

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62665; File No. SR-ISE-2010-82)

August 9, 2010

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on August 2, 2010, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 transaction fees and rebates for adding and removing liquidity. 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, on the Commission’s Web site at www.sec.gov, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange proposes to increase liquidity and attract order flow by amending its transaction fees and rebates for adding and removing liquidity (“maker/taker fees”).³ The Exchange’s maker/taker fees currently apply to the following categories of market participants:

³ These fees are similar to the “maker/taker” fees currently assessed by NASDAQ OMX PHLX (“PHLX”). PHLX currently charges a fee for removing liquidity to the following class of market participants: (i) Customer, (ii) Directed Participant, (iii) Specialist, ROT, SQT and RSQT, (iv) Firm, (v) Broker-Dealer, and (vi) Professional. PHLX also provides a rebate for adding liquidity to the following class of market participants: (i) Customer, (ii) Directed Participant, (iii) Specialist, ROT, SQT and RSQT, and (iv) Professional. PHLX also charges a fee for adding liquidity to the following class of market participants: (i) Firm, and (ii) Broker-Dealer. See Securities Exchange Act Release Nos. 61684 (March 10, 2010), 75 FR 13189 (March 18, 2010); 61932 (April 16, 2010), 75 FR 21375 (April 23, 2010); 61961 (April 22, 2010), 75 FR 22881 (April 30, 2010); and 62472 (July 8, 2010), 75 FR 41250 (July 15, 2010).

(i) Market Maker; (ii) Market Maker Plus;⁴ (iii) Non-ISE Market Maker;⁵ (iv) Firm Proprietary; (v) Customer (Professional);⁶ (vi) Priority Customer,⁷ 100 or more contracts; and (vii) Priority Customer, less than 100 contracts.⁸

Current Transaction Charges for Adding and Removing Liquidity

The Exchange currently assesses a per contract transaction charge to market participants that remove, or “take,” liquidity from the Exchange in the following options classes:

⁴ 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.

⁵ 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.

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

⁷ 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).

⁸ The Chicago Board Options Exchange (“CBOE”) currently makes a similar distinction between large size customer orders that are fee liable and small size customer orders whose fees are waived. CBOE currently waives fees for customer orders of 99 contracts or less in options on exchange-traded funds (“ETFs”) and Holding Company Depositary Receipts (“HOLDERS”) and charges a transaction fee for customer orders that exceed 99 contracts. See Securities Exchange Act Release No. 59892 (May 8, 2009), 74 FR 22790 (May 14, 2009).

PowerShares QQQ trust (“QQQQ”), Bank of America Corporation (“BAC”), Citigroup, Inc. (“C”), Standard and Poor's Depository Receipts/SPDRs (“SPY”), iShares Russell 2000 (“IWM”), Financial Select Sector SPDR (“XLF”), Apple, Inc. (“AAPL”), General Electric Company (“GE”), JPMorgan Chase & Co. (“JPM”), Intel Corporation (“INTC”), Goldman Sachs Group, Inc. (“GS”), Research in Motion Limited (“RIMM”), AT&T, Inc. (“T”), Verizon Communications, Inc. (“VZ”), United States Natural Gas Fund (“UNG”), Freeport-McMoRan Copper & Gold, Inc. (“FCX”), Cisco Systems, Inc. (“CSCO”), Diamonds Trust, Series 1 (“DIA”), Amazon.com, Inc. (“AMZN”), United States Steel Corporation (“X”), Alcoa Inc. (“AA”), American International Group, Inc. (“AIG”), American Express Company (“AXP”), Best Buy Company (“BBY”), Caterpillar, Inc. (“CAT”), Chesapeake Energy Corporation (“CHK”), Dendreon Corporation (“DNDN”), iShares MSCI Emerging Markets Index Fund (“EEM”), iShares MSCI EAFE Index Fund (“EFA”), iShares MSCI Brazil Index Fund (“EWZ”), Ford Motor Company (“F”), Direxion Shares Financial Bull (“FAS”), Direxion Shares Financial Bear (“FAZ”), First Solar, Inc. (“FSLR”), Market Vectors ETF Gold Miners (“GDX”), SPDR Gold Trust (“GLD”), iShares DJ US Real Estate Index Fund (“IYR”), MGM Mirage (“MGM”), Morgan Stanley (“MS”), Microsoft Corporation (“MSFT”), Micron Technology, Inc. (“MU”), Palm, Inc. (“PALM”), Petroleo Brasileiro S.A. (“PBR”), The Procter & Gamble Company (“PG”), Potash Corporation of Saskatchewan (“POT”), Transocean Ltd. (“RIG”), ProShares UltraShort S&P 500 (“SDS”), iShares Silver Trust (“SLV”), Energy Select Sector SPDR Fund (“XLE”), Exxon Mobil Corporation (“XOM”), Barrick Gold Corporation (“ABX”), Bristol-Myers Squibb Company (“BMY”), BP p.l.c. (“BP”), ConocoPhillips (“COP”), Dell Computer Corporation (“DELL”), Dryships Inc. (“DRYS”), iShares Trust FTSE/Xinhua China 25 Index Fund (“FXI”), Halliburton Company (“HAL”), International Business Machines Corporation

