SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67628; File No. SR-ISE-2012-71)

August 9, 2012

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Fees for Certain Regular and Complex Orders Executed on the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 1, 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, II, and III 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 ISE is proposing to amend transaction fees for certain regular and complex orders executed on the Exchange. 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

1 15 U.S.C. 78s(b)(1).

2 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 Exchange currently assesses a per contract transaction charge and provides rebates to market participants that add or remove liquidity from the Exchange ("maker/taker fees and rebates") in a number of options classes (the "Select Symbols").[3] For removing liquidity in the Select Symbols, the Exchange currently charges a taker fee of: (i) $0.29 per contract for Market Maker[4] and Market Maker Plus[5] orders, (ii) $0.35 per contract for Non-ISE Market Maker[6]

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3 Options classes subject to maker/taker fees and rebates are identified by their ticker symbol on the Exchange's Schedule of Fees.

4 The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See ISE Rule 100(a)(25).

5 A Market Maker Plus is an ISE 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. A Market Maker's single best and single worst overall quoting days each month, on a per symbol basis, are excluded in calculating whether a Market Maker qualifies for this rebate, if doing so qualifies a Market Maker for the rebate. If at the end of the month, a Market Maker meets the Exchange's stated criteria, the Exchange rebates $0.10 per contract for 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.

orders, (iii) $0.30 per contract for Firm Proprietary / Broker-Dealer and Professional Customer[7] orders, and (iv) $0.20 per contract for Priority Customer[8] orders. The Exchange now proposes to increase the taker fee for: (i) Market Maker and Market Maker Plus orders in the Select Symbols from $0.29 per contract to $0.32 per contract, (ii) Non-ISE Market Maker orders in the Select Symbols from $0.35 per contract to $0.36 per contract, (iii) Firm Proprietary/Broker-Dealer and Professional Customer orders in the Select Symbols from $0.30 per contract to $0.33 per contract, and (iv) Priority Customer orders in the Select Symbols from $0.20 per contract to $0.25 per contract.

For complex orders in the Select Symbols (excluding SPY), the Exchange currently charges a taker fee of: (i) $0.35 per contract for Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders, and (ii) $0.38 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a taker fee for complex orders in the Select Symbols (excluding SPY). The Exchange now proposes to increase the complex order taker fee in the Select Symbols (excluding SPY) for: (i) Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders, from $0.35 per contract to $0.37 per contract, and (ii) Non-ISE Market Maker orders, from $0.38 per contract to $0.39 per contract. The Exchange is not proposing any change to the complex order taker fee for Priority Customer orders in the Select Symbols (excluding SPY).

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6 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, registered in the same options class on another options exchange.

7 A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

8 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).

With this proposed rule change, the Exchange proposes to adopt a new column for taker fees for SPY as those fees are distinct and also to provide market participants greater clarity with regards to fees for SPY.[9] Specifically, for complex orders in SPY, the Exchange currently charges a taker fee of: (i) $0.35 per contract for Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders, and (ii) $0.39 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a taker fee for complex orders in SPY. The Exchange now proposes to increase the complex order taker fee in SPY for: (i) Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders, from $0.35 per contract to $0.38 per contract, and (ii) Non-ISE Market Maker orders, from $0.39 per contract to $0.40 per contract. The Exchange is not proposing any change to the complex order taker fee for Priority Customer orders in SPY.

With the proposed adoption of a new column for SPY, the column that previously reflected taker fees for SPY and Non-Select Penny Pilot Symbols will now display taker fees for Non-Select Penny Pilot Symbols only. For complex orders in the Non-Select Penny Pilot Symbols, the Exchange currently charges a taker fee of: (i) $0.35 per contract for Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders, and (ii) $0.39 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a taker fee for complex orders in the Non-Select Penny Pilot Symbols. The Exchange now proposes to increase the complex order taker fee in the Non-Select Penny Pilot Symbols for Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders, from $0.35 per contract to $0.37

9 The Exchange notes that its Schedule of Fees has a separate column for rebates payable for complex orders in SPY. The Exchange proposes to adopt a similar distinct column for taker fees for complex orders in SPY.

per contract. The Exchange is not proposing any change to the complex order taker fee for Non-ISE Market Maker and Priority Customer orders in the Non-Select Penny Pilot Symbols.

