

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67859; File No. SR-ISE-2012-72)

September 14, 2012

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Schedule of Fees Regarding Complex Order Rebates

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 September 4, 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 its Schedule of Fees. 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 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.

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

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

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses per contract transaction fees 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”).<sup>3</sup> The Exchange’s maker/taker fees and rebates are applicable to regular and complex orders executed in the Select Symbols and in the Special Non-Select Penny Pilot Symbols.<sup>4</sup> The Exchange also currently assesses maker/taker fees and rebates for complex orders in symbols that are in the Penny Pilot program but are not a Select Symbol (“Non-Select Penny Pilot Symbols”)<sup>5</sup> and for complex orders in all symbols that are not in the Penny Pilot Program (“Non-Penny Pilot Symbols”).<sup>6</sup>

The purpose of this proposed rule change is to amend the rebate tiers and increase the rebate levels for complex orders in options on the Select Symbols, the Non-Select Penny Pilot Symbols, the Non-Penny Pilot Symbols and in options on one Select Symbol – SPY – which has a distinct rebate tier and amount. The Exchange believes this proposed rule change will enhance the Exchange’s competitive position and incentivize Members to increase the amount of Priority Customer complex orders that they send to the Exchange in these symbols.

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

<sup>4</sup> See Exchange Act Release Nos. 67201 (June 14, 2012), 77 FR 37082 (June 20, 2012) (SR-ISE-2012-49); and 67627 (August 9, 2012), 77 FR 49046 (August 15, 2012) (SR-ISE-2012-70).

<sup>5</sup> See Exchange Act Release No. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR-ISE-2011-72).

<sup>6</sup> See Exchange Act Release Nos. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR-ISE-2011-84); 66392 (February 14, 2012), 77 FR 10016 (February 21, 2012) (SR-ISE-2012-06); 66961 (May 10, 2012), 77 FR 28914 (May 16, 2012) (SR-ISE-2012-38); and 67400 (July 11, 2012), 77 FR 42036 (July 17, 2012) (SR-ISE-2012-63).

In the Select Symbols, the Exchange currently provides a base rebate of \$0.34 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 can earn a higher rebate amount by achieving certain average daily volume (ADV) thresholds on a month-to-month basis. The current ADV threshold for the base tier is 0-74,999 Priority Customer complex contracts. The Exchange proposes to lower this threshold to 0-39,999 Priority Customer complex contracts and the base rebate of \$0.34 per contract, per leg, will now apply to this tier. With the adoption of a new base tier, what was previously the base tier is now the second tier. The ADV threshold for this tier was previously 0-74,999 Priority Customer complex contracts. The Exchange proposes to amend this threshold so that it is now 40,000-74,999 Priority Customer complex contracts. The rebate amount for this tier was previously \$0.34 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.36 per contract, per leg. With the adoption of a new base tier, what was previously the second tier is now the third tier. The ADV threshold for this tier was previously 75,000-124,999 Priority Customer complex contracts. The Exchange is not proposing any change to the ADV threshold for this tier. The rebate amount for this tier was previously \$0.36 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.37 per contract, per leg. With the adoption of a new base tier, what was previously the third tier is now the fourth tier. The ADV threshold for this tier was previously 125,000-249,999 Priority Customer complex contracts. The Exchange proposes to amend this threshold by lowering the top end of the range so that it is now 125,000-224,999 Priority Customer complex orders. The rebate amount for this tier was previously \$0.37 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.38 per contract, per leg. Finally, with the adoption of a new base tier, what was previously the fourth tier is now

the fifth tier. The ADV threshold for this tier was previously 250,000 or more Priority Customer complex contracts. The Exchange proposes to amend this threshold by lowering it so that it is now 225,000 or more Priority Customer complex contracts. The rebate amount for this tier was previously \$0.38 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.39 per contract, per leg. 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.

In the Non-Select Penny Pilot Symbols, the Exchange currently provides a base 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 can earn a higher rebate amount by achieving certain ADV thresholds on a month-to-month basis. The current ADV threshold for the base tier is 0-74,999 Priority Customer complex contracts. The Exchange proposes to lower this threshold to 0-39,999 Priority Customer complex contracts and the base rebate of \$0.33 per contract, per leg, will now apply to this tier. With the adoption of a new base tier, what was previously the base tier is now the second tier. The ADV threshold for this tier was previously 0-74,999 Priority Customer complex contracts. The Exchange proposes to amend this threshold so that it is now 40,000-74,999 Priority Customer complex contracts. The rebate amount for this tier was previously \$0.33 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.34 per contract, per leg. With the adoption of a new base tier, what was previously the second tier is now the third tier. The ADV threshold for this tier was previously 75,000-124,999 Priority Customer complex contracts. The Exchange is not proposing any change to the ADV threshold for this tier. The rebate amount for

