

*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 inspection and copying 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 FINRA. 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-FINRA-2007-016 and should be submitted on or before November 7, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56646; File No. SR-ISE-2007-96]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Payment for Order Flow Fees

October 11, 2007.

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 October 9, 2007, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. ISE has designated this proposal as one establishing or changing

a due, fee, or other charge imposed by ISE under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</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 ISE is proposing to amend its payment for order flow program. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.iseoptions.com](http://www.iseoptions.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 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 ISE has substantially 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 a payment-for-order-flow ("PFOF") program that helps its market makers establish PFOF arrangements with an EAM ("Electronic Access Member") in exchange for that EAM preferencing some or all of its order flow to that market maker. This program is funded through a fee paid by Exchange market makers for each customer contract they execute, and is administered by both Primary Market Makers ("PMM")<sup>5</sup> and Competitive Market Makers ("CMM"),<sup>6</sup> depending on who the order is preferenced to. Further, the maximum amount of PFOF fees currently collected by the exchange for PMMs and CMMs to administer is \$450,000 and \$50,000, respectively. When the pool balance exceeds these threshold levels, ISE

<sup>1</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>3</sup> See Securities Exchange Act Release No. 43833 (January 10, 2001), 66 FR 7822 (January 25, 2001) (SR-ISE-00-10).

<sup>4</sup> See Securities Exchange Act Release No. 53127 (January 13, 2006), 71 FR 3582 (January 23, 2006) (SR-ISE-2005-57).

rebates funds proportionately to those who have paid the PFOF fees. The Exchange states that it closely monitors the levels of the cap to ensure that there are adequate funds available to market makers to be competitive. In order to allow the Exchange's market makers to better compete in attracting order flow to the Exchange, it proposes to adopt a uniform PFOF cap of \$100,000 for both its PMM- and CMM-administered pools. The Exchange believes that the PMM ceiling of \$450,000 is a considerable amount of money, and thus seeks to reduce that amount to \$100,000. With regard to the CMM ceiling, the Exchange believes that \$50,000 is too little an amount for these market makers to better compete in attracting order flow and thus proposes to raise that ceiling to \$100,000.

Additionally, the Exchange proposes to amend its fee schedule to reflect that PFOF funds are rebated on a monthly basis, instead of on a quarterly basis.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change 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, because it is an equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities.

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

The Exchange believes 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

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 with respect to the proposed rule change.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder, because it establishes or changes a due,

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

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

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

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

<sup>15</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.

fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate 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*. Please include File Number SR-ISE-2007-96 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-ISE-2007-96. 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 inspection and copying 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 office of 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-2007-96 and should be submitted on or before November 7, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-56642; File No. SR-NYSEArca-2007-100]**

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exchange Fees and Charges**

October 11, 2007.

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 October 1, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. NYSE Arca has designated this proposal as one establishing or changing a due, fee, or other charge imposed by NYSE Arca under section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</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**

NYSE Arca proposes to amend its Schedule of Fees and Charges for Exchange Services ("Fee Schedule"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nysearca.com>.

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

<sup>12</sup> 15 U.S.C. 78s(b)(1).

<sup>13</sup> 17 CFR 240.19b-4.

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

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

### **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. NYSE Arca 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**

NYSE Arca states that the purpose of this filing is to amend the existing Fee Schedule by eliminating the Marketing Charges associated with options on the S&P 500 Index (SPY). The Exchange also proposes to revise a footnote in the Fee Schedule that references the Penny Pilot program.

The Exchange presently assesses a \$1.00 per contract Marketing Charge on certain Market Maker transactions in options that overlie the S&P 500 Index (SPY). As per the Fee Schedule, the Exchange does not assess Marketing Charges on issues that trade as part of the Penny Pilot Program ("Pilot"). On September 28, 2007, options on SPY were included in the Pilot. Therefore, the Exchange will no longer assess a Marketing Fee on SPY options.

In addition, in the Transaction Fees section on the Fee Schedule, the Exchanges lists fees that are specific to the Pilot. The original Pilot expired on July 27, 2007 and was extended through September 27, 2007. The Exchange has received approval to once again extend the Pilot, this time until March 27, 2009.<sup>5</sup> A footnote referencing the expiration date of the Pilot is included on the Fee Schedule, and has been revised each time the Pilot was extended. The Exchange now proposes to remove the expiration date of the Pilot in the associated footnote and instead reference NYSEArca Rule 6.72. The terms of the Pilot, including any expiration date, are contained in Rule 6.72 and are revised each time the Pilot is extended.

<sup>5</sup> See Securities Exchange Act Release No. 56568 (September 27, 2007), 72 FR 56422 (October 3, 2007) (SR-NYSEArca-2007-88).