

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

The Exchange does not believe that the proposed rule change will result in any burden on competition 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 either solicited or received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act<sup>13</sup> and Rule 19b-4(f)(6)<sup>14</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>15</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.<sup>16</sup> The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change to become operative upon ten days written notice to PSX Participants, upon this proposal's publication in the **Federal Register**.<sup>17</sup> The Exchange proposes to uniformly apply Exchange Rule 909 to all members of NASDAQ OMX PHLX, options and equities. The Exchange currently requires members who transact options to comply with Rule 909 and provide the Exchange with an NSCC number for the purpose of direct debiting. The Exchange believes that expanding this Rule to apply to

members transacting equities, PSX Participants, would allow the Exchange to alleviate administrative processes related to the collection of monies. The Exchange desires to provide PSX Participants adequate time to transition to direct debit and therefore requests the Commission waive the 30-day operative delay. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative upon ten days written notice to PSX Participants, upon this proposal's publication in the **Federal Register**.<sup>18</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-Phlx-2010-171 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-Phlx-2010-171. 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 website (<http://www.sec.gov/>

<sup>18</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[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 a.m. and 3 p.m. 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-Phlx-2010-171 and should be submitted on or before January 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63494; File No. SR-ISE-2010-112]

### 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

December 9, 2010.

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 November 26, 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 and II, and below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit

<sup>19</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>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</sup> *Id.*

<sup>17</sup> The Exchange has stated that it will notify members by phone and through Equity Trader Alerts to prepare members for this rule change.

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, 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

<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) and 62805 (August 31, 2010), 75 FR 54682 (September 8, 2010) (SR-ISE-2010-90).

<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

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 also currently charges a take fee to \$0.40 per contract for Market Maker, Market Maker Plus, Firm Proprietary, Customer (Professional) and Non-ISE Market Maker interest that responds to special orders.<sup>8</sup>

Additionally, the Exchange currently charges a make fee of: (i) \$0.10 per contract for Market Maker, Non-ISE Market Maker, Firm Proprietary and Customer (Professional) orders. Priority Customer orders, regardless of size, and Market Maker Plus orders are not assessed a fee for adding liquidity.

In order to promote and encourage liquidity in the Select Symbols, the Exchange currently offers a rebate of: (i) \$0.10 per contract for Market Maker Plus orders; (ii) \$0.15 per contract to contracts that do not trade with the contra order in the Exchange's Facilitation Mechanism and Solicited Order Mechanism; (iii) \$0.20 per contract for Priority Customer Complex orders, regardless of size, that trade with non-customer orders in the Exchange's Complex Order Book; and (iv) \$0.25 per contract to contracts that do not trade with the contra order in the Exchange's Price Improvement Mechanism.

The Exchange now proposes to amend its maker/taker fees by making the following changes to the Select

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 ("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>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> See Securities Exchange Act Release No. 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR-ISE-2010-106).

Symbols: (i) Remove AAPL, BIDU and GS and (ii) add Sirius XM radio, Inc. ("SIRI"), Starbucks Corporation ("SBUX") and Vivus, Inc. ("VVUS").

The Exchange has designated this proposal to be operative on December 1, 2010.

##### 2. Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(4)<sup>9</sup> 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. Additionally, the Exchange believes that the addition and removal of option classes that are subject to the Exchange's maker/taker fees are both equitable and reasonable because those fees apply to all categories of participants in the same manner. The Exchange's maker/taker fees, which are currently applicable to each market participant, will continue to apply to the Select Symbols.

#### 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.

<sup>9</sup> 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)(A)(ii) of the Act.<sup>10</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 No. SR-ISE-2010-112 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2010-112. 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 such 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-2010-112 and should be submitted by January 5, 2011.

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

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63493; File No. SR-NYSEArca-2010-110]

### Self-Regulatory Organizations; NYSE Arca Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the Teucrium Natural Gas Fund Under NYSE Arca Equities Rule 8.200

December 9, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 3, 2010, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") 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 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 Exchange proposes to list and trade shares of the Teucrium Natural Gas Fund under NYSE Arca Equities Rule 8.200. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

#### 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

NYSE Arca Equities Rule 8.200, Commentary .02 permits the trading of Trust Issued Receipts ("TIRs") either by listing or pursuant to unlisted trading privileges ("UTP").<sup>4</sup> The Exchange proposes to list and trade shares ("Shares") of the Teucrium Natural Gas Fund ("Fund") pursuant to NYSE Arca Equities Rule 8.200.

The Exchange notes that the Commission has previously approved the listing and trading of other issues of Trust Issued Receipts on the American Stock Exchange LLC,<sup>5</sup> trading on NYSE Arca pursuant to unlisted trading privileges ("UTP"),<sup>6</sup> and listing on NYSE Arca.<sup>7</sup> Among these is the Teucrium Corn Fund, a series of the Teucrium Commodity Trust ("Trust").<sup>8</sup> In addition, the Commission has approved other exchange-traded fund-like products linked to the performance of underlying commodities.<sup>9</sup>

<sup>4</sup> Commentary .02 to NYSE Arca Equities Rule 8.200 applies to TIRs that invest in "Financial Instruments". The term "Financial Instruments", as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

<sup>5</sup> See, e.g., Securities Exchange Act Release No. 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR-Amex-2008-39).

<sup>6</sup> See, e.g., Securities Exchange Act Release No. 58163 (July 15, 2008), 73 FR 42391 (July 21, 2008) (SR-NYSEArca-2008-73).

<sup>7</sup> See, e.g., Securities Exchange Act Release No. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR-NYSEArca-2008-91).

<sup>8</sup> See Securities Exchange Act Release No. 62213 (June 3, 2010), 75 FR 32828 (June 9, 2010) (SR-NYSEArca-2010-22) (order approving listing on the Exchange of Teucrium Corn Fund).

<sup>9</sup> See, e.g., Securities Exchange Act Release Nos. 57456 (March 7, 2008), 73 FR 13599 (March 13, 2008) (SR-NYSEArca-2007-91) (order granting accelerated approval for NYSE Arca listing the

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).