("IBM"), The Coca-Cola Company ("KO"), Las Vegas Sands Corp. ("LVS"), McDonald's Corporation ("MCD"), Altria Group Inc. ("MO"), Monsanto Company ("MON"), Nokia Oyj ("NOK"), Oracle Corporation ("ORCL"), Pfizer Inc. ("PFE"), QUALCOMM Inc ("QCOM"), Sprint Corporation ("S"), Schlumberger Limited ("SLB"), Semiconductor HOLDERS Trust ("SMH"), SanDisk Corporation ("SNDK"), Proshares Ultrashort Lehman ("TBT"), United States Oil Fund ("USO"), Visa Inc ("V"), Companhia Vale Do Rio Doce ("VALE"), Weatherford International Inc. ("WFT"), Industrial Select Sector SPDR ("XLI"), SPDR S&P Retail ETF ("XRT"), and Yahoo! Inc. ("YHOO") (the "Select Symbols"). The per contract transaction charge depends on the category of market participant submitting an order or quote to the Exchange that removes liquidity.⁹ Priority Customer Complex orders, regardless of size, are not assessed a fee for removing liquidity.

The Exchange also currently assesses transaction charges for adding liquidity in options on the Select Symbols. Priority Customer orders, regardless of size, and Market Maker Plus orders are not assessed a fee for adding liquidity.

Current Rebates

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.¹⁰ Further, in order to incentivize members to direct retail

⁹ Although these options classes will no longer be subject to the tiered market maker transaction fees, the volume from these options classes will continue to be used in the calculation of the tiers so that this new pricing does not affect a market maker's fee in all other names.

¹⁰ 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

orders to the Exchange, Priority Customer Complex orders, regardless of size, currently receive a rebate of \$0.15 per contract on all legs when these orders trade with non-customer orders in the Exchange's Complex Orderbook. Additionally, the Exchange's Facilitation Mechanism has an auction which allows for participation in a trade by members other than the member who entered the trade. To incentivize members, the Exchange currently offers a rebate of \$0.15 per contract to contracts that do not trade with the contra order in the Facilitation Mechanism. This rebate is also offered to contracts that do not trade with the contra order in the Price Improvement Mechanism.

Fee Changes

The Exchange proposes to remove the following options class from the Exchange's maker/taker fee schedule: PALM.

Additionally, the Exchange currently assesses transaction charges for each leg of Complex Orders that remove liquidity in the Select Symbols, as follows: (i) \$0.25 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 orders. Priority Customer Complex orders, regardless of size, are not assessed a fee for removing liquidity. The Exchange proposes to increase the transaction charge for Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders from \$0.25 per contract to \$0.27 per contract for each leg of Complex Orders that remove liquidity in the Select Symbols. However, ISE market makers who remove liquidity in the Select Symbols from the Complex Orderbook by trading with orders that

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).

are preferenced to them will continue to be charged \$0.25 per contract. The fee for Non-ISE Market Maker orders and Priority Customer Complex orders will remain at their current levels.

Finally, as an incentive for members to direct customer order flow to the Exchange, Priority Customer Complex orders, regardless of size, currently receive a rebate of \$0.15 per contract on all legs when these orders trade with non-customer orders in the Exchange's Complex Order Book. The Exchange proposes to increase this rebate from \$0.15 per contract to \$0.20 per contract.

Other Fees

Fees for orders executed in the Exchange's Facilitation, Solicited Order, Price Improvement and Block Order Mechanisms are for contracts that are part of the originating or contra order.

- Complex orders executed in the Facilitation and Solicited Order Mechanisms are charged fees only for the leg of the trade consisting of the most contracts.
- Payment for Order Flow fees will not be collected on transactions in options overlying the Select Symbols.¹¹

¹¹ ISE currently has a payment-for-order-flow ("PFOF") program that helps the Exchange's market makers establish PFOF arrangements with an Electronic Access Member ("EAM") in exchange for that EAM preferencing some or all of its order flow to that market maker. This program is funded through a fee paid by Exchange market makers for each customer contract they execute, and is administered by both Primary Market Makers ("PMM") and Competitive Market Makers ("CMM"), depending to whom the order is preferenced.

- The Cancellation Fee will continue to apply to options overlying the Select Symbols.¹²
- The Exchange has a \$0.20 per contract fee credit for members who, pursuant to Supplementary Material .02 to Rule 803, execute a transaction in the Exchange's flash auction as a response to orders from persons who are not broker/dealers and who are not Priority Customers.¹³ For options overlying the Select Symbols, the Exchange provides a \$0.10 per contract fee credit for members who execute a transaction in the Exchange's flash auction as a response to orders from persons who are not broker/dealers and who are not Priority Customers.
- The Exchange has a \$0.20 per contract fee for market maker orders sent to the Exchange by EAMs.¹⁴ Market maker orders sent to the Exchange by EAMs will be assessed a fee of \$0.25 per contract for removing liquidity in options overlying the Select Symbols and \$0.10 per contract for adding liquidity in options overlying the Select Symbols.

The Exchange has designated this proposal to be operative on August 2, 2010.

¹² The Exchange assesses a Cancellation Fee of \$2.00 to EAMs that cancel at least 500 orders in a month, for each order cancellation in excess of the total number of orders such member executed that month. All orders from the same clearing EAM executed in the same underlying symbol at the same price within a 300 second period are aggregated and counted as one executed order for purposes of this fee. This fee is charged only to customer orders.

¹³ See Securities Exchange Act Release No. 61731 (March 18, 2010), 75 FR 14233 (March 24, 2010).

¹⁴ See Securities Exchange Act Release No. 60817 (October 13, 2009), 74 FR 54111 (October 21, 2009).

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 options overlying the Select Symbols. 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 proposed fees it charges for options overlying the Select Symbols 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. In particular, the Exchange believes increasing the rebate for Priority Customer Complex orders will attract additional order flow to the Exchange. As to the proposed fee change for taking liquidity from the Complex Order Book, the Exchange believes the proposed increase is reasonable and equitable in that the increase applies to all market participants that were previously subject to this fee. Moreover, 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 all option exchanges. Additionally, the Exchange believes it remains an attractive venue for market participants to trade complex orders despite the proposed nominal fee increase as its fees are still lower than fees charged by other options exchanges. PHLX, For example, currently charges

Broker-Dealers and Firms \$0.45 per contract for removing liquidity from its Complex Order Live Auction.¹⁵

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 Act¹⁶ and Rule 19b-4(f)(2)¹⁷ 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:

¹⁵ See PHLX Fee Schedule. See also Securities Exchange Act Release No. 61398 (January 22, 2010), 75 FR 4884 (January 29, 2010) (SR-PHLX-2009-116).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 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 Number SR-ISE-2010-82 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-2010-82. 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 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 the 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 Number SR-ISE-2010-82 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.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).