For complex orders in the Non-Penny Pilot Symbols, the Exchange currently charges a taker fee of: (i) $0.75 per contract for Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders, and (ii) $0.78 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a taker fee for complex orders in the Non-Penny Pilot Symbols. The Exchange now proposes to increase the complex order taker fee in the Non-Penny Pilot Symbols for: (i) Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders, from $0.75 per contract to $0.80 per contract, and (ii) Non-ISE Market Maker orders, from $0.78 per contract to $0.83 per contract. The Exchange is not proposing any change to the complex order taker fee for Priority Customer orders in the Non-Penny Pilot Symbols.

Additionally, the Exchange provides Market Makers with a two cent discount when trading against Priority Customer orders that are preferenced to them. This discount is applicable when Market Makers remove liquidity from the complex order book in the Select Symbols, in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols. Market Makers that remove liquidity in the Select Symbols, in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols from the complex order book by trading with Priority Customer orders that are preferenced to them will continue to receive a two cent discount.

Further, the Exchange currently provides volume-based tiered rebates for Priority Customer complex orders in the Select Symbols (excluding SPY), in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols when these orders trade with non-Priority Customer orders in the complex order book. In order to enhance the Exchange's competitive position and to incentivize Members to increase the amount of Priority Customer complex orders in the Select Symbols (excluding SPY), in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols that they send to the Exchange, the Exchange now proposes to increase the rebate levels for these volume-based tiers. In the Select Symbols (excluding SPY), the Exchange currently provides a rebate of $0.32 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members who achieve a certain level of average daily volume (ADV) of executed Priority Customer complex order contracts across all symbols during a calendar month are provided a rebate of $0.33 per contract, per leg, in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.34 per contract, per leg, in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and $0.35 per contract, per leg, in these symbols, if a Member achieves an ADV of 250,000 Priority Customer complex order contracts. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month. The Exchange now proposes to increase the rebate levels applicable to the Select Symbols (excluding SPY), as follows: (i) increase the base rebate level, from $0.32 per contract, per leg, to $0.34 per contract, per leg, (ii) increase the rebate level, from $0.33 per contract, per leg, to $0.36 per contract, per leg, for Members who achieve an ADV of 75,000 Priority Customer complex order contracts, (iii) increase the rebate level, from $0.34 per contract, per leg, to $0.37 per contract, per leg, for Members who achieve an ADV of 125,000 Priority Customer complex order contracts, and (iv) increase the rebate level, from $0.35 per contract, per leg, to $0.38 per contract, per leg, for Members who achieve an ADV of 250,000 Priority Customer complex order contracts.

In SPY, the Exchange currently provides a rebate of $0.33 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members who achieve a certain level of ADV of executed Priority Customer complex order contracts in SPY during a calendar month are provided a rebate of $0.34 per contract, per leg, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.35 per contract, per leg, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and $0.36 per contract, per leg, if a Member achieves an ADV of 250,000 Priority Customer complex order contracts. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month. The Exchange now proposes to increase the rebate levels applicable to SPY, as follows: (i) increase the base rebate level, from $0.33 per contract, per leg, to $0.36 per contract, per leg, (ii) increase the rebate level, from $0.34 per contract, per leg, to $0.37 per contract, per leg, for Members who achieve an ADV of 75,000 Priority Customer complex order contracts, (iii) increase the rebate level, from $0.35 per contract, per leg, to $0.38 per contract, per leg, for Members who achieve an ADV of 125,000 Priority Customer complex order contracts, and (iv) increase the rebate level, from $0.36 per contract, per leg, to $0.39 per contract, per leg, for Members who achieve an ADV of 250,000 Priority Customer complex order contracts.

