SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61869; File No. SR-ISE-2010-25)

April 7, 2010

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 31, 2010, International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. ISE has designated this proposal as one establishing or changing a member due, fee, or other charge imposed under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b-4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 its Schedule of Fees by adopting per contract transaction fees for options overlying the PowerShares QQQ Trust ("QQQQ")®; Bank of America Corporation ("BAC") and Citigroup Inc. ("C"). The fees would apply to transactions that take and remove liquidity in the above symbols. The Exchange also proposes to offer transaction rebates to certain market participants. The text of the proposed rule change is available on the

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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

4 17 CFR 240.19b-4(f)(2).

Exchange's Web site (http://www.ise.com), at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at www.sec.gov.

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 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 the proposed rule change is to increase liquidity and attract order flow in QQQQ, BAC and C options on the Exchange.[5]

Transaction Charges for Removing Liquidity

The Exchange proposes to assess a per contract transaction charge in QQQQ, BAC and C options to market participants that remove, or "take," liquidity from the Exchange. The per

[5] The fees proposed herein are similar to the "maker/taker" fees currently assessed by NASDAQ OMX PHLX ("PHLX"). PHLX currently charges a fee (a) for adding liquidity to the following class of market participants on that exchange: (i) Firm and (ii) Broker-Dealer; (b) for removing liquidity to the following class of market participants: (i) Customer, (ii) Directed Participant, (iii) Specialist, ROT, SQT and RSQT, (iv) Firm and (v) Broker-Dealer. PHLX also provides a rebate for adding liquidity to the following class of market participants: (i) Customer, (ii) Directed Participant, (iii) Specialist, ROT, SQT and RSQT. See Securities Exchange Act Release No. 61684 (March 10, 2010), 75 FR 13189 (March 18, 2010).

contract transaction charge would depend on the category of market participant submitting an order or quote to the Exchange that removes liquidity.[6]

The proposed amendment to the Exchange's Schedule of Fees identifies the following categories of market participants: (i) Market Maker; (ii) Market Maker Plus;[7] (iii) Non-ISE Market Maker;[8] (iv) Firm Proprietary; (v) Customer (Professional);[9] (vi) Priority Customer,[10] 100 or more contracts; and (vii) Priority Customer, less than 100 contracts.[11]

The transaction charges to be assessed for removing liquidity in QQQQ, BAC and C options from the Exchange are: (i) $0.25 per contract for Market Maker, Market Maker Plus,

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6 Although these options classes will no longer be subject to the tiered market maker transaction fees, the volume from these options classes will continue to be used in the calculation of the tiers so that this new pricing does not affect a market maker's fee in all other names.

7 A Market Maker Plus is a market maker who is on the National Best Bid or National Best Offer 80% of the time in that symbol during the current trading month for series trading between $0.03 and $5.00 in premium. The Exchange will determine 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 80% criteria, the Exchange will rebate $0.10 per contract for transactions executed by that market maker during that month. The Exchange will provide market makers a report on a daily basis with quoting statistics so that market makers can determine whether or not they are meeting the 80% criteria.

8 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.

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

10 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).

11 The Chicago Board Options Exchange ("CBOE") currently makes a similar distinction between large size customer orders that are fee liable and small size customer orders whose fees are waived. CBOE currently waives fees for customer orders of 99 contracts or less in options on exchange-traded funds ("ETFs") and Holding Company Depositary Receipts ("HOLDRs") and charges a transaction fee for customer orders that exceed 99 contracts. See Securities Exchange Act Release No. 59892 (May 8, 2009), 74 FR 22790 (May 14, 2009).

Firm Proprietary and Customer (Professional) orders; (ii) $0.35 per contract for Non-ISE Market Maker orders; (iii) $0.20 per contract for Priority Customer orders for 100 or more contracts. Priority Customer orders for less than 100 contracts will not be assessed a fee for removing liquidity.

The transaction charges to be assessed for each leg of Complex Orders that remove liquidity in QQQQ, BAC and C options are: (i) $0.25 per contract for Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) $0.35 per contract for Non-ISE Market Maker orders. Priority Customer Complex orders, regardless of size, will not be assessed a fee for removing liquidity.

Transaction Charges for Adding Liquidity

The Exchange proposes to assess transaction charges for adding liquidity in QQQQ, BAC and C options on the Exchange, as follows: (i) $0.10 per contracts for Market Maker, Firm Proprietary and Customer (Professional) orders; and (ii) $0.20 per contract for Non-ISE Market Maker orders. Priority Customer orders, regardless of size, and Market Maker Plus orders will not be assessed a fee for adding liquidity.

The transaction charges to be assessed for each leg of Complex Orders that add liquidity in QQQQ, BAC and C options are: (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 Complex orders, regardless of size, will not be assessed a fee for adding liquidity.

Rebates

In order to promote and encourage liquidity in QQQQ, BAC and C options, the Exchange proposes a $0.10 per contract rebate for Market Maker Plus orders sent to the Exchange.[12] Further, in order to incentivize members to direct retail orders to the Exchange, Priority Customer Complex orders, regardless of size, will receive a rebate of $0.15 per contract on all legs when these orders trade with non-customer orders in the Exchange's Complex Orderbook.

