

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64270; File No. SR-ISE-2011-13)

April 8, 2011

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a Fee Cap and a Service Fee

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 March 31, 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 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 establish a fee cap of \$100,000 per month and a related service fee for member firms on all proprietary trading, with certain exclusions, in all ISE products. 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

---

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

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

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 establish a monthly fee cap per ISE member organization, subject to certain exclusions, across all products traded on ISE. The proposed fee cap shall apply to transactions executed in a member's proprietary account. The cap also would apply to crossing transactions for the account of entities affiliated with a member. That is, the cap will apply to a member's crossing transactions even if the member executes crosses in the account of an affiliate, rather than the member's own account. This will provide members with the flexibility to effect transactions where it makes the most business sense within their family of companies.

For example, a member engaged in trading activity on ISE may have an affiliate engaged in a market making capacity on another exchange, which may be a separate broker/dealer entity. A crossing transaction by that member in which a customer order is facilitated against the proprietary trading interest of the member's affiliate would be eligible for the proposed fee cap. On the other hand, a crossing transaction by the same

member where a customer order is facilitated against the proprietary trading interest of an unaffiliated entity would not be eligible for the fee cap.<sup>3</sup>

Specifically, the Exchange proposes to cap proprietary transaction fees in all products traded on ISE, in the aggregate, at \$100,000 per month per member, with certain exclusions which are noted below. All proprietary transactions, including non-ISE market maker contracts that are part of a crossing transaction, are eligible towards the proposed fee cap. Volume from regular and complex orders, as well as Facilitation Mechanism, Price Improvement Mechanism, Solicited Order Mechanism, Block Order Mechanism and Qualified Contingent Cross (“QCC”) orders,<sup>4</sup> will also count towards the fee cap.

In addition to adopting a fee cap, ISE proposes to adopt a service fee of \$0.01 per side on all non-QCC transactions that are eligible for the fee cap. For QCC volume, the Exchange proposes to adopt a higher service fee of \$0.05 per side, recognizing that this is a premium service that required substantial investment by the ISE to deliver to members. The proposed service fee shall apply once a member reaches the fee cap level and shall apply to every contract side included in and above the fee cap. A member who does not reach the monthly fee cap will not be charged the proposed service fee. Additionally, the proposed service fee is not calculated in reaching the fee cap. Once the fee cap is reached, the proposed service fee shall apply to both proprietary and other account

---

<sup>3</sup> Each member would be responsible for notifying the Exchange of its affiliations so that fees and contracts of the member and its affiliates involved in crossing transactions may be aggregated for purposes of the fee cap.

<sup>4</sup> The Commission recently approved the QCC order type. See Securities Exchange Act Release No. 63955 (February 24, 2011) (SR-ISE-2010-73). The Exchange filed a separate proposed rule change to adopt fees for QCC orders. See Securities Exchange Act Release No. 64112 (March 23, 2011) (SR-ISE-2011-14).

designations<sup>5</sup> in all ISE products in addition to those transactions that were included in reaching the fee cap. The proposed service fee, when charged for volume above the cap when no other transaction fees are collected, is being instituted to defray the Exchange's costs of providing services to members, which include trade matching and processing, post trade allocation, submission for clearing and customer service activities related to trading activity on the Exchange.

In calculating the proposed fee cap, the Exchange proposes to exclude the following:<sup>6</sup> 1) any surcharge fee charged by the Exchange on licensed products,<sup>7</sup> 2) fees from Non-ISE Market Maker volume not related to an affiliated member's crossing activity, 3) the fee for responses to special orders<sup>8</sup> in all products, 4) the maker and taker

---

<sup>5</sup> Other account designations include Prop-firm (Member trading for its own account and clearing in the F range at OCC), Prop-cust (Member trading for its own account and clearing in the C range at OCC), BD-firm (Member trading on behalf of another registered broker/dealer clearing in the F range at OCC), BD-cust (Member trading on behalf of another registered broker/dealer clearing in the C range at OCC), FarMM (Member trading on behalf of another registered broker/dealer clearing in the M range at OCC).

<sup>6</sup> Other exchanges currently employ exclusions to their fee cap programs. For example, at the Chicago Board Options Exchange, Inc. ("CBOE"), Automated Improvement Mechanism ("AIM") execution fees do not count towards the fee cap employed by that exchange. See CBOE Fees Schedule, Section 1 (Equity Options Fees).

<sup>7</sup> The Exchange currently charges a surcharge that ranges between \$0.02 per contract to \$0.22 per contract on the following licensed products: BKX, MFX, MID, MSH, SML, UKX, RMN, RUI, RUT, MVR, NDX, MNX, FUM, HSX, POW, TNY, WMX and NXTQ.

<sup>8</sup> Special orders are order types that involve a crossing transaction or an auction, where a broadcast is transmitted to Exchange members for potential participation and/or price improvement.

fees charged by the Exchange for complex orders<sup>9</sup> for certain option classes,<sup>10</sup> and 5) the taker fees charged by the Exchange for regular orders<sup>11</sup> for the Select Symbols.

