

Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,<sup>8</sup> 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-EDGX-2010-25 and should be submitted on or before February 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority:<sup>9</sup>

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63664; File No. SR-ISE-2010-120]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Fees and Rebates for Adding and Removing Liquidity

January 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 23, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and

Exchange Commission the proposed rule change, and on January 5, 2011, filed Amendment No. 1 to 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, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of the 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, 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 a per contract transaction charge to market participants that add or remove liquidity from the Exchange ("maker/taker fees") in 100 options classes (the "Select Symbols").<sup>3</sup> The Exchange currently charges a take fee of: (i) \$0.25

per contract for Market Maker, Market Maker Plus,<sup>4</sup> Firm Proprietary and Customer (Professional)<sup>5</sup> orders; (ii) \$0.35 per contract for Non-ISE Market Maker<sup>6</sup> orders; (iii) \$0.20 per contract for Priority Customer<sup>7</sup> orders for 100 or more contracts. Priority Customer orders for less than 100 contracts are not assessed a fee for removing liquidity. The Exchange now proposes to increase the take fee for Firm Proprietary and Customer (Professional) orders from \$0.25 per contract to \$0.28 per contract. Additionally, in the interest of standardizing the take fee charged for Priority Customer orders, the Exchange proposes to lower the take fee for Priority Customer orders of 100 or more contracts from \$0.20 per contract to \$0.12 per contract while increasing the take fee for Priority Customer orders of less than 100 contracts from \$0.00 per contract to \$0.12 per contract. As a result, all Priority Customer orders, regardless of size, will be assessed a take fee of \$0.12 per contract.

For Complex Orders, the Exchange currently charges a take fee of: (i) \$0.27 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 orders, regardless of size, are not assessed a fee

<sup>4</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 \$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>5</sup> A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

<sup>6</sup> A Non-ISE Market Maker, or Far Away Market Maker ("FARM"), 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>7</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>8</sup> The text of the proposed rule change is available on Exchange's Web site at <http://www.directedge.com>, on the Commission's Web site at <http://www.sec.gov>, at EDGX, and at the Commission's Public Reference Room.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 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) and 63534 (December 13, 2010), 75 FR 79433 (December 20, 2010) (SR-ISE-2010-114).

for removing liquidity from the Complex Order book. The Exchange now proposes to increase the take fee for Firm Proprietary and Customer (Professional) complex orders from \$0.27 per contract to \$0.28 per contract. The Exchange is not proposing any change to the take fee for Market Maker, Market Maker Plus, and Priority Customer complex orders.

The Exchange has designated this proposal to be operative on January 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>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>9</sup> in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members. 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 believes that its proposal to assess a \$0.12 per contract take fee for all Priority Customer orders is reasonable as it will standardize the fee charged by the Exchange for this category of market participants. The Exchange also believes that its proposal to assess a \$0.28 per contract take fee for Firm Proprietary and Customer (Professional) regular and complex orders in the Select Symbols is also reasonable because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, the proposed fees assessed to Firm Proprietary and Customer (Professional) orders are comparable to rates assessed by NASDAQ OMX PHLX, Inc. ("PHLX"). PHLX currently assesses a take fee of \$0.45 for Firm and Broker-Dealer orders and \$0.40 for Professional orders in its regular order book. PHLX also currently assesses a take fee of \$0.27 for Firm and Professional orders and \$0.35 for Broker-Dealer orders in its complex order book.<sup>10</sup>

The Exchange believes that the price differentiation between the various market participants is justified because market makers have obligations to the market that the other market participants, such as Firm Proprietary and Customer (Professional), do not.

The Exchange believes that it is equitable to assess a nominally higher fee for Firm Proprietary and Customer (Professional) orders that do not have the quoting requirements that Exchange market makers do. 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 other option exchanges. The Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory for the reasons stated above.

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>11</sup> 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. 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-2010-120 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-2010-120. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-2010-120, and should be submitted on or before February 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> See PHLX Fee Schedule at <http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf>.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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