The fee for orders executed in the Exchange's Facilitation, Solicited Order, Price Improvement and Block Order Mechanisms remain unchanged from what the Exchange currently charges. Specifically, Market Maker, Market Maker Plus, Non-ISE Market Maker, Firm Proprietary and Customer (Professional) orders in QQQQ, BAC and C options entered into these mechanisms will be charged $0.20 per contract. Priority Customer orders executed in the Exchange's Facilitation, Solicited Order, Price Improvement and Block Order Mechanisms, regardless of size, are not assessed a fee. The Exchange's Facilitation Mechanism has an auction which allows for participation in a trade by members other than the member who entered the trade. Thus, to incentivize members, a rebate of $0.15 per contract will apply to contracts that do not trade with the contra order in the Facilitation Mechanism.[13]

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12 The concept of incenting market makers with a rebate is not novel. In 2008, the CBOE established a program for its Hybrid Agency Liaison whereby it provides a $0.20 per contact rebate to its market makers provided that at least 80% of the market maker's quotes in a class during a month are on one side of the national best bid or offer. Market makers not meeting CBOE's criteria are not eligible to receive a rebate. See Securities Exchange Act Release No. 57231 (January 30, 2008), 73 FR 6752 (February 5, 2008). The CBOE has since lowered the criteria from 80% to 60 %. See Securities Exchange Act Release No. 57470 (March 11, 2008), 73 FR 14514 (March 18, 2008).

13 Assume the ISE BBO and NBBO are 0.95 x 1.00. A firm enters a Facilitation order for a Customer to buy 100 contracts for $0.98 (originating order). The Firm is the Seller (contra order). During the auction period a market maker responds to sell 40 contracts at $0.98. At the conclusion of the auction, the Firm is allocated 60 contracts and the market maker is allocated 40 contracts. The contra order will then receive a rebate of $0.15 per

Other Fees

- Fees for orders executed in the Exchange's Facilitation, Solicited Order, Price Improvement and Block Order Mechanisms are for contracts that are part of the originating or contra order.
- Complex orders executed in the Facilitation and Solicited Order Mechanisms are charged fees only for the leg of the trade consisting of the most contracts.
- Payment for Order Flow fees will not be collected on transactions on QQQQ, BAC and C options.[14]
- The Cancellation Fee will continue to apply in QQQQ, BAC and C options.[15]
- The Exchange has a $0.20 per contract fee credit for members who, pursuant to Supplementary Material .02 to Rule 803, execute a transaction in the Exchange's flash auction as a response to orders from persons who are not broker/dealers and who are not Priority Customers.[16] For QQQQ, BAC and C options, the Exchange

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contract for the 40 contracts that did not trade with it. See e-mail from Samir Patel, Assistant General Counsel, ISE, to Johnna B. Dumler, Special Counsel, Commission, and Andrew Madar, Special Counsel, Commission, dated April 1, 2010.

14 ISE currently has a payment-for-order-flow ("PFOF") program that helps the Exchange's market makers establish PFOF arrangements with an Electronic Access Member ("EAM") in exchange for that EAM preferencing some or all of its order flow to that market maker. This program is funded through a fee paid by Exchange market makers for each customer contract they execute, and is administered by both Primary Market Makers ("PMM") and Competitive Market Makers ("CMM"), depending to whom the order is preferenced.

15 The Exchange assesses a Cancellation Fee of $2.00 to EAMs that cancel at least 500 orders in a month, for each order cancellation in excess of the total number of orders such member executed that month. All orders from the same clearing EAM executed in the same underlying symbol at the same price within a 300 second period are aggregated and counted as one executed order for purposes of this fee. This fee is charged only to customer orders.

16 See Securities Exchange Act Release No. 61731 (March 18, 2010), 75 FR 14233 (March 24, 2010).

proposes to lower the per contract fee credit for members who execute a transaction in the Exchange's flash auction as a response to orders from persons who are not broker/dealers and who are not Priority Customers to $0.10 per contract.

- The Exchange has a $0.20 per contract fee for market maker orders sent to the Exchange by EAMs.[17] Market Maker orders sent to the Exchange by EAMs will be assessed a fee of $0.25 per contract for removing liquidity in QQQQ, BAC and C options and $0.10 per contract for adding liquidity in QQQQ, BAC and C options.

The Exchange has designated this proposal to be operative on April 1, 2010.

2. Statutory Basis

The basis under the Exchange 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. 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 QQQQ, BAC and C options. 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. The Exchange believes that the proposed fees it charges for options overlying QQQQ, BAC and C remain competitive with fees charged by other exchanges and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange.

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17 See Securities Exchange Act Release No. 60817 (October 13, 2009), 74 FR 54111 (October 21, 2009).

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) of the Act[18] and Rule 19b-4(f)(2)[19] 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. Please include File Number SR-ISE-2010-25 on the subject line.

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18 15 U.S.C. 78s(b)(3)(A).

19 17 CFR 240.19b-4(f)(2).

Paper comments:

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

All submissions should refer to File Number SR-ISE-2010-25. 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 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 Web site 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 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 publicly available. All submissions should refer to File Number SR-ISE-2010-25 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.[20]

Florence E. Harmon
Deputy Secretary

[20] 17 CFR 200.30-3(a)(12).