The proposed fee cap is functionally similar to a “Multiply-Listed Option Fee Cap” in place at the CBOE<sup>12</sup> and a “Firm Related Equity Option Cap” in place at NASDAQ OMX PHLX, Inc. (“PHLX”).<sup>13</sup> The Exchange believes the proposed fee cap would create an incentive for members to continue to send order flow to the Exchange.

The Exchange has designated this proposal to be operative on April 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 Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>15</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

---

<sup>9</sup> A Complex Order is defined in Exchange Rule 722(a)(1) as any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.

<sup>10</sup> The proposed exclusion applies to options classes that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols (“Select Symbols”).

<sup>11</sup> An order means a commitment to buy or sell securities as defined in Exchange Rule 715.

<sup>12</sup> The CBOE fees are capped at \$75,000. See CBOE Fees Schedule, Section 1 (Equity Options Fees).

<sup>13</sup> PHLX Firms are subject to a maximum fee of \$75,000. See PHLX Fee Schedule, Section II (Equity Options Fees).

<sup>14</sup> 15 U.S.C. 78f(b).

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

The Exchange believes that adopting the fee cap is reasonable because it will potentially lower transaction fees for members providing liquidity on the Exchange. Members who reach the fee cap during a month will not have to pay regular transaction fees and thus will be able to lower their monthly fees.

The Exchange believes that the fee cap is not unfairly discriminatory because all members, including non-ISE market makers are eligible to reach the cap. Moreover, the transactional fees that apply to the cap are not focused on any particular type of trading or member. Indeed, the cap covers all types of proprietary business members conduct on the Exchange, including regular transactions, complex orders, as well as all “special” transactions, such as trades in the Facilitation Mechanism, Price Improvement Mechanism, Solicited Order Mechanism, Block Order Mechanism, and Qualified Contingent Crosses. The Exchange is applying the fee cap only to firm proprietary business, and not customer or market maker business, because the Exchange is specifically targeting this type of business as a competitive response to similar fee caps other exchanges have adopted,<sup>16</sup> and thus to make it more attractive for members to send such business to the Exchange. The Exchange has adopted other incentive programs targeting other business areas: lower fees (or no fees) for customer orders;<sup>17</sup> and tiered

---

<sup>16</sup> See supra notes 12 and 13.

<sup>17</sup> For example, the customer fee is \$0.00 per contract for products other than Second Market Options, Singly Listed Indexes, Singly Listed ETFs and FX Options. For Second Market Options, the customer fee is \$0.05 per contract and for Singly Listed Options, Singly Listed ETFs and FX Options, the customer fee is \$0.18 per contract. The Exchange also currently has an incentive plan in place for certain specific FX Options which has its own pricing. See ISE Schedule of Fees.

pricing that reduces rates for market makers based on the level of business they bring to the Exchange.<sup>18</sup>

The Exchange further believes the proposal to adopt the fee cap is equitable because it would uniformly apply to all members engaged in proprietary trading in option classes traded on the Exchange. As noted, ISE market makers currently receive the benefit of a fee reduction under a sliding scale fee structure applicable to non-Select Symbols.

The Exchange believes that adopting the service fee is reasonable because it will also potentially lower transaction fees for members. Members who reach the fee cap during a month will pay the service fee instead of the regular transaction fees and thus will be able to lower their monthly fees. The Exchange believes that charging a service fee is also reasonable because it will allow the Exchange to recoup the costs incurred in providing certain services, which include trade matching and processing, post trade allocation, submission for clearing and customer service activities related to trading activity on the Exchange. The Exchange also believes it is reasonable to charge a higher service fee for providing certain unique orders, such as QCC orders, recognizing the unique efforts and costs associated with developing that product. The Exchange believes the proposed fee change will attract additional order flow to the Exchange and thereby will benefit all market participants.

The Exchange believes the proposal to adopt the service fee is equitable and not unfairly discriminatory because it would uniformly apply to all members engaged in

---

<sup>18</sup> The Exchange currently has a sliding scale fee structure that ranges from \$0.01 per contract to \$0.18 per contract depending on the level of volume a Member trades on the Exchange in a month.

proprietary trading. The proposed fee is designed to give members who trade a lot on the Exchange a benefit by way of a lower transaction fee.

The Exchange believes the proposed service fee change will benefit market participants by potentially lowering their fees while allowing the Exchange to remain competitive with other exchanges that offer similar fee cap programs. The Exchange notes that the proposed service fee is similar to fees other exchanges charge for providing certain services to its members. For example, Phlx currently assesses a risk management fee.<sup>19</sup> Additionally, the CBOE has a matched-unmatched fee that it applies.<sup>20</sup> Both the Phlx and the CBOE fees are in essence fees charged by those exchanges for services they provide to their members.

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

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.

---

<sup>19</sup> See Phlx Fee Schedule, Section VI (Equity Options Fees).

<sup>20</sup> See CBOE Fees Schedule – Duplicate Fees Related To Manual Data Entry (Keypunch) Errors.



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>21</sup> 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](mailto:rule-comments@sec.gov). Please include File No. SR-ISE-2011-13 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.

---

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-ISE-2011-13. 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 Commissions 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. 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-2011-13 and should be submitted by [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.<sup>22</sup>

Cathy Ahn  
Deputy Secretary

---

<sup>22</sup> 17 CFR 200.30-3(a)(12).