.03 and \$5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to \$100) and between \$0.10 and \$5.00 (for options whose underlying stock's previous trading day's last sale price was greater than \$100) in premium across all expiration months in order to receive the rebate. The Exchange determines whether a market maker qualifies as a Market Maker Plus at the end of each month by looking back at each market maker's quoting statistics during that month. If at the end of the month, a market maker meets the Exchange's stated criteria, the Exchange rebates \$0.10 per contract for transactions executed by that market maker during that month. The Exchange provides market makers a report on a daily basis with quoting statistics so that

per contract for Non-ISE Market Maker⁶ orders; (iii) \$0.20 per contract for Priority Customer⁷ orders for 100 or more contracts. Priority Customer orders for less than 100 contracts are not assessed a fee for removing liquidity.

The Exchange recently increased the take fee to \$0.40 per contract for Market Maker, Market Maker Plus, Firm Proprietary, Customer (Professional) and Non-ISE Market Maker interest that responds to special orders.⁸ In SR-ISE-2010-106, the Exchange inadvertently failed to extend the \$0.40 per contract take fee for special order responses to Priority Customer interest. To correct that oversight, the Exchange now proposes to increase the take fee to \$0.40 per contract for Priority Customer interest that responds to special orders.⁹ A special order is an order submitted for execution in the Exchange's Facilitation Mechanism, Solicited Order

market makers can determine whether or not they are meeting the Exchange's stated criteria.

⁵ A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

⁶ A Non-ISE Market Maker, or Far Away Market Maker ("FARMM"), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), registered in the same options class on another options exchange.

⁷ A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

⁸ See Securities Exchange Act Release No. 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR-ISE-2010-106).

⁹ The proposed fee for responses to special orders is similar to fees currently in place at other options exchanges. ISE believes the fee charged by NASDAQ OMX BOX, Inc. ("BOX") is as high as \$0.50 per contract. See Securities Exchange Act Release No. 62632 (August 3, 2010), 75 FR 47869 (August 9, 2010) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of the Boston Options Exchange Facility) (SR-BX-2010-049). Additionally, NASDAQ OMX PHLX, Inc. ("PHLX") charges a take fee between \$0.25 per contract and \$0.45 per contract for responses to the "PIXL auction broadcast message." See PHLX Fee Schedule at <http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf>.

Mechanism, Block Order Mechanism and Price Improvement Mechanism. A response to a special order is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism and Price Improvement Mechanism.¹⁰ This proposed fee change will apply to Priority Customer interest, regardless of size.¹¹

As noted above, special order broadcasts are sent to Exchange members when certain types of orders are entered in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism and Price Improvement Mechanism. Customers who have access to highly developed trading systems are able to quickly receive and process substantial amounts of market-wide and ISE data, thereby allowing them to selectively enter orders by responding to special order broadcasts, much like a broker-dealer does. The advanced trading systems utilized by these customers provide them with the ability to rapidly respond to updates to the special order broadcasts and market-wide data (such as changes to the NBBO and the underlying market) by aggressively submitting orders within the 3 second exposure period.

The Exchange thus proposes to charge the proposed fee of \$0.40 per contract to Priority Customer interest to put them on more equal footing with other trading interest that currently pay for this functionality.

¹⁰ Pre-existing Priority Customer interest that trades with special orders in the Exchange's various auctions will continue to be charged the fee noted in the Exchange's Schedule of Fees.

¹¹ The Exchange currently charges a fee for customers who respond to special order broadcasts in non-maker/taker symbols traded on the Exchange. See Securities Exchange Act Release No. 55060 (January 8, 2007), 72 FR 2050 (January 17, 2007) (SR-ISE-2006-72).

In addition, since the behavior of these customers is similar to the behavior of an ISE member, ISE believes it is reasonable for the Exchange to charge these customers the same fees as those charged to ISE members.

The Exchange has designated this proposal to be operative on December 1, 2010.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(4)¹² that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in options overlying the Select Symbols. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed fees are within the range assessed by other exchanges¹³ and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. The Exchange's maker/taker fees, which are currently applicable to each market participant, will continue to apply to the Select Symbols.

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.

¹² 15 U.S.C. 78f(b)(4).

¹³ See supra note 7.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁴ 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 Number SR-ISE-2010-114 on the subject line.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2010-114. 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 website (<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 website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-ISE-2010-114, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).