

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65084; File No. SR-ISE-2011-49)

August 10, 2011

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

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 July 29, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (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 ISE is proposing to amend transaction fees and rebates for certain complex orders executed on the Exchange. The text of the proposed rule change is available on the Exchange's website (<http://www.ise.com>), on the Commission's website at www.sec.gov, 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

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 For complex orders in the Select Symbols, the Exchange currently charges a take fee of: (i) \$0.30 per contract for Market Maker, Market Maker Plus,⁴ Firm Proprietary and

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), 62805 (August 31, 2010), 75 FR 54682 (September 8, 2010) (SR-ISE-2010-90), 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR-ISE-2010-106), 63534 (December 13, 2010), 75 FR 79433 (December 20, 2010) (SR-ISE-2010-114); 63664 (January 6, 2011), 76 FR 2170 (January 12, 2011) (SR-ISE-2010-120); and 64303 (April 15, 2011), 76 FR 22425 (April 21, 2011) (SR-ISE-2011-18).

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

Customer (Professional)⁵ orders; and (ii) \$0.35 per contract for Non-ISE Market Maker⁶ orders. Priority Customer⁷ orders, regardless of size, are not assessed a fee for adding or removing liquidity from the Complex Order book. The Exchange now proposes to change the take fees for complex orders in a select number of options classes (“Designated Symbols”), as follows: (i) for Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) complex orders, from \$0.30 per contract to \$0.31 per contract, and (ii) for Non-ISE Market Maker complex orders, from \$0.35 per contract to \$0.36 per contract. The Exchange is not proposing any change to fees for Priority Customer complex orders in the Designated Symbols. The Designated Symbols are AAPL, BAC, C, F, GLD, INTC, IWM, JPM, QQQ, SLV, SPY and XLF.

Additionally, ISE Market Makers who remove liquidity in the Select Symbols from the Complex Order book by trading with orders that are preferenced to them are currently charged \$0.28 per contract. The Exchange now proposes to change the take fee to \$0.29 per contract for ISE Market Makers who remove liquidity in the Designated Symbols from the Complex Order book by trading with orders that are preferenced to them. The Exchange notes that NASDAQ OMX PHLX, Inc. (“PHLX”) currently assesses a fee for complex orders for certain symbols that are preferenced to market makers at that exchange at a rate of \$0.27 per contract. For regular

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).

complex orders that remove liquidity in those symbols, PHLX charges its market makers a take fee of \$0.29 per contract. With this proposed fee change, ISE will maintain the two cent differential that is currently in place at PHLX.⁸

Finally, as an incentive for members to direct customer order flow to the Exchange, Priority Customer complex orders in the Select Symbols, regardless of size, currently receive a rebate of \$0.25 per contract on all legs when these orders trade with non-customer orders in the Exchange's Complex Order book. The Exchange proposes to increase this rebate to \$0.26 per contract. The Exchange believes it is necessary to pay a rebate for Customer complex orders in the Designated Symbols in order to continue to attract Customer complex order flow to the Exchange.

The Exchange has designated this proposal to be operative on August 1, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange 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 Designated Symbols.

⁸ See PHLX Fee Schedule at <http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf>.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

The Exchange believes that the proposed fees for options overlying the Designated Symbols remain competitive with fees charged by other exchanges and are therefore reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. The Exchange believes that its proposal to assess a \$0.31 per contract take fee for Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) complex orders in the Designated Symbols, and \$0.36 per contract take fee for Non-ISE Market Maker complex orders, is reasonable because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, the proposed take fees for complex orders are comparable to rates assessed by PHLX. PHLX currently assesses a take fee of \$0.29 per contract to its market makers, \$0.30 per contract for Firm and Professional orders and \$0.35 per contract for Broker-Dealer orders in a number of symbols in its complex order book.¹¹

The Exchange also believes that its proposal to assess a take fee for preferenced orders in the Designated Symbols of \$0.29 per contract is reasonable because it will allow the Exchange to remain competitive with other exchanges that employ a similar pricing scheme while maintaining the two cent differential that currently exists at options exchanges between fees charged for regular complex orders that take liquidity and complex orders that are preferenced to market makers. For example, PHLX currently charges \$0.27 per contract to Directed Participants for removing liquidity in all their Select Symbols while charging \$0.29 per contract to its market makers.¹² Additionally, the Exchange believes the proposed fees are reasonable and equitable in that they will apply equally to all market participants that were previously subject to these fees.

¹¹ See PHLX Fee Schedule at <http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf>.

¹² Id.

The Exchange also believes that it is reasonable and equitable to provide a rebate for Priority Customer complex orders in the Designated Symbols because paying a rebate would continue to attract additional order flow to the Exchange and thereby create liquidity in the Designated Symbols that ultimately will benefit all market participants who trade on the Exchange. The Exchange further believes that paying a rebate is equitable and reasonable because it is similar to rebates paid by other Exchanges.¹³ The proposed increased rebate of \$0.26 per contract for Priority Customer complex orders in the Designated Symbols is identical to a proposal recently submitted by PHLX.¹⁴

Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other option exchanges. Additionally, the Exchange believes it remains an attractive venue for market participants to trade complex orders despite its proposed fee change as its fees remain competitive with those charged by other exchanges for similar trading strategies. 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. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

¹³ Id.

¹⁴ As of the date of this filing, PHLX has not posted on its web site its proposed rule change to increase the rebate to \$0.26 per contract for Customer Complex Orders in the Designated Symbols. PHLX did, however, publish and distribute Options Trader Alert #2011-36 announcing new complex order pricing, effective August 1, 2011, in options overlying the Designated Symbols. See <http://www.nasdaqtrader.com/TraderNews.aspx?id=OTA2011-36>.

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.

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.¹⁵ 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 No. SR-ISE-2011-49 on the subject line.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

Paper comments:

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2011-49. 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, 100 F Street, NE, Washington, DC 20549, 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 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-2011-49 and should be submitted on or before [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.¹⁶

Elizabeth M. Murphy
Secretary

¹⁶ 17 CFR 200.30-3(a)(12).