

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65550; File No. SR-ISE-2011-65)

October 13, 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 Orders Executed on the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on September 30, 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 and II 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 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>), 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 places specified in Item IV below. The self-regulatory organization has prepared summaries, set

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

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

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 per contract transaction charges and credits to market participants that add or remove liquidity from the Exchange (“maker/taker fees”) in a number of options classes (the “Select Symbols”).<sup>3</sup> The Exchange’s maker/taker fees are applicable to regular and complex orders executed in the Select Symbols.<sup>4</sup> Recently, the Exchange extended the fees and rebates for complex orders applicable to the Select Symbols to all symbols that are in the Penny Pilot program.<sup>5</sup>

For complex orders in the Select Symbols and in symbols that are in the Penny Pilot program but excluding the Designated Symbols, the Exchange currently charges a “take” fee of:

(i) \$0.30 per contract for Market Maker,<sup>6</sup> Market Maker Plus,<sup>7</sup> Firm Proprietary and Customer

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<sup>3</sup> Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange’s Schedule of Fees.

<sup>4</sup> The Exchange has also adopted fees and rebates for complex orders in a select number of option classes (“Designated Symbols”) that are distinct from the fees for complex orders in the Select Symbols. These Designated Symbols are identified by their ticker symbol on the Exchange’s Schedule of Fees. See Exchange Act Release Nos. 65084 (August 10, 2011), 76 FR 50805 (August 16, 2011) (SR-ISE-2011-49).

<sup>5</sup> See Exchange Act Release No. 65021 (August 3, 2011), 76 FR 48933 (August 9, 2011) (SR-ISE-2011-45).

<sup>6</sup> Market Makers who remove liquidity in the Select Symbols from the Complex Order Book by trading with orders preferenced to them are charged \$0.28 per contract.

<sup>7</sup> 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

(Professional)<sup>8</sup> orders; and (ii) \$0.35 per contract for Non-ISE Market Maker<sup>9</sup> orders. Priority Customer<sup>10</sup> orders, regardless of size, are not charged a take fee for complex orders. For these same symbols, the Exchange currently charges a “make” fee of: (i) \$0.10 per contract for Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) \$0.20 per contract for Non-ISE Market Maker orders. Priority Customer orders, regardless of size, are not charged a make fee for complex orders.

Further, for Priority Customer complex orders in the Select Symbols and in the symbols that are in the Penny Pilot program but excluding the Designated Symbols, the Exchange currently provides a rebate of \$0.25 per contract when these orders trade with non-customer orders in the Complex Order Book.

Additionally, the Exchange currently provides certain rebates that are applicable to executions in the Select Symbols. Specifically, to incentivize members to trade in the Exchange’s various auction mechanisms, the Exchange currently provides a per contract rebate to those contracts that do not trade with the contra order in the Exchange’s Facilitation

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

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

<sup>9</sup> 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.

<sup>10</sup> 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).

Mechanism,<sup>11</sup> Price Improvement Mechanism<sup>12</sup> and Solicited Order Mechanism.<sup>13</sup> For the Facilitation and Solicited Order Mechanisms, the rebate is currently \$0.15 per contract. For the Price Improvement Mechanism, the rebate is currently \$0.25 per contract. The Exchange now proposes to extend these rebates to complex special orders in the symbols that are in the Penny Pilot program.

Further, the Exchange currently has a “take” fee of \$0.40 per contract<sup>14</sup> for Market Maker Plus, Market Maker, Non-ISE Market Maker, Firm Proprietary, Customer (Professional) and Priority Customer interest that responds to special orders.<sup>15</sup> The Exchange now proposes to extend this \$0.40 per contract “take” fee to complex special orders in the symbols that are in the Penny Pilot program.

The Exchange has designated this proposal to be operative on October 3, 2011.

## 2. Statutory Basis

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<sup>11</sup> See Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR-ISE-2010-25).

<sup>12</sup> See Exchange Act Release No. 62048 (May 6, 2010), 75 FR 26830 (May 12, 2010) (SR-ISE-2010-43). The Exchange subsequently increased this rebate to \$0.25 per contract. See Exchange Act Release No. 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR-ISE-2010-106).

<sup>13</sup> See Exchange Act Release No. 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR-ISE-2010-106).

<sup>14</sup> Id.

<sup>15</sup> A special order is an order submitted for execution in the Exchange’s Facilitation Mechanism, Solicited Order 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.

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act<sup>16</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>17</sup> 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 interact with and respond to certain types of orders.

The Exchange believes that it is reasonable and equitable to provide a rebate for complex contracts that do not trade with the contra order in the Exchange's various auction mechanisms because paying a rebate would continue to attract additional order flow to the Exchange and thereby create liquidity in these additional symbols, i.e., the Penny Pilot symbols, that ultimately will benefit all market participants who trade on the Exchange. The Exchange already provides this rebate for executions in the Select Symbols and is now proposing to extend the rebate to complex orders transacted in the Exchange's various auction mechanisms in the symbols that are in the Penny Pilot program.

The Exchange also believes that the proposed extension of the special order response fee for complex orders in the symbols that are in the Penny Pilot symbols will allow the Exchange to remain competitive with fees charged by other exchanges and are therefore reasonable and equitably allocated. The Exchange believes that the proposed extension of the special order response fee to complex orders in the symbols that are in the Penny Pilot symbols is reasonable

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<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(4).

and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes.<sup>18</sup>

The Exchange believes that its fees and credits remain competitive with fees charged by other exchanges and therefore are reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes extending certain aspects of its maker/taker pricing structure will attract additional complex order business while at the same time create standardization in complex order pricing across symbols that make up the majority of daily volume in options trading. The Exchange further believes that the amounts of the proposed fees are reasonable because they are identical to fees assessed by the Exchange for execution of complex orders in the Select Symbols.

The Exchange further believes that the Exchange's maker/taker fees are not unfairly discriminatory because the fee structure is consistent with fee structures that exists today at other options exchanges. Additionally, 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. Finally, 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

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<sup>18</sup> The Boston Options Exchange currently assesses a similar fee. See 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).

particular exchange to be excessive.

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.<sup>19</sup> At any time within 60 days of the filing of the 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

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2011-65 on the subject line.

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-2011-65. 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 the filing also will be available for inspection and copying at the principal office 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-2011-65 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.<sup>20</sup>

Elizabeth M. Murphy  
Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).