SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65327; File No. SR-ISE-2011-48)

September 13, 2011

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Fee Credits

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 August 30, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the Exchange. 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 certain fees related to orders subject to intermarket linkage and to change the treatment of customer orders subject to intermarket linkage in its Select Symbols. 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

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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 members of the Exchange ("Exchange Members") that add or remove liquidity from the Exchange ("maker/taker fees") in certain options classes (the "Select Symbols").[3]

Pursuant to Commission approval, both Priority Customer[4] and Professional Customer[5] orders on the ISE that are not executable on the Exchange are exposed or "flashed" to Exchange Members before they are sent through the intermarket linkage system to another exchange for execution because that exchange is displaying a better price.[6] Since the inception of maker/taker fees on the Exchange, Priority Customer orders in the Select Symbols that are "flashed" and

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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 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).

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

subject to linkage handling have been treated as 'makers' of liquidity. Since Priority Customer orders in the Select Symbols 'make' liquidity, regardless of size, such orders are traded on the Exchange for free.[7] Professional Customer orders in the Select Symbols that are "flashed" and subject to linkage handling are currently charged a maker fee of $0.10 per contract. The Exchange, however, believes that these orders are, in fact, takers of liquidity. These orders are "flashed" to Exchange Members precisely because when they are sent to ISE, they are marketable at another exchange and would 'take' liquidity from that other exchange. By definition, 'flash' orders are not resting orders; instead, they are "flashed" for matching at the national best bid or offer and potential routing through intermarket linkage. Therefore, the Exchange believes it is appropriate to treat such orders as 'taking' liquidity. And as takers of liquidity, the Exchange proposes to charge these orders the Exchange's standard taker fee for Select Symbols, which for Priority Customer orders and Professional Customer orders is currently $0.12 per contract and $0.28 per contract, respectively.

Additionally, the Exchange currently provides a $0.10 per contract fee credit for executions resulting from responses to Customer (Professional)[8] orders that are "flashed" by the Exchange to its Members. The Exchange now proposes to extend the $0.10 per contract fee credit for executions resulting from responses to Priority Customer orders in the Select Symbols that are "flashed" by the Exchange to its Members. For Priority Customer orders that are preferenced to an ISE Market Maker that are subsequently executed in the Exchange's "flash"

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6 See Securities Exchange Act Release No. 57812 (May 12, 2008), 73 FR 28846 (May 19, 2008) (SR-ISE-2008-28).

7 In fact, while a number of other exchanges charge a "route-out" fee for orders that are subject to intermarket linkage, ISE does not charge such a fee.

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

mechanism, the Exchange proposes to adopt a fee credit of $0.12 per contract for the preferenced Market Maker. At least one other exchange currently provides a rebate to a particular segment of its membership for responding to that exchange's "flash" auction. For example, the Chicago Board Options Exchange, Inc. ("CBOE") currently provides a $0.15 per contract rebate but does so only to its market makers and only if those market makers satisfy a quoting requirement.[9] ISE's proposed rebate, on the other hand, is not limited to market makers only and does not have any requirements that must be met in order for an Exchange Member to receive the rebate. So long as the Exchange Member responds to a Priority Customer order and executes it, that Exchange Member will receive the proposed rebate.

The proposed rule change is applicable only for executions in the Select Symbols.

2. Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Exchange Act[10] (the "Act") in general, and furthers the objectives of Section 6(b)(4) of the Act[11] 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 Exchange Member 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 believes that the proposed fees it charges for options overlying the Select Symbols remain competitive with fees charged by other exchanges and therefore continue to be

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9 See CBOE Fees Schedule, Section 19, HYBRID AGENCY LIAISON ("HAL") STEP-UP REBATE, at http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf.

10 15 U.S.C. 78f(b).

11 15 U.S.C. 78f(b)(4).

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 treating Priority Customer orders and Professional Customer orders in the Select Symbols that are "flashed" as takers of liquidity (as opposed to makers of liquidity which is how these orders were previously treated), as well as providing a rebate to responses to Priority Customer orders (in addition to the responses to Professional Customer orders, which is in place today) furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to make the Exchange's fee structure for "flashed" orders more consistent with its overall maker/taker fee structure, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The Exchange believes that its proposal to adopt $0.12 per contract taker fee for flashed Priority Customer orders and a $0.28 per contract taker fee for flashed Professional Customer orders in the Select Symbols is an equitable allocation of reasonable dues, fees and other charges among Exchange Members and other persons using its facilities because such fees are within the range of fees assessed by the Exchange and other exchanges employing maker/taker pricing schemes. The Exchange believes that its proposal to adopt $0.10 per contract rebate for responses to flashed Priority Customer orders in the Select Symbols is an equitable allocation of reasonable dues, fees and other charges among Exchange Members and other persons using its facilities because such rebate amount is the same as the rebate amount that is currently in place for responses to flashed Professional Customer orders in the Select Symbols. The Exchange also believes that its proposal is reasonable because it will allow the Exchange to remain competitive with other exchanges that employ a similar pricing scheme.

The Exchange further believes that adopting a fee credit for executions resulting from responses to Priority Customer orders is reasonable and equitable because doing so will incentivize Exchange Members to execute Priority Customer orders on the Exchange by trading against these orders at the National Best Bid or Offer (NBBO), while continuing to charge a competitively low fee for taking liquidity. Further, the Exchange believes that the proposed fee credit is not unfairly discriminatory because the credit would be applied uniformly to all responses to Priority Customer orders executed in the Exchange's "flash" mechanism, except for preferenced Market Makers which receive a slightly higher credit because of the preferenced Market Makers' role in directing such order to it at the Exchange.

The Exchange believes that adopting a higher fee credit for Priority Customer orders that are preferenced to an ISE Market Maker is reasonable and equitable because doing so will provide preferenced Market Makers with an added incentive to bring order-flow to the Exchange. Preferenced Market Makers have an influence on the order routing decisions of order flow providers with whom they have a relationship. Accordingly, when such orders are intentionally directed to the preferenced Market Maker at the Exchange, it is appropriate for the preferenced Market Maker to receive a higher rebate than an order that was not intentionally directed to the Exchange.

To the extent that the purposes of the proposal are achieved, the Exchange's Members should benefit from the improved market liquidity and the greater number of Priority Customer and Professional Customer orders which trade at the Exchange rather than be linked away to another market. Further, the Exchange believes that the proposed fee credit is not unfairly discriminatory because the credit would be applied uniformly to all responses to Priority Customer orders executed in the Exchange's "flash" mechanism, except for preferenced Market

Makers which receive a slightly higher credit because of the preferenced Market Makers' role in intentionally directing order flow to the Exchange.

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 having maker/taker pricing. Additionally, the Exchange believes it remains an attractive venue for market participants to trade Priority Customer and Professional Customer orders despite its proposed fee change as its fees remain competitive with those charged by other exchanges for similar pricing strategies. The Exchange operates in a highly competitive market in which Exchange Members can readily, and do, direct order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed fees and rebates it assesses must be competitive with fees and rebates assessed on other options exchanges. The Exchange believes that this competitive marketplace impacts the fees present on the Exchange today and influences the proposals set forth above.

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.

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.[12] 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-2011-48 on the subject line.

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-2011-48. 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

12 15 U.S.C. 78s(b)(3)(A)(ii).

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-2011-48 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.[13]

Elizabeth M. Murphy
Secretary

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[13] 17 CFR 200.30-3(a)(12).