

necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)<sup>15</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>17</sup> normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>18</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>19</sup> which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would continue the pilot for Directed Orders that has operated under BSE-2006-14. The Pilot Program is designed to function in exactly the same manner as under BSE-2006-14. A waiver would therefore continue to conform the BOX rules to BOX's current practice without interruption and clarify that Directed Orders on BOX are not anonymous.<sup>20</sup>

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of 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 met this requirement.

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

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>19</sup> *Id.*

<sup>20</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on

Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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-BX-2010-080 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-BX-2010-080. 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 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

efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 publicly available. All submissions should refer to File Number SR-BX-2010-080 and should be submitted on or before January 10, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63534; File No. SR-ISE-2010-114]

**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 13, 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 December 1, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, and on December 13, 2010, 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 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.

<sup>21</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.

## 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

ISE proposes this Amendment No. 1 to SR-ISE-2010-114. The purpose of this amendment is to make clarifying changes to Form 19b-4 and Exhibit 1 of SR-ISE-2010-114. 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 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

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 recently increased the 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> In SR-ISE-2010-106, the Exchange inadvertently failed to extend the \$0.40 per contract take fee for special order responses to Priority Customer interest. To correct that oversight, the Exchange now proposes to increase the take fee to \$0.40 per contract for Priority Customer interest that responds to special orders.<sup>9</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>10</sup> This

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).

<sup>9</sup> The proposed fee for responses to special orders is similar to fees currently in place at other options exchanges. ISE believes the fee charged by NASDAQ OMX BOX, Inc. ("BOX") is as high as \$0.50 per contract. See Securities 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). Additionally, NASDAQ OMX PHLX, Inc. ("PHLX") charges a take fee between \$0.25 per contract and \$0.45 per contract for responses to the "PIXL auction broadcast message." See PHLX Fee Schedule at <http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf>.

<sup>10</sup> Pre-existing Priority Customer interest that trades with special orders in the Exchange's various auctions will continue to be charged the fee noted in the Exchange's Schedule of Fees.

proposed fee change will apply to Priority Customer interest, regardless of size.<sup>11</sup>

As noted above, special order broadcasts are sent to Exchange members when certain types of orders are entered in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism and Price Improvement Mechanism. Customers who have access to highly developed trading systems are able to quickly receive and process substantial amounts of market-wide and ISE data, thereby allowing them to selectively enter orders by responding to special order broadcasts, much like a broker-dealer does. The advanced trading systems utilized by these customers provide them with the ability to rapidly respond to updates to the special order broadcasts and market-wide data (such as changes to the NBBO and the underlying market) by aggressively submitting orders within the 3 second exposure period.

The Exchange thus proposes to charge the proposed fee of \$0.40 per contract to Priority Customer interest to put them on more equal footing with other trading interest that currently pay for this functionality.

In addition, since the behavior of these customers is similar to the behavior of an ISE member, ISE believes it is reasonable for the Exchange to charge these customers the same fees as those charged to ISE members.

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

#### 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(4)<sup>12</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

<sup>11</sup> The Exchange currently charges a fee for customers who respond to special order broadcasts in non-maker/taker symbols traded on the Exchange. See Securities Exchange Act Release No. 55060 (January 8, 2007), 72 FR 2050 (January 17, 2007) (SR-ISE-2006-72).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

the proposed fees are within the range assessed by other exchanges<sup>13</sup> 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. 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.

### **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>14</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-2010-114 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-2010-114. 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-2010-114, and should be submitted on or before January 10, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63542; File No. SR-NYSE-2010-79]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 123C(9)(a)(1) To Extend the Operation of a Pilot Operating Pursuant to the Rule Until June 1, 2011**

December 14, 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 November 30, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") 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 amend NYSE Rule 123C(9)(a)(1) to extend the operation of a pilot operating pursuant to the Rule until June 1, 2011. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, <http://www.sec.gov>, and <http://www.nyse.com>.

#### **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.

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

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

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

<sup>13</sup> See *supra* note 7.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>15</sup> 17 CFR 200.30-3(a)(12).