

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61855; File No. SR-ISE-2010-26)

April 6, 2010

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Intermarket Sweep Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 26, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "SEC" or the "Commission") the proposed rule change as described in Items I, II, and III 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 Substance of the Proposed Rule Change

The Exchange proposes to adopt a fee and credit related to the execution of Intermarket Sweep Orders ("ISOs") by Primary Market Makers ("PMMs") on behalf of non-broker/dealer Professional Orders..[sic] 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

statements may be examined at the 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 – The purpose of this proposed rule change is to adopt a fee and credit related to the execution of ISOs by PMMs on behalf of non-broker/dealer Professional Orders.<sup>3</sup>

On August 31, 2009, the Exchange implemented the new Options Order Protection and Locked/Crossed Market Plan (“Distributive Linkage”) and the use of ISOs. Consistent with Distributive Linkage and pursuant to ISE rules, the Exchange’s Primary Market Makers (“PMMs”) have an obligation to address customer<sup>4</sup> orders when there is a better market displayed on another exchange. ISE’s PMMs meet this obligation via the use of ISOs. In meeting their obligations, PMMs may incur fees when they send ISOs, especially when sending ISOs to exchanges that charge “taker” fees. To minimize the PMM’s financial burden and help offset such fees, the ISE amended its schedule of fees on October 1, 2009 to adopt a rebate for the PMM of \$0.20 per contract on all ISO orders sent to an away exchange (regardless of the fee charged by the exchange where the ISO order sent away was executed).<sup>5</sup>

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<sup>3</sup> Pursuant to ISE Rule 100(37C), a Professional Order is an order that is for that account of a person or entity that is not a Priority Customer. Pursuant to ISE Rule 100(37A), a Priority Customer is a person or entity that is not a broker or 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.

<sup>4</sup> Pursuant to ISE Rule 1900(f) of the Distributive Linkage rules, a customer is an individual or organization that is not a broker-dealer.

<sup>5</sup> See Securities and Exchange Act Release No. 60791 (October 5, 2009), 74 FR 25251 (October 13, 2009)(SR-ISE-2009-74).

The Exchange is now proposing to charge non-broker/dealer Professional Orders a fee of \$0.45 per contract for executions that result from the PMM routing ISOs to away exchanges and to provide the PMM with a credit equal to the fee charged by the destination exchange for such non-broker/dealer Professional Orders, but not more than \$0.45 per contract. Charging non-broker/dealer Professional Orders a fee to offset the charges assessed to the PMM by other exchanges for “linkage” executions is appropriate because the market professionals that are submitting non-broker/dealer Professional Orders can route directly to the away exchanges, if desired, and, therefore, should not be able to forgo the away market fee, at the expense of the PMM, by directing their orders to the ISE.<sup>6</sup> The Exchange will continue to provide the existing \$0.20 rebate to PMMs for Priority Customer Orders.<sup>7</sup>

The proposed fee changes will become operative on April 1, 2010.

(2) Basis – The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the proposed fee change will more effectively offset fees incurred by PMMs when they send ISOs to away markets.

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.

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<sup>6</sup> The Chicago Board Options Exchange (“CBOE”) charges a comparable route-out fee for non-customer orders. See CBOE Fee Schedule, Item 20. See Securities Exchange Act Release No. 61701 (March 12, 2010), 75 FR 13622 (March 22, 2010)(SR-CBOE-2010-022).

<sup>7</sup> See note 3.

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) of the Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate 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.

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](mailto:rule-comments@sec.gov). Please include File No. SR-ISE-2010-26 on the subject line.

Paper comments:

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 19b-4(f)(2).

- 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-2010-26. 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 Commissions Internet Web site

(<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 a.m. and 3 p.m. Copies of such filing also will be available inspection and copying at the principal office of the ISE. 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-2010-26 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).