

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66589; File No. SR-ISE-2012-13)

March 14, 2012

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a Route-Out Fee for Priority Customer Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 29, 2012, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) 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 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 adopt a fee related to the execution of Priority Customer orders subject to linkage handling. The text of the proposed rule change is available on the Exchange’s website (<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

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

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

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 purpose of this proposed rule change is to adopt a fee related to the execution of Priority Customer<sup>3</sup> orders subject to linkage handling.

On August 31, 2009, the Exchange implemented the new Options Order Protection and Locked/Crossed Market Plan ("Distributive Linkage") and the use of Intermarket Sweep Orders ("ISOs"). Consistent with Distributive Linkage and pursuant to ISE rules, the Exchange's Primary Market Makers ("PMMs") have an obligation to address customer<sup>4</sup> orders when there is a better market displayed on another exchange. ISE's PMMs meet this obligation via the use of ISOs. In meeting their obligations, PMMs may incur fees when they send ISOs, especially when sending ISOs to exchanges that charge "taker" fees. To minimize the PMM's financial burden and help offset such fees, the ISE amended its schedule of fees on October 1, 2009 to adopt a rebate for the PMM of \$0.20 per contract on all ISO orders sent to an away exchange (regardless of the fee charged by the exchange where the ISO order sent away was executed).<sup>5</sup>

With the costs associated with servicing Priority Customer orders that must be executed at another exchange coupled with the cost of funding the existing fee credit, the Exchange

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<sup>3</sup> Pursuant to ISE Rule 100(37A), a Priority Customer is a person or entity that is not a broker or 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.

<sup>4</sup> Pursuant to ISE Rule 1900(f) of the Distributive Linkage rules, a customer is an individual or organization that is not a broker-dealer.

<sup>5</sup> See Securities and Exchange Act Release No. 60791 (October 5, 2009), 74 FR 52521 (October 13, 2009) (SR-ISE-2009-74).

believes it is appropriate to charge a fee for these orders. Therefore, the Exchange now proposes to charge Priority Customer orders a fee of \$0.25 per contract for executions that result from the PMM routing ISOs to another exchange in a limited number of symbols. Specifically, the proposed fee will only be charged for Priority Customer orders that are routed to an away exchange in symbols that are subject to the Exchange's modified maker/taker pricing model. These symbols, which currently number 101, are identified on the Exchange's Schedule of Fees as Select Symbols. The proposed fee change will allow the Exchange to equitably assess reasonable fees incurred for processing such orders, and permit the Exchange to recoup administrative and other costs. Under this proposed rule change, Priority Customer orders that are routed out to another exchange will be charged \$0.25 per contract instead of the standard taker fee applicable to the Select Symbols.

The Exchange notes that it currently has a similar fee and credit for Customer (Professional) orders. Specifically, the Exchange currently charges PMMs a fee of \$0.45 per contract for executions of Customer (Professional) orders that are routed to one or more exchanges in connection with Distributive Linkage, and also provides PMMs with a credit equal to the fee charged by the destination exchange for such Customer (Professional) orders, but not more than \$0.45 per contract.<sup>6</sup> This routing fee and credit applies to all the symbols that are traded on the Exchange.

The Exchange also proposes to make two clarifying changes to its Schedule of Fees related to ISO fees and credits previously adopted by the Exchange under SR-ISE-2009-74 and SR-ISE-2010-26. First, as noted above, the \$0.20 per contract fee credit adopted in SR-ISE-2009-74 applies to all the symbols that are traded on the Exchange, including the Select

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<sup>6</sup> See Securities and Exchange Act Release No. 61855 (April 6, 2010), 75 FR 19441 (April 14, 2010) (SR-ISE-2010-26).

Symbols. The Exchange has been providing this credit to PMMs since the inception of the Exchange's modified maker/taker pricing model. For the sake of clarity, the Exchange proposes to add language on page 20 of its Schedule of Fees that specifically references the credit, as follows: "Intermarket Sweep Order Credit for Priority Customer - A fee credit of \$0.20 per contract applies to Primary Market Makers (PMM) – for classes in which it serves as a PMM – that send an Intermarket Sweep Order to other exchanges." The proposed language is almost identical to the language that currently appears on page 5 of the Exchange's Schedule of Fees.

Second, again, as noted above, the \$0.45 per contract fee and credit adopted in SR-ISE-2010-26 currently applies to all the symbols that are traded on the Exchange, including the Select Symbols. And the Exchange has been charging this fee and providing a corresponding credit when PMMs address their obligations under Distributive Linkage and route these orders for executions to an away exchange. Again, for the sake of clarity, the Exchange proposes to add language on page 20 of its Schedule of Fees that specifically references both the fee and the credit, respectively, as follows: "Intermarket Sweep Order Fee for Customer (Professional) – A fee of \$0.45 per contract applies to executions of orders from persons who are not broker/dealers and who are not Priority Customers that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan" and "Intermarket Sweep Order Credit for Customer (Professional) - Primary Market Makers will receive a credit equal to the fee charged by a destination market, but not more than \$0.45 per contract, for executing orders from persons who are not broker/dealers and who are not Priority Customers." The proposed language for both the fee and the credit is identical to the language that currently appears on page 5 of the Exchange's Schedule of Fees.

The Exchange has designated this proposal to be operative on March 1, 2012.

## 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the “Exchange Act”) for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the Exchange believes charging a route-out fee for Priority Customer orders is reasonable if doing so provides the Exchange the ability to recover the costs of funding a credit the Exchange provides to its PMMs, who, in the course of meeting their obligation, are incurring a financial burden. The Exchange further believes it is equitable and reasonable to assess the proposed fee to recoup costs associated with routing Priority Customer orders to away markets. The Exchange also believes that the proposed fees are equitable and not unfairly discriminatory because the fees would be uniformly applied to all Priority Customer orders. ISE notes that a number of other exchanges currently charge a variety of routing related fees associated with customer and non-customer orders that are subject to linkage handling. The Exchange further notes that the fees proposed herein are substantially lower than the level of fees charged by some of the Exchange’s competitors.<sup>7</sup>

Further, the Exchange believes it is equitable, reasonable and not unfairly discriminatory to note on its Schedule of Fees, to provide clarity, that the fees and credits adopted in SR-ISE-2009-74 and SR-ISE-2101-26 and which, as a result have already been established on the Exchange, are applicable to the Select Symbols. Since the Exchange has applied these fees and credits to all the symbols traded on the Exchange, including the Select Symbols, since the inception of these fees and credits, noting them on the Exchange’s Schedule of Fees will simply

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<sup>7</sup> See NASDAQ OMX PHLX Fee Schedule, Section V.

add more clarity to the Exchange's Schedule of Fees and promote further transparency 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 Exchange 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 Exchange Act.<sup>8</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 Exchange 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 Exchange Act. Comments may be submitted by any of the following methods:

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2012-13 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-2012-13. 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/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 10:00 a.m. and 3:00 p.m. Copies of the 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-ISE-2012-13 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).