In Non-Select Penny Pilot Symbols, the Exchange currently provides a rebate of $0.29 per contract, per leg, for Priority Customer complex orders when these orders trade with non-

Priority Customer complex orders in the complex order book. Additionally, Members who achieve a certain level of ADV of executed Priority Customer complex order contracts in the Non-Select Penny Pilot Symbols during a calendar month are provided a rebate of $0.31 per contract, per leg, in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.33 per contract, per leg, in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and $0.34 per contract, per leg, in these symbols, if a Member achieves an ADV of 250,000 Priority Customer complex order contracts. Again, the highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month. The Exchange now proposes to increase the rebate levels applicable to the Non-Select Penny Pilot Symbols, as follows: (i) increase the base rebate level, from $0.29 per contract, per leg, to $0.33 per contract, per leg, (ii) increase the rebate level, from $0.31 per contract, per leg, to $0.34 per contract, per leg, for Members who achieve an ADV of 75,000 Priority Customer complex order contracts, (iii) increase the rebate level, from $0.33 per contract, per leg, to $0.36 per contract, per leg, for Members who achieve an ADV of 125,000 Priority Customer complex order contracts, and (iv) increase the rebate level, from $0.34 per contract, per leg, to $0.37 per contract, per leg, for Members who achieve an ADV of 250,000 Priority Customer complex order contracts.

In the Non-Penny Pilot Symbols, the Exchange currently provides a rebate of $0.62 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members who achieve a certain level of ADV of executed Priority Customer complex order contracts in the Non-Penny

Pilot Symbols during a calendar month are provided a rebate of $0.64 per contract, per leg, in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.66 per contract, per leg, in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and $0.67 per contract, per leg, in these symbols, if a Member achieves an ADV of 250,000 Priority Customer complex order contracts. Again, the highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month. The Exchange now proposes to increase the rebate levels applicable to the Non-Penny Pilot Symbols, as follows: (i) increase the base rebate level, from $0.62 per contract, per leg, to $0.66 per contract, per leg, (ii) increase the rebate level, from $0.64 per contract, per leg, to $0.70 per contract, per leg, for Members who achieve an ADV of 75,000 Priority Customer complex order contracts, (iii) increase the rebate level, from $0.66 per contract, per leg, to $0.74 per contract, per leg, for Members who achieve an ADV of 125,000 Priority Customer complex order contracts, and (iv) increase the rebate level, from $0.67 per contract, per leg, to $0.76 per contract, per leg, for Members who achieve an ADV of 250,000 Priority Customer complex order contracts.

Further, the Exchange currently provides a rebate of $0.06 per contract, per leg, for Priority Customer complex orders in all symbols traded on the Exchange (excluding SPY) when these orders trade against quotes or orders in the regular orderbook. In order to enhance the Exchange's competitive position and to incentivize Members to increase the amount of Priority Customer complex orders that they send to the Exchange, the Exchange is proposing to adopt volume-based tiers similar to the volume-based tiers currently in place for complex orders that trade with non-Priority Customer complex orders in the complex order book. While keeping the base rebate at $0.06 per contract, per leg, the Exchange proposes to adopt increased rebates, as follows: (i) increase the rebate level, from $0.06 per contract, per leg, to $0.07 per contract, per leg, for Members who achieve an ADV of 75,000 executed Priority Customer complex contracts, (ii) increase the rebate level, from $0.06 per contract, per leg, to $0.08 per contract, per leg, for Members who achieve an ADV of 125,000 executed Priority Customer complex contracts, and (iii) increase the rebate level, from $0.06 per contract, per leg, to $0.09 per contract, per leg, for Members who achieve an ADV of 250,000 executed Priority Customer complex contracts. The highest rebate amount achieved by the Member for the current calendar month shall apply retroactively to all Priority Customer complex order contracts that trade against quotes or orders in the regular orderbook during such calendar month.

