

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61731; File No. SR-ISE-2010-18)

March 18, 2010

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

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 March 1, 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 its Schedule of Fees by adopting a per contract fee credit related to the execution on ISE of customer orders exposed to members before those orders are sent out for execution on another exchange through the intermarket linkage. 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, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Before a Primary Market Maker (“PMM”) sends a customer order to another exchange for execution when ISE is not at the national best bid or offer (“NBBO”), the Exchange exposes these customer orders to all its members to give them an opportunity to match the NBBO. This exposure is intended to allow ISE to retain more order flow by giving these customer orders additional opportunity to be executed at the NBBO at ISE, which also reduces PMM costs by reducing the number of orders they must send to other exchanges on behalf of customer orders.

Specifically, before a PMM sends an order on behalf of a customer, the customer order is exposed at the NBBO price for a period established by the Exchange not to exceed one second. During this exposure period, Exchange members may enter responses up to the size of the order being exposed in the regular trading increment applicable to the option. The Exchange currently has fee waivers in place for members who step up and match or improve the NBBO during the exposure period.³ If at the end of the exposure period, the order is executable at the then-current NBBO and ISE is not at the then-current NBBO, the order is executed against responses that equal or better the then-current NBBO. The exposure period is terminated if the exposed order becomes executable on the ISE at the prevailing NBBO or if the Exchange receives an unrelated order that could trade against the exposed order at the prevailing NBBO price. If, after an order is exposed, the order is not executed in full on the Exchange at the then-current NBBO or better,

³ See Exchange Act Release Nos. 58164 (July 15, 2008), 73 FR 42638 (July 22, 2008); 58216 (July 23, 2008), 73 FR 44302 (July 30, 2008).

and it is marketable against the then-current NBBO, the PMM sends an order on the customer's behalf for the balance of the order as provided in Rule 803(c)(2)(ii). If the balance of the order is not marketable against the then-current NBBO, it is placed on the ISE book.

All customer orders, including professional customer orders, receive trade through protection under the ISE's rules.⁴ Therefore, all customer orders are exposed when ISE is not at the best bid or offer. Members, however, do not know whether an order being exposed is for a Priority Customer⁵ or a professional customer. Members have a natural incentive to step up to trade against Priority Customers as they view this as providing a service to retail customers. Members do not have a natural incentive to trade against professional customers who they view as their competitors. Thus, to encourage members to participate in the flash auction and thereby keep trades at the Exchange, ISE proposes to adopt a fee credit. Specifically, ISE proposes to adopt a \$0.20 per contract fee credit for members who execute a transaction as a response to a Professional Order⁶ in the Exchange's flash auction.

2. Basis

The basis under the Securities Exchange Act of 1934 (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. In particular, the proposed rule change will allow ISE to retain more order flow by giving these customer orders additional opportunity to be executed ISE at the

⁴ See ISE Rule 1902.

⁵ 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).

⁶ 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.

NBBO or better and will also reduce PMM costs by reducing the number of orders they must send to other exchanges for execution.

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 Act⁷ and Rule 19b-4(f)(2)⁸ 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:

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(2).

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 No. SR-ISE-2010-18 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 No. SR-ISE-2010-18. 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,⁹ 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 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

⁹ The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

you wish to make available publicly. All submissions should refer to File No. SR-ISE-2010-18 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.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).