



INTERNATIONAL SECURITIES EXCHANGE

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August 23, 2010

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Re: File No. SR-NYSEArca-2010-77

Dear Ms. Murphy:

The International Securities Exchange, LLC ("ISE") appreciates the opportunity to comment on the above-referenced rule filing ("Filing") of NYSE Arca.¹ The Filing eliminates the NYSE Arca fee for members facilitating customer order flow on its floor. We believe that the elimination of this fee in the context of NYSE Arca's overall fee schedule results in fees that are not equitably allocated, and that unfairly discriminate between broker-dealers in contravention of the requirements of the Securities Exchange Act of 1934, as amended ("Exchange Act").² We therefore urge the Commission to suspend the effectiveness of the Filing as the first step in disapproving the fee change.

We view the Filing as the continuation of a disturbing trend in which various options exchanges are adopting trading rules and discriminatory fees to limit competition for order flow and to encourage the internalization of order flow. We previously have commented on discriminatory fees by the Boston Options Exchange ("BOX"), the Chicago Board Options Exchange ("CBOE") and NASDAQ OMX PHLX ("Phlx").³ In all three cases the exchanges charged significantly lower fees to firms seeking to internalize order flow than to firms seeking to trade against their own order flow.

The Filing continues this unwelcome trend. Specifically, while NYSE Arca has eliminated the \$.18 manual firm facilitation fee, it has retained all other facilitation-related fees. The result is that a firm internalizing a customer order in a facilitated trade on the NYSE Arca pays no fees, while firms seeking to

¹ See Exchange Act Release No. 62670 (August 9, 2010), 75 F.R. 49546 (August 13, 2010).

² Exchange Act Sections 6(b)(4) and (5).

³ Letter dated August 13, 2010 from Michael J. Simon, Secretary, ISE, to Elizabeth Murphy, Secretary, Commission on Files No. SR-BX-2010-49 and S7-09-10 ("BOX Comment letter"). We also have commented on an NYSE Arca proposal to limit competition for non-facilitation crosses. See letter dated August 17, 2010 from Michael J. Simon, Secretary, ISE, to Elizabeth Murphy, Secretary, Commission on File No. SR-NYSEArca-2010-69.

compete for the order pay fees of \$.16 (for market makers) or \$.25 (for other professionals).⁴ A fee differential of this magnitude creates a significant barrier to order interaction and inappropriately promotes internalization.

NYSE Arca fails to provide any explanation as to how a \$.16 to \$.25 fee differential complies with the Exchange Act. The Commission has clearly established the precedent that only a *de minimis* fee differential is permitted when dealing with captive order flow. Specifically, the Commission has abrogated a \$.05 fee differential in an analogous situation regarding directed orders, when the Phlx adopted a fee where firms to whom orders are directed had a \$.05 advantage compared to other firms trading against that order.⁵ Thereafter, the Commission let stand a similar \$.02 fee differential.⁶ As with the BOX, CBOE and Phlx fees we addressed in the BOX comment letter, by eliminating fees for facilitating firms NYSE Arca has established an inequitable and unfairly discriminatory fee structure.

We request that the Commission suspend the effectiveness of the Filing as the first step in disapproving the proposal. If you have any questions on our comments, please do not hesitate to contact us.

Sincerely,



Michael J. Simon,
Secretary

cc: Robert Cook, Director, Division of Trading and Markets
James Brigagliano, Deputy Director, Division of Trading and Markets
Heather Seidel, Acting Associate Director, Division of Trading and Markets

⁴ NYSE Arca also eliminated the \$2,000 a day per-issue fee cap for firm and broker-deal manual (floor-based) executions.

⁵ File No. SR-Phlx-2010-14; Securities Exchange Act Release No. 61547 (February 19, 2010), 75 F.R. 8762 (February 25, 2010).

⁶ Phlx rebates \$.25 to directed participants for adding liquidity, while rebating only \$.23 to other members. See <http://www.nasdaqomxtrader.com/content/marketregulation/membership/phlx/feesched.pdf> ("Phlx Fee Schedule"), at Section I, Rebates for and Fees for Adding and Removing Liquidity in Select Symbols.