For SPY, the Exchange currently provides a rebate of $0.07 per contract, per leg, for Priority Customer complex orders when these orders trade against quotes or orders in the regular orderbook. The Exchange now proposes to adopt volume-based tiers for options on SPY, similar to the volume-based tiers currently in place for complex orders that trade with non-Priority Customer complex orders in the complex order book. While keeping the base rebate at $0.07 per contract, per leg, the Exchange proposes to adopt increased rebates, as follows: (i) increase the rebate level, from $0.07 per contract, per leg, to $0.08 per contract, per leg, for Members who achieve an ADV of 75,000 executed Priority Customer complex contracts, (ii) increase the rebate level, from $0.07 per contract, per leg, to $0.09 per contract, per leg, for Members who achieve an ADV of 125,000 executed Priority Customer complex contracts, and (iii) increase the rebate level, from $0.07 per contract, per leg, to $0.10 per contract, per leg, for Members who achieve an ADV of 250,000 executed Priority Customer complex contracts. Again, the highest rebate amount achieved by the Member for the current calendar month shall apply retroactively to all Priority Customer complex order contracts in SPY that trade against quotes or orders in the regular orderbook during such calendar month.

Finally, pursuant to Securities and Exchange Commission ("SEC") approval, the Exchange currently allows Market Makers to enter quotations for complex order strategies in the complex order book.[10] Given this enhancement to the complex order functionality, and in order to maintain a competitive fee and rebate structure for Priority Customer orders, the Exchange has adopted maker fees that apply to transactions in the complex order book when they interact with Priority Customer orders in options overlying AA, ABX, EFA, GLD, MSFT, MU, NVDA, VXX, VZ, WFC, XLB and XOP ("Complex Quoting Symbols"). Specifically, the Exchange currently charges a maker fee of $0.35 per contract for Market Maker, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders when these orders interact with Priority Customer orders in the Complex Quoting Symbols. Priority Customer orders in the Complex Quoting Symbols that trade in the complex order book are not charged a fee and do not receive a rebate when interacting with other Priority Customer orders.

The Exchange now proposes to increase the maker fee for Market Maker, Non-ISE Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders in the Complex Quoting Symbols from $0.35 per contract to $0.37 per contract when these orders interact with Priority Customer orders in the complex order book. The Exchange does not propose any change to fees for Priority Customer orders in the Complex Quoting Symbols that trade in the complex order book. Additionally, the Exchange provides Market Makers with a two cent discount when trading against Priority Customer orders that are preferenced to them.

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10 See Securities Exchange Act Release No. 65548 (October 13, 2011), 76 FR 64980 (October 19, 2011) (SR-ISE-2011-39).

This discount is applicable when Market Makers add or remove liquidity from the complex order book in the Complex Quoting Symbols. The Exchange does not propose any change to this discount. As such, Market Makers will continue to receive the two cent discount.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities and Exchange Act of 1934 (the "Act")[11] in general, and furthers the objectives of Section 6(b)(4) of the Act[12] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange 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 Non-Select Penny Pilot Symbols, the Non-Penny Pilot Symbols, the Complex Quoting Symbols and SPY.

The Exchange believes that its proposal to assess a $0.32 per contract taker fee for regular Market Maker and Market Maker Plus orders in the Select Symbols is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, NASDAQ OMX PHLX, Inc. ("PHLX") currently charges $0.39 per contract for Specialist and Market Maker orders in its regular order book.[13] The Exchange also notes that with this proposed rule change, the fee charged to regular Market Maker and Market Maker Plus orders in the Select Symbols will remain lower than the fee currently charged by the Exchange to certain other market participants.

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11 15 U.S.C. 78f(b).

12 15 U.S.C. 78f(b)(4).

