

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65499; File No. SR-ISE-2011-64)

October 6, 2011

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

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 September 26, 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 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 proposes to amend its Schedule of Fees relating to certain professional customer 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

ISE proposes to increase the execution fee for “professional customers,” who execute orders as a result of taking liquidity from ISE’s order book in certain option classes, from \$0.18 per contract to \$0.20 per contract. This proposed fee change is applicable to option classes that are not subject to the Exchange’s modified maker/taker pricing structure (“Non-Select Symbols”). In addition to the Non-Select Symbols, this proposed fee change shall also apply to non-complex orders in option classes that are in the Penny Pilot program.³

ISE rules distinguish between Priority Customer Orders⁴ and Professional Orders.⁵ For purpose of this discussion, “professional customers” are non-broker/dealer

³ The Exchange recently extended its maker/taker pricing structure to all complex orders in option classes that are in the Penny Pilot program. See Exchange Act Release No. 65021 (August 3, 2011), 76 FR 48933 (August 9, 2011) (SR-ISE-2011-45). 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. See Exchange Act Release No. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR-ISE-2006-62). The current pilot is scheduled to expire on December 31, 2011. See Exchange Act Release No. 63437 (December 6, 2010), 75 FR 77032 (December 10, 2010) (SR-ISE-2010-116).

⁴ A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker or 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).

⁵ A Professional Order is defined in ISE Rule 100(a)(37C) as an order that is for the account of a person or entity that is not a Priority Customer.

participants who enter at least 390 orders per day on average during a calendar month for their own beneficial account(s). The Exchange notes that the level of trading activity by professional customers more resembles that of broker/dealers, i.e., proprietary traders, than it does of a retail, or “Priority” customer. As a result, professional customers are on parity with broker/dealers and generally pay the same transaction fees as broker/dealers. For example, for years broker/dealer orders have been charged an execution fee of \$0.20 per contract in the Non-Select Symbols. And recently, the Exchange began charging professional customers who execute orders as a result of posting liquidity to ISE’s order book in the Non-Select Symbols \$0.20 per contract.⁶

With this proposed fee change, the Exchange seeks to standardize the fee charged to professional customers for trading on the Exchange in the Non-Select Symbols as all professional customers will now pay \$0.20 per contract, regardless of whether they are posting liquidity or taking liquidity in the Non-Select Symbols and for non-complex orders in option classes that are in the Penny Pilot program. The Exchange believes that the proposed fees for professional customers will allow the Exchange to remain competitive with other options exchanges who apply fees to professional customers. Further, in addition to standardizing these [sic] fees, the Exchange believes the proposed fee change will make the Exchange’s transaction fees simpler and more concise to Exchange Members.

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

2. Statutory Basis

⁶ See Securities Exchange Act Release No. 61434 (January 27, 2010), 75 FR 5826 (February 4, 2010).

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act⁸ in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members. The Exchange believes that the proposed fee changes will generally allow the Exchange to better compete for professional customer order flow and thus enhance competition. Specifically, the Exchange believes that its proposal to assess a \$0.20 per contract fee for professional customers who take liquidity from the Exchange's order book in the Non-Select Symbols and for non-complex orders in option classes that are in the Penny Pilot program is equitable and reasonable as it will standardize fees charged by the Exchange for all professional customers that engage in a similar activity. The Exchange further believes it is reasonable, equitable and not unfairly discriminatory to charge professional customers the same level of fees that the Exchange charges broker/dealers as both groups of market participants essentially engage in similar trading activity.

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.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

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 Act⁹ and Rule 19b-4(f)(2)¹⁰ thereunder. 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.

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-2011-64 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-2011-64. This file number should be included on the subject line if e-mail is used. To help the Commission process and

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

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 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-2011-64 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Elizabeth M. Murphy
Secretary

¹¹ 17 CFR 200.30-3(a)(12).