

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64562; File No. SR-ISE-2011-29]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Second Market Fees

May 27, 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 May 18, 2011, 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 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 fees for executions in the Exchange's Second Market. 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 has rules for the listing and trading of low-volume option classes that qualify for listing under ISE Rule 502. These option

classes trade in the Exchange's "Second Market."<sup>3</sup> The Exchange currently lists eligible equity option classes (excluding options on exchange traded funds) that trade on another options exchange and that have an average daily volume below 500 contracts over a six-month period in the Second Market. When the Exchange launched the Second Market, it adopted Second Market fees that varied from those that were and still are currently applicable to the Exchange's primary market. Specifically, for Second Market transactions, Members are currently charged an execution fee of \$.05 per contract for Priority Customer<sup>4</sup> orders. Priority Customer orders executed in the Exchange's primary market, on the other hand, are, for the most part, not charged an execution fee.<sup>5</sup>

Further, the Exchange currently has a payment-for-order-flow ("PFOF") program that helps its 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. The Exchange's PFOF fees are currently set at \$0.65 per contract for all option classes that are not in the penny pilot program. For penny pilot classes, the Exchange charges a PFOF fee of \$0.25 per contract. The Exchange currently does not charge a PFOF fee for option classes that are subject to the Exchange's maker/taker fees.<sup>6</sup> And since the launch of the Second Market, ISE has not charged and currently does not charge a PFOF fee for Second Market transactions.

The Exchange now proposes to amend its Second Market fees to standardize them with the fees charged for executions in the Exchange's primary market. Specifically, ISE proposes to lower the execution fee for Priority Customer orders in the Second Market from \$0.05 per contract to \$0.00 per contract. The Exchange also proposes to adopt a PFOF fee for Second Market transactions. In addition to

<sup>3</sup> See Exchange Act Release No. 34-54580 (October 6, 2006), 71 FR 60781 (October 16, 2006) (SR-ISE-2006-40).

<sup>4</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>5</sup> Priority Customer orders in Singly Listed Indexes, Singly Listed ETFs and FX Options that are not a part of the FX Options Incentive Plan are charged \$0.18 per contract. Priority Customer orders in FX Options that are part of the FX Options Incentive Plan are charged \$0.40 per contract.

<sup>6</sup> The exclusion applies to option classes that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols.

standardizing these fees, the Exchange believes these fee changes will make the Exchange's transaction fees simpler and more concise to Exchange Members. The Exchange believes that the proposed fee changes for Second Market transactions will encourage more order flow to the Exchange and also allow ISE market makers to better compete for order flow.

The Exchange has designated this proposal to be operative on June 1, 2011.

###### 2. Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>8</sup> in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members. The Exchange believes that the proposed fee changes will generally allow the Exchange and its market makers to better compete for order flow and thus enhance competition. More specifically, the Exchange believes that its proposal to assess a \$0.00 per contract fee for Second Market transactions is equitable and reasonable as it will standardize the fee charged by the Exchange for all market participants that trade in Second Market options. The Exchange believes that its proposal to assess a PFOF fee for Second Market transactions is also equitable and reasonable because the fee will serve to encourage order flow to the Exchange much like the PFOF fee does for option classes in the Exchange's primary market. Finally, the Exchange believes the proposed fee changes are equitable and reasonable as they will apply universally to all market participants who trade in Second Market options on the Exchange.

##### 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>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

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

<sup>2</sup> 17 CFR 240.19b-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>9</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-2011-29 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-2011-29. 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 website viewing and

printing in the Commission's Public Reference Room. 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-2011-29 and should be submitted by June 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64570; File No. SR-BX-2011-029]

### Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of a Proposal To Permit the Exchange To List Series With Additional Expiration Months If Such Series Are Listed on Another Exchange

May 31, 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 May 23, 2011, NASDAQ OMX BX (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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 the Rules of the Boston Options Exchange Group, LLC ("BOX") to permit the Exchange to list additional expiration

months if such expiration months are listed on another exchange. The text of the proposed rule change is available at the Exchange's principal office, at <http://www.nasdaqomxbx.cchwallstreet.com>, the Commission's Public Reference Room, and at the Commission's Web site at <http://www.sec.gov>.

#### 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 Exchange 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 Exchange 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 purpose of the proposed rule change is to amend the BOX Trading Rules to permit the Exchange to list additional expiration months if such expiration months are listed on another exchange. This filing is based on a filing previously submitted by the International Securities Exchange, LLC.<sup>4</sup>

Under current Chapter IV, Section 6 of the BOX Trading Rules, the Exchange usually will open four (4) Expiration months for each type of option of a class of options open for trading on BOX: the first two (2) being the two nearest months, regardless of the quarterly cycle on which that class trades; the third and fourth being the next two months of the quarterly cycle previously designated by the Exchange for that specific class. For example, if the Exchange listed in late September a new stock option on a January-April-July-October quarterly cycle, the Exchange would list the two nearest-term months (October and November) and the next two expiration months of the cycle (January and April). Further, when the October series expire, the Exchange would add the December series as the next nearest month. And when the November series expire, the Exchange would add the July series as the next month of the cycle.

<sup>10</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> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> See Securities Exchange Act Release No. 64343 (April 26, 2011) 76 FR 24546 (May 2, 2011) (SR-ISE-2011-26).

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