13 See PHLX Fee Schedule at http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf.

The Exchange also believes that its proposal to assess a $0.33 per contract taker fee for regular Firm Proprietary / Broker-Dealer and Professional Customer orders and $0.36 per contract taker fee for regular Non-ISE Market Maker orders in the Select Symbols is reasonable and equitably allocated because the fee is also within the range of fees assessed by other exchanges employing similar pricing schemes. By comparison, the proposed fees assessed to regular Firm Proprietary / Broker-Dealer and Professional Customer orders and to regular Non-ISE Market Maker orders are lower than the rates assessed by PHLX for similar orders. PHLX currently charges a taker fee of $0.45 per contract for equivalent orders in its regular order book.[14]

The Exchange also believes that its proposal to assess a $0.25 per contract taker fee for all regular Priority Customer orders in the Select Symbols is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. The proposed fee is substantially lower than the $0.39 per contract taker fee currently charged by PHLX for Customer orders in its regular order book.[15] Therefore, while ISE is proposing a fee increase, the resulting fee remains lower than the fee currently charged by PHLX. Further, the proposed increase will bring this fee closer to the fee the Exchange currently charges to other market participants. The Exchange also notes, however, that with this proposed rule change, the fee charged to regular Priority Customer orders will remain lower (as it historically has always been) than the fee currently charged by the Exchange to other market participants.

The Exchange believes that the price differentiation between the various market participants is justified because Market Makers have obligations to the market that the other

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14 Id.

15 Id.

market participants do not. The Exchange believes that, in this instance, it is equitable to assess a higher fee to market participants that do not have the quoting requirements that Exchange Market Makers have. While ISE is proposing fee increases for Market Maker, Market Maker Plus, Non-ISE Market Maker, Firm Proprietary / Broker-Dealer, Professional Customer and Priority Customer orders in the Select Symbols, the resulting fees remain lower than the fees currently charged by PHLX for similar orders.

The Exchange believes that its proposal to assess a $0.37 per contract taker fee for Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer complex orders, and $0.39 per contract for Non-ISE Market Maker complex orders, in the Select Symbols (excluding SPY) is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes and in some cases, is lower that the fees assessed by other exchanges. For example, PHLX currently charges $0.39 per contract for removing liquidity in complex orders for Specialist, Market Maker, Firm, Broker-Dealer and Professional orders.[16] Therefore, while ISE is proposing a fee increase for Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders, the resulting fee will remain lower than the fee currently charged by PHLX for similar orders, while the resulting fee from the proposed fee increase for Non-ISE Market Maker orders will be equal to the fee currently charged by PHLX for similar orders. In addition, the Exchange believes that charging Non-ISE Market Maker orders a higher rate than the fee charged to Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer complex orders is appropriate and not unfairly discriminatory because Non-ISE Market Makers are not subject to many of the non-transaction based fees that these other categories of membership are subject to, e.g., membership fees, access

[16] Id.

fees, API/Session fees, market data fees, etc. Therefore, in this instance, it is appropriate and not unfairly discriminatory to assess a higher transaction fee to Non-ISE Market Makers because the Exchange incurs costs associated with these types of orders that are not recovered by non-transaction based fees paid by members.

The Exchange believes that its proposal to increase the taker fee to $0.38 per contract for ISE Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer complex orders, and to increase the taker fee to $0.40 per contract for Non-ISE Market Maker complex orders, in SPY is reasonable because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, PHLX currently charges $0.39 per contract for removing liquidity in complex orders in SPY for Specialist, Market Maker, Firm, Broker-Dealer and Professional orders.[17] Therefore, while ISE is proposing fees increases for Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer complex orders, the resulting fees will remain lower than the fees currently charged by PHLX for similar orders, while the resulting fee from the proposed fee increase for Non-ISE Market Maker complex orders will only be marginally higher than the fee currently charged by PHLX for similar orders. In addition, the Exchange believes that charging Non-ISE Market Maker complex orders a higher rate than the fee charged to Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer complex orders in SPY is appropriate and not unfairly discriminatory because Non-ISE Market Makers are not subject to many of the non-transaction based fees that these other categories of membership are subject to, e.g., membership fees, access fees, API/Session fees, market data fees, etc. Therefore, in this instance, it is appropriate and not unfairly discriminatory to assess a

17 Id.

higher transaction fee on Non-ISE Market Makers because the Exchange incurs costs associated with these types of orders that are not recovered by non-transaction based fees paid by members.

