

OPTIONS EXCHANGE			
Regulatory Information Circular			
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Subject: Transaction-Based Options Regulatory Fee to Replace Registered Representative Fee

On December 9, 2009, ISE filed a proposed rule change to eliminate Registered Representative Fees (“RR Fee”) and replace them with a transaction-based “Options Regulatory Fee” (“ORF”).¹ Effective January 1, 2010, ISE will assess a per contract fee to each ISE member for all options transactions executed or cleared by an ISE member that are cleared by The Options Clearing Corporation (“OCC”) in the customer range (i.e., that clear in a customer account at OCC) regardless of the exchange on which the transaction occurs. The ORF will apply to both buys and sells and will be collected by OCC on behalf of ISE.

Currently, the primary source of regulatory revenue at ISE is a fee based on the number of registered representatives that a member firm employs. ISE believes the current RR Fee is not equitable. Many firms that account for a significant portion of the options business, and therefore the resultant regulatory effort, have very few registered representatives. For this reason and others, ISE believes a transaction-based regulatory fee represents a fairer allocation of the costs of regulation among ISE members. ISE has broad regulatory responsibilities with respect to its members’ activities, irrespective of where their transactions take place. Many of the Exchange’s surveillance programs for customer trading activity require ISE to look at activity across all options markets. Accordingly, there is a strong nexus between the ORF and the Exchange’s regulatory activities with respect to its members’ customer trading activity.

ISE has currently set the ORF at \$.0035 per contract. The amount of the ORF will be one-cent in the case of a one-contract trade, i.e., there is a minimum one-cent charge per trade.

Since the ORF is based on the number of option contracts executed, ISE will periodically review the rate on at least an annual basis and, if necessary due to volume levels, make necessary adjustments so as to collect the appropriate level of regulatory revenue. Members will be given notice of any such adjustments by means of a Regulatory Information Circular.

In its rule filing ISE states that it expects that member firms will pass-through the ORF to their customers in the same manner that firms pass-through to their customers the fees charged by SROs to help the SROs meet their obligations under Section 31 of the Securities Exchange Act of 1934. Based on its discussions with the SEC, ISE believes the ORF can

¹ See Securities Exchange Act Release No. 61154 (December 11, 2009).

properly be characterized as a regulatory fee. While the ORF is an obligation of the ISE member, OCC on ISE's behalf will bill the OCC clearing firm that clears the eligible trade (the vast majority of which are ISE members). ISE believes that by collecting the ORF in this manner, members and non-members will more easily be able to pass-through the ORF to their customers.

ISE will calculate the ORF based on the aggregate number of contracts executed by each clearing firm every month. Due to rounding and the fact that there is a minimum one-cent charge per trade, a firm charging its customers on a trade-by-trade basis may collect more or less ORF fees each month from its customers than it pays to ISE. ISE anticipates that this difference will be minimal or non-existent over a calendar year. When calculating the ORF, firms must round to the nearest cent using pure rounding (i.e., any digit 5 and above is rounded up). At the end of each month, ISE will submit to OCC a data file identifying the number of contracts executed by each ISE member and the ORF amount to be debited from each clearing firm's account. The ORF charge will be a line item on your OCC bill, appearing close to the Section 31-related charges incurred by your firm.

ISE's ORF is identical to the fee currently in place at the Chicago Board Options Exchange. Other exchanges may impose a similar fee on their member's activity, including the activity of those members on ISE. NASDAQ OMX PHLX recently filed to charge an identical fee beginning on January 1, 2010. Ultimately if all exchanges follow this approach, there would be a total options regulatory fee that would be assessed with a portion going to each exchange. ISE has committed to the SEC that revenue collected from the ORF, in combination with ISE's other regulatory fees and fines, will not exceed its regulatory costs. Therefore, the aggregate amount of revenue collected should not significantly increase and may even decrease. The ORF does not represent a fee increase by ISE; it is simply a change in the calculation and collection method.