

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65021; File No. SR-ISE-2011-45)

August 3, 2011

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

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 1, 2011, the International Securities Exchange, LLC (the “Exchange” or “ISE”) filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II 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 fees 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 forth in sections A, B and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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”).³

For complex orders in the Select Symbols, the Exchange currently charges a “take” fee

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).

of: (i) \$0.30 per contract for Market Maker,⁴ Market Maker Plus,⁵ Firm Proprietary and Customer (Professional)⁶ orders; and (ii) \$0.35 per contract for Non-ISE Market Maker⁷ orders. Priority Customer⁸ orders are not charged a take fee for complex orders. For complex orders, 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 are not charged a make fee for complex orders.

⁴ 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.

⁵ 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 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.

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

⁷ 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.

⁸ 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).

Additionally, the Exchange provides a rebate of \$0.25 per contract to Priority Customer complex orders that trade with non-customer orders in the Complex Order Book.

The Exchange now proposes to extend the fees and credits for complex orders applicable to the Select Symbols to all symbols that are in the Penny Pilot Program.⁹ Thus, pursuant to this proposed rule change, for complex orders in the Penny Pilot Symbols, the Exchange will charge a “take” fee of: (i) \$0.30 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

⁹ The Penny Pilot Program, which commenced on January 26, 2007, permits ISE and all of the other options exchanges to quote certain option classes in pennies. The current pilot is scheduled to expire on December 31, 2011. The following options classes are currently in the Penny Pilot Program: A, AA, AAPL, ABK, ABT, ABX, ACAS, ACI, ADBE, ADM, ADSK, AEM, AET, AFL, AGO, AIG, AKAM, AKS, ALL, AMAT, AMD, AMED, AMGN, AMLN, AMR, AMZN, ANF, ANR, APA, APC, APOL, APWR, ARNA, ATPG, ATVI, AUU, AXP, BA, BAC, BAX, BBY, BBD, BBT, BBY, BCRX, BHI, BHP, BIDU, BK, BMY, BP, BPOP, BRCD, BRCM, BRKB, BSX, BTU, BUCY, BX, C, CAT, CB, CELG, CENX, CF, CHK, CI, CIEN, CIT, CL, CLF, CMA, CMCSA, CNX, COF, COP, COST, CREE, CRM, CSCO, CSX, CTIC, CVS, CVX, CX, DAL, DCTH, DD, DE, DELL, DHI, DIA, DIS, DNDN, DO, DOW, DRY, DTV, DVN, EBAY, EEM, EFA, EK, EMC, ENER, EOG, EP, ERTS, ESI, ESRX, ETFC, EWJ, EWT, EWW, EWY, EWZ, F, FAS, FAZ, FCX, FDX, FFIV, FIS, FITB, FLEX, FNM, FRE, FSLR, FWLT, FXE, FXI, FXP, GDX, GE, GFI, GG, GGP, GILD, GIS, GLD, GLW, GM, GMCR, GME, GNW, GPS, GRMN, GS, HAL, HBAN, HBC, HD, HES, HGSI, HIG, HK, HL, HOG, HON, HOT, HPQ, HSY, IBM, IBN, INTC, IOC, IP, ITMN, IWM, IYR, JCP, JDSU, JNJ, JNPR, JOYG, JPM, JWN, KBH, KEY, KFT, KGC, KMP, KO, KRE, LCC, LDK, LEAP, LEN, LLY, LNC, LO, LOW, LVS, M, MA, MBI, MCD, MCO, MCP, MDT, MDVN, MEE, MET, MGM, MJN, MMM, MMR, MNKD, MNX, MO, MON, MOS, MRK, MRO, MRVL, MS, MSFT, MSI, MT, MTG, MU, MYL, NBR, NE, NEM, NFLX, NKE, NLY, NOK, NOV, NTAP, NUE, NVDA, NYX, OIH, ORCL, OXY, PARD, PBR, PCL, PCX, PEP, PFE, PG, PHM, PM, PNC, POT, PRU, PXP, QCOM, QID, QLD, QQQ, RCL, RF, RIG, RIMM, RMBS, RSH, RTN, RVBD, S, SBUX, SD, SDS, SEED, SHLD, SIRI, SKF, SLB, SLM, SLV, SLW, SMH, SNDK, SO, SPG, SPWRA, SPY, SQNM, SRS, SSO, STEC, STI, STP, STT, STX, SU, SUN, SVNT, SWN, SYMC, T, TBT, TCK, TEVA, TGT, TIF, TIVO, TLB, TLT, TM, TSL, TSO, TWX, TXN, TXT, TYC, TZA, UAL, UNG, UNH, UNP, UPS, URE, USB, USO, UTX, UUP, UYG, V, VALE, VLO, VRSN, VVUS, VXX, VZ, WAG, WDC, WFC, WFM, WFR, WFT, WHR, WIN, WLP, WLT, WMB, WMT, WYNN, X, XHB, XL, XLB, XLE, XLF, XLI, XLK, XLNX, XLP, XLU, XLV, XLY, XME, XOM, XOP, XRT, XRX, YHOO, YRCW, YUM and ZION (the “Penny Pilot Symbols”).

orders. Priority Customer orders will not be charged a take fee for complex orders. For complex orders in the Penny Pilot Symbols, the Exchange will charge 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 will not be charged a make fee for complex orders.

Additionally, the Exchange currently provides a rebate of \$0.25 per contract to Priority Customer complex orders that trade with non-customer orders in the Complex Order Book and proposes to extend this rebate to the Penny Pilot Symbols. Finally, the Exchange currently charges a Payment for Order Flow (PFOF) fee of \$0.25 per contract for each customer order executed in the Penny Pilot Symbols, including complex orders. As part of this proposed rule change, the Exchange proposes not to charge a PFOF fee for customer complex orders transacted in the Penny Pilot Symbols.

The Exchange has designated this proposal to be operative on August 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 Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ 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 add or remove liquidity in options overlying the symbols that are subject to the Exchange’s maker/taker fees.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

The Exchange believes that its complex order 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 Exchange believes that its proposal to extend its complex order pricing to all Penny Pilot Symbols is reasonable because doing so will attract additional order flow to the Exchange. The complex order pricing employed by the Exchange for the Select Symbols has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes extending that 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 believes it is reasonable to eliminate the PFOF fee for customer complex orders in the Penny Pilot Symbols because the Exchange does not charge a PFOF fee for symbols that are subject to the Exchange's maker/taker pricing, i.e., the Select Symbols. PFOF fees are pricing incentives offered by exchanges to attract order flow. Since the Exchange is proposing to adopt maker/taker pricing for complex orders, which provides incentives to attract order flow in the form of rebates, the Exchange does not have a need to charge PFOF fees for these orders.

The Exchange also believes that extending the maker/taker pricing to complex orders in the Penny Pilot Symbols is reasonable and equitable because the Exchange is not changing its maker/taker pricing structure; it is merely extending it to additional symbols, i.e., Penny Pilot Symbols. The Exchange also believes that eliminating the PFOF fee for complex orders in the Penny Pilot Symbols is reasonable and equitable because it will benefit customers. 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.

Finally, 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. Additionally, 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 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.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

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

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 Number SR-ISE-2011-45 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-2011-45. 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 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 available publicly. All submissions should refer to File No. SR-ISE-2011-45 and should be submitted on or before [insert date 21 days from 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

¹³ 17 CFR 200.30-3(a)(12).