

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62507; File No. SR-ISE-2010-68)

July 15, 2010

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Qualification Standards for Market Makers to Receive a Rebate for Adding Liquidity

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 June 28, 2010, 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 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 the qualification standards for market makers to receive a rebate under the Exchange's maker/taker pricing program. 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, at the Commission's Public Reference Room, and on the Commission's Web site at [www.sec.gov](http://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

---

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

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

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 amend the qualification standards for market makers to receive a rebate under the Exchange’s maker/taker pricing program. The Exchange recently adopted transaction fees and rebates for adding and removing liquidity (“maker/taker fees”).<sup>3</sup> The maker/taker fees currently apply to trading in a select number of options classes<sup>4</sup> to the following categories of market participants: (i) Market Maker; (ii) Market Maker Plus; (iii) Non-ISE Market Maker;<sup>5</sup> (iv) Firm Proprietary; (v) Customer (Professional);<sup>6</sup>

---

<sup>3</sup> See Securities Exchange Act Release Nos. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010); 62048 (May 6, 2010), 75 FR 26830 (May 12, 2010); and 62319 (June 17, 2010), 75 FR 36134 (June 24, 2010).

<sup>4</sup> As of June 1, 2010, the following options classes were subject to maker/taker fees: QQQQ, BAC, C, SPY, IWM, XLF, AAPL, GE, JPM, INTC, GS, RIMM, T, VZ, UNG, FCX, CSCO, DIA, AMZN, X, AA, AIG, AXP, BBY, CAT, CHK, DNDN, EEM, EFA, EWZ, F, FAS, FAZ, FSLR, GDX, GLD, IYR, MGM, MS, MSFT, MU, PALM, PBR, PG, POT, RIG, SDS, SLV, XLE, and XOM. On June 28, 2010, the Exchange submitted a proposed rule change, SR-ISE-2010-65, to be effective on July 1, 2010, to add the following 30 options classes to be included in the Exchange’s maker/taker fee schedule: ABX, BMY, BP, COP, DELL, DRYS, FXI, HAL, IBM, KO, LVS, MCD, MO, MON, NOK, ORCL, PFE, QCOM, S, SLB, SMH, SNDK, TBT, USO, V, VALE, WFT, XLI, XRT, and YHOO.

<sup>5</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>6</sup> A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

(vi) Priority Customer,<sup>7</sup> 100 or more contracts; and (vii) Priority Customer, less than 100 contracts.

In order to promote and encourage liquidity in options classes that are subject to maker/taker fees, the Exchange currently offers a \$0.10 per contract rebate for Market Maker Plus orders sent to the Exchange.<sup>8</sup> A Market Maker Plus is currently defined by the Exchange as 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 in premium in each of the front two expiration months and 80% of the time for all series trading between \$0.03 and \$5.00 in premium for all expiration months for that symbol during the current trading month.<sup>9</sup>

The Exchange now proposes to amend the qualification standards in order for a market maker to qualify for the \$0.10 per contract rebate. Specifically, the Exchange proposes to define a Market Maker Plus as 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

---

<sup>7</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).

<sup>8</sup> 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).

<sup>9</sup> See Securities Exchange Act Release No. 62282 (June 11, 2010), 75 FR 34499 (June 17, 2010).

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 for that symbol during the current trading month.

The Exchange currently 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 current stated criteria, the Exchange rebates \$0.10 per contract for transactions executed by that market maker during that month. The Exchange will continue to monitor each market maker's quoting statistics to determine whether a market maker qualifies for a rebate under the standards proposed herein.

The Exchange also currently 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 current stated criteria. Again, the Exchange will continue to provide market makers a daily report so that market makers can determine whether or not they are meeting the Exchange's new quoting requirement to qualify for a rebate.

The Exchange believes the proposed rule change will encourage market makers to post tighter markets in the options classes that are subject to maker/taker fees and thereby increase liquidity and attract order flow to the Exchange.

The Exchange has designated this proposal to be operative on July 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 the options classes that are subject to the Exchange's maker/taker fees. 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 fees it charges for options classes that are subject to the Exchange's maker/taker fees 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. The Exchange further believes that amending the qualification standards for market makers to qualify for a rebate will encourage these market participants to post tighter markets in the options classes that are subject to the Exchange's maker/taker fees and thereby increase liquidity and attract order flow to the Exchange.

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<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</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 Number SR-ISE-2010-68 on the subject line.

#### Paper comments:

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

All submissions should refer to File Number SR-ISE-2010-68. 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

---

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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-2010-68 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>12</sup>

Florence E. Harmon  
Deputy Secretary

---

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