The Exchange believes that its proposal to assess a $0.37 per contract taker fee for Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer complex orders in the Non-Select Penny Pilot Symbols is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, PHLX currently charges $0.22 per contract plus a payment for order flow fee of $0.25 per contract (applicable to customer orders), for a total rate of $0.47 per contract for adding and removing liquidity in complex orders for Specialist and Market Maker orders and charges anywhere from $0.25 per contract to $0.45 per contract for Firm, Broker-Dealer and Professional orders.[18]

The Exchange believes it is reasonable and equitable to charge Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer complex orders a taker fee of $0.80 per contract, and to charge Non-ISE Market Maker orders a taker fee of $0.83 per contract for complex orders in the Non-Penny Pilot Symbols because the Exchange is seeking to recoup the cost associated with paying a higher per contract rebate to Priority Customers. In addition, the Exchange believes that charging Non-ISE Market Maker orders a higher rate than the fee charged to Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer complex orders in the Non-Penny Pilot Symbols is appropriate and not unfairly discriminatory because Non-ISE Market Makers are not subject to many of the non-transaction based fees that these other categories of membership are subject to, e.g., membership fees, access fees, API/Session fees, market data fees, etc. Therefore, in this instance, it is appropriate and not unfairly

[18] Id.

discriminatory to assess a higher transaction fee on Non-ISE Market Makers because the Exchange incurs costs associated with these types of orders that are not recovered by non-transaction based fees paid by members.

The Exchange believes that increasing the fees applicable to orders executed in the complex order book when trading against Priority Customer orders in the Complex Quoting Symbols is appropriate given the functionality developed by the Exchange that allows market makers to quote in the complex order book. Specifically, the Exchange believes that its proposal to assess a maker fee of $0.37 per contract for the Complex Quoting Symbols when orders in these symbols interact with Priority Customer orders is reasonable and equitable because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. In fact, the proposed fee is considerably less than that charged by other exchanges. For example, the maker fee for a broker-dealer complex order in XOP at PHLX is $0.60 per contract[19] while the same order that is electronically delivered at the Chicago Board Options Exchange ("CBOE") is $0.45 per contract.[20] Additionally, one of the primary goals of this fee change is to maintain the attractive and competitive economics for Priority Customer complex orders, in light of the enhanced manner in which complex orders now trade on the Exchange.

The Exchange believes that it is reasonable and equitable to provide a two cent discount to Market Makers on preferenced orders as an incentive for them to quote in the complex order book. Accordingly, Market Makers who remove liquidity in the Select Symbols, the Non-Select Penny Pilot Symbols, the Non-Penny Pilot Symbols, the Complex Quoting Symbols and SPY from the complex order book will be charged $0.02 less per contract when trading with Priority

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19 Id.

20 See CBOE Fees Schedule, at http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf.

Customer orders that are preferenced to them. ISE notes that with this proposed fee change, the Exchange will continue to maintain a two cent differential that was previously in place.

The Exchange believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade with Non-Priority Customer complex orders in the complex order book because paying a rebate would continue to attract additional order flow to the Exchange and create liquidity in the symbols that are subject to the rebate, which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange already provides these types of rebates, and is now merely proposing to increase those rebate amounts. The Exchange believes that the proposed rebates are competitive with rebates provided by other exchanges and are therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange.

The Exchange also believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade against quotes or orders in the regular orderbook. Again, the Exchange already provides this rebate and is now proposing to increase those rebate amounts through volume-based tiers. The Exchange believes paying these rebates would also attract additional order flow to the Exchange.

The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes that this proposed rule change will continue to attract additional complex order business in the symbols that are subject of this proposed rule change.

Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges. Additionally, the Exchange believes it remains an attractive venue for market participants to direct their order flow in the symbols that are subject to this proposed rule change as its fees are competitive with those charged by other exchanges for similar trading strategies. 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. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

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.[21] 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.

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[21] 15 U.S.C. 78s(b)(3)(A)(ii).

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-2012-71 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-2012-71. 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-2012-71 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.[22]

Kevin M. O'Neill
Deputy Secretary

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22 17 CFR 200.30-3(a)(12).