this tier was previously \$0.34 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.36 per contract, per leg. With the adoption of a new base tier, what was previously the third tier is now the fourth tier. The ADV threshold for this tier was previously 125,000-249,999 Priority Customer complex contracts. The Exchange proposes to amend this threshold by lowering the top end of the range so that it is now 125,000-224,999 Priority Customer complex orders. The rebate amount for this tier was previously \$0.36 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.37 per contract, per leg. Finally, with the adoption of a new base tier, what was previously the fourth tier is now the fifth tier. The ADV threshold for this tier was previously 250,000 or more Priority Customer complex contracts. The Exchange proposes to amend this threshold by lowering it so that it is now 225,000 or more Priority Customer complex contracts. The rebate amount for this tier was previously \$0.37 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.38 per contract, per leg. 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.

In the Non-Penny Pilot Symbols, the Exchange currently provides a base rebate of \$0.66 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 can earn a higher rebate amount by achieving certain ADV thresholds on a month-to-month basis. The current ADV threshold for the base tier is 0-74,999 Priority Customer complex contracts. The Exchange proposes to lower this threshold to 0-39,999 Priority Customer complex contracts and the base rebate of \$0.66 per contract, per leg, will now apply to this tier. With the adoption of a

new base tier, what was previously the base tier is now the second tier. The ADV threshold for this tier was previously 0-74,999 Priority Customer complex contracts. The Exchange proposes to amend this threshold so that it is now 40,000-74,999 Priority Customer complex contracts. The rebate amount for this tier was previously \$0.66 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.70 per contract, per leg. With the adoption of a new base tier, what was previously the second tier is now the third tier. The ADV threshold for this tier was previously 75,000-124,999 Priority Customer complex contracts. The Exchange is not proposing any change to the ADV threshold for this tier. The rebate amount for this tier was previously \$0.70 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.74 per contract, per leg. With the adoption of a new base tier, what was previously the third tier is now the fourth tier. The ADV threshold for this tier was previously 125,000-249,999 Priority Customer complex contracts. The Exchange proposes to amend this threshold by lowering the top end of the range so that it is now 125,000-224,999 Priority Customer complex orders. The rebate amount for this tier was previously \$0.74 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.76 per contract, per leg. Finally, with the adoption of a new base tier, what was previously the fourth tier is now the fifth tier. The ADV threshold for this tier was previously 250,000 or more Priority Customer complex contracts. The Exchange proposes to amend this threshold by lowering it so that it is now 225,000 or more Priority Customer complex contracts. The rebate amount for this tier was previously \$0.76 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.77 per contract, per leg. 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.

Finally, in SPY, the Exchange currently provides a base rebate of \$0.36 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 can earn a higher rebate amount by achieving certain ADV thresholds on a month-to-month basis. The current ADV threshold for the base tier is 0-74,999 Priority Customer complex contracts. The Exchange proposes to lower this threshold to 0-39,999 Priority Customer complex contracts and the base rebate of \$0.36 per contract, per leg, will now apply to this tier. With the adoption of a new base tier, what was previously the base tier is now the second tier. The ADV threshold for this tier was previously 0-74,999 Priority Customer complex contracts. The Exchange proposes to amend this threshold so that it is now 40,000-74,999 Priority Customer complex contracts. The rebate amount for this tier was previously \$0.36 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.37 per contract, per leg. With the adoption of a new base tier, what was previously the second tier is now the third tier. The ADV threshold for this tier was previously 75,000-124,999 Priority Customer complex contracts. The Exchange is not proposing any change to the ADV threshold for this tier. The rebate amount for this tier was previously \$0.37 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.38 per contract, per leg. With the adoption of a new base tier, what was previously the third tier is now the fourth tier. The ADV threshold for this tier was previously 125,000-249,999 Priority Customer complex contracts. The Exchange proposes to amend this threshold by lowering the top end of the range so that it is now 125,000-224,999 Priority Customer complex orders. The rebate amount for this tier was previously \$0.38 per contract, per leg. The Exchange

proposes to increase the rebate for this tier to \$0.39 per contract, per leg. Finally, with the adoption of a new base tier, what was previously the fourth tier is now the fifth tier. The ADV threshold for this tier was previously 250,000 or more Priority Customer complex contracts. The Exchange proposes to amend this threshold by lowering it so that it is now 225,000 or more Priority Customer complex contracts. The rebate amount for this tier was previously \$0.39 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.40 per contract, per leg. 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.

Further, the Exchange currently provides a base 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 has 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. The current ADV threshold for the base tier is 0-74,999 Priority Customer complex contracts. The Exchange proposes to lower this threshold to 0-39,999 Priority Customer complex contracts and the base rebate of \$0.06 per contract, per leg, will now apply to this tier. With the adoption of a new base tier, what was previously the base tier is now the second tier. The ADV threshold for this tier was previously 0-74,999 Priority Customer complex contracts. The Exchange proposes to amend this threshold so that it is now 40,000-74,999 Priority Customer complex contracts. The rebate amount for this



tier was previously \$0.06 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.07 per contract, per leg. With the adoption of a new base tier, what was previously the second tier is now the third tier. The ADV threshold for this tier was previously 75,000-124,999 Priority Customer complex contracts. The Exchange is not proposing any change to the ADV threshold for this tier. The rebate amount for this tier was previously \$0.07 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.08 per contract, per leg. With the adoption of a new base tier, what was previously the third tier is now the fourth tier. The ADV threshold for this tier was previously 125,000-249,999 Priority Customer complex contracts. The Exchange proposes to amend this threshold by lowering the top end of the range so that it is now 125,000-224,999 Priority Customer complex orders. The rebate amount for this tier was previously \$0.08 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.09 per contract, per leg. Finally, with the adoption of a new base tier, what was previously the fourth tier is now the fifth tier. The ADV threshold for this tier was previously 250,000 or more Priority Customer complex contracts. The Exchange proposes to amend this threshold by lowering it so that it is now 225,000 or more Priority Customer complex contracts. The rebate amount for this tier was previously \$0.09 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.10 per contract, per leg. 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.

For SPY, the Exchange currently provides a base rebate of \$0.07 per contract, per leg, for Priority Customer complex orders traded on the Exchange when these orders trade against quotes or orders in the regular orderbook. The current ADV threshold for the base tier is 0-74,999

Priority Customer complex contracts. The Exchange proposes to lower this threshold to 0-39,999 Priority Customer complex contracts and the base rebate of \$0.07 per contract, per leg, will now apply to this tier. With the adoption of a new base tier, what was previously the base tier is now the second tier. The ADV threshold for this tier was previously 0-74,999 Priority Customer complex contracts. The Exchange proposes to amend this threshold so that it is now 40,000-74,999 Priority Customer complex contracts. The rebate amount for this tier was previously \$0.07 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.08 per contract, per leg. With the adoption of a new base tier, what was previously the second tier is now the third tier. The ADV threshold for this tier was previously 75,000-124,999 Priority Customer complex contracts. The Exchange is not proposing any change to the ADV threshold for this tier. The rebate amount for this tier was previously \$0.08 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.09 per contract, per leg. With the adoption of a new base tier, what was previously the third tier is now the fourth tier. The ADV threshold for this tier was previously 125,000-249,999 Priority Customer complex contracts. The Exchange proposes to amend this threshold by lowering the top end of the range so that it is now 125,000-224,999 Priority Customer complex orders. The rebate amount for this tier was previously \$0.09 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.10 per contract, per leg. Finally, with the adoption of a new base tier, what was previously the fourth tier is now the fifth tier. The ADV threshold for this tier was previously 250,000 or more Priority Customer complex contracts. The Exchange proposes to amend this threshold by lowering it so that it is now 225,000 or more Priority Customer complex contracts. The rebate amount for this tier was previously \$0.10 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.11 per contract, per leg. 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.

Finally, to incentivize members to trade in the Exchange's various auction mechanisms, the Exchange currently provides a per contract rebate to those contracts that do not trade with the contra order in the Exchange's Facilitation Mechanism and Solicited Order Mechanism, except when they trade against pre-existing orders and quotes, and to those contracts that do not trade with the contra order in the, Price Improvement Mechanism. For the Facilitation and Solicited Order Mechanisms, the rebate is currently \$0.15 per contract. For the Price Improvement Mechanism, the rebate is currently \$0.25 per contract. These rebates will continue to apply.

The Exchange is not proposing any other changes in this filing.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Exchange Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act<sup>8</sup> 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 interact with and respond to certain types of orders.

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

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

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

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 has already established a volume-based incentive program, and is now merely proposing to adopt an additional tier and increase the rebate amounts in that program. 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 has already established a volume-based incentive program, and is now merely proposing to adopt an additional tier and increase the rebate amounts in that program. The Exