

fees are fair and reasonable, equitably allocated, and not unfairly discriminatory because they generally will be the same as the currently applicable standard fee schedule, with the exception of transactions that exceed the fee cap threshold for Specialists, e-Specialists, and Market Makers (both Directed and non-Directed).<sup>8</sup>

The Exchange also believes that with the proposed transition to the standard fee schedule, it is reasonable and not unfairly discriminatory to include Electronic Complex Orders in the fee cap for Specialists, e-Specialists, and Market Makers. These market participants incur permit fees and are obligated to provide liquidity; the Exchange believes that it is appropriate to reduce their fees once they have provided the threshold level of liquidity to the market. The Exchange believes that the fee cap, along with the reduced fee, will encourage these dedicated liquidity providers to continue to provide liquidity on a non-discriminatory basis to all market participants.

The proposal to charge \$.05 per contract for those transactions that exceed the fee cap threshold also is reasonable, equitable and not unfairly discriminatory because it is the same fee that such a participant would pay today under the current Fee Schedule for Electronic Complex Orders. In addition, the Exchange incurred costs to build the Electronic Complex Order book and the marginally higher fee (\$.05 versus \$.01) for transactions in excess of the fee cap will assist the Exchange in recouping such costs from the market participants that derive benefits from the Electronic Complex Order book.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will 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*

No written comments were solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2011-77 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-NYSEAmex-2011-77. 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, NW., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>. 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 Number SR-NYSEAmex-2011-77 and should be submitted on or before November 9, 2011.

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

**Elizabeth M. Murphy,**

*Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65550; File No. SR-ISE-2011-65]

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Rebates for Certain Orders Executed on the Exchange**

October 13, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on September 30, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "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 fees and rebates for certain complex orders executed on the Exchange. The text of

<sup>8</sup> NYSE Amex notes that at least one other exchange generally applies its standard transaction fees to Electronic Complex Orders too. See Chicago Board Options Exchange, Incorporated Fees Schedule, dated September 1, 2011, available at <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

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 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 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").<sup>3</sup> The Exchange's maker/taker fees are applicable to regular and complex orders executed in the Select Symbols.<sup>4</sup> Recently, the Exchange extended the fees and rebates for complex orders applicable to the Select Symbols to all symbols that are in the Penny Pilot program.<sup>5</sup>

For complex orders in the Select Symbols and in symbols that are in the Penny Pilot program but excluding the Designated Symbols, the Exchange currently charges a "take" fee of: (i) \$0.30 per contract for Market Maker,<sup>6</sup> Market Maker Plus,<sup>7</sup> Firm Proprietary

and Customer (Professional)<sup>8</sup> orders; and (ii) \$0.35 per contract for Non-ISE Market Maker<sup>9</sup> orders. Priority Customer<sup>10</sup> orders, regardless of size, are not charged a take fee for complex orders. For these same symbols, 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, regardless of size, are not charged a make fee for complex orders.

Further, for Priority Customer complex orders in the Select Symbols and in the symbols that are in the Penny Pilot program but excluding the Designated Symbols, the Exchange currently provides a rebate of \$0.25 per contract when these orders trade with non-customer orders in the Complex Order Book.

Additionally, the Exchange currently provides certain rebates that are applicable to executions in the Select Symbols. Specifically, to incentivize members to trade in the Exchange's various auction mechanisms, the Exchange currently provides a per contract rebate to those contracts that do not trade with the contra order in the Exchange's Facilitation Mechanism,<sup>11</sup>

\$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.

<sup>8</sup> A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

<sup>9</sup> 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.

<sup>10</sup> 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).

<sup>11</sup> See Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR-ISE-2010-25).

Price Improvement Mechanism<sup>12</sup> and Solicited Order Mechanism.<sup>13</sup> For the Facilitation and Solicited Order Mechanisms, the rebate is currently \$0.15 per contract. For the Price Improvement Mechanism, the rebate is currently \$0.25 per contract. The Exchange now proposes to extend these rebates to complex special orders in the symbols that are in the Penny Pilot program.

Further, the Exchange currently has a "take" fee of \$0.40 per contract<sup>14</sup> for Market Maker Plus, Market Maker, Non-ISE Market Maker, Firm Proprietary, Customer (Professional) and Priority Customer interest that responds to special orders.<sup>15</sup> The Exchange now proposes to extend this \$0.40 per contract "take" fee to complex special orders in the symbols that are in the Penny Pilot program.

The Exchange has designated this proposal to be operative on October 3, 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>16</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>17</sup> 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 interact with and respond to certain types of orders.

The Exchange believes that it is reasonable and equitable to provide a rebate for complex contracts that do not trade with the contra order in the Exchange's various auction mechanisms because paying a rebate would continue to attract additional order flow to the Exchange and thereby create liquidity in

<sup>12</sup> See Exchange Act Release No. 62048 (May 6, 2010), 75 FR 26830 (May 12, 2010) (SR-ISE-2010-43). The Exchange subsequently increased this rebate to \$0.25 per contract. See Exchange Act Release No. 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR-ISE-2010-106).

<sup>13</sup> See Exchange Act Release No. 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR-ISE-2010-106).

<sup>14</sup> *Id.*

<sup>15</sup> A special order is an order submitted for execution in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism and Price Improvement Mechanism. A response to a special order is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism and Price Improvement Mechanism.

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(4).

<sup>3</sup> Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

<sup>4</sup> The Exchange has also adopted fees and rebates for complex orders in a select number of option classes ("Designated Symbols") that are distinct from the fees for complex orders in the Select Symbols. These Designated Symbols are identified by their ticker symbol on the Exchange's Schedule of Fees. See Exchange Act Release Nos. 65084 (August 10, 2011), 76 FR 50805 (August 16, 2011) (SR-ISE-2011-49).

<sup>5</sup> See Exchange Act Release No. 65021 (August 3, 2011), 76 FR 48933 (August 9, 2011) (SR-ISE-2011-45).

<sup>6</sup> Market Makers who remove liquidity in the Select Symbols from the Complex Order Book by trading with orders preferred to them are charged \$0.28 per contract.

<sup>7</sup> 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

these additional symbols, *i.e.*, the Penny Pilot symbols, that ultimately will benefit all market participants who trade on the Exchange. The Exchange already provides this rebate for executions in the Select Symbols and is now proposing to extend the rebate to complex orders transacted in the Exchange's various auction mechanisms in the symbols that are in the Penny Pilot program.

The Exchange also believes that the proposed extension of the special order response fee for complex orders in the symbols that are in the Penny Pilot symbols will allow the Exchange to remain competitive with fees charged by other exchanges and are therefore reasonable and equitably allocated. The Exchange believes that the proposed extension of the special order response fee to complex orders in the symbols that are in the Penny Pilot symbols is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes.<sup>18</sup>

The Exchange believes that its 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 complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes extending certain aspects of its maker/taker 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 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. Additionally, 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. Finally, 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.<sup>19</sup> At any time within 60 days of the filing of the 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

Number SR-ISE-2011-65 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-2011-65. 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 a.m. and 3 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-2011-65 and should be submitted on or before November 9, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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<sup>18</sup> The Boston Options Exchange currently assesses a similar fee. See Exchange Act Release No. 62632 (August 3, 2010), 75 FR 47869 (August 9, 2010) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of the Boston Options Exchange Facility) (SR-BX-2010-049).

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>20</sup> 17 CFR 200.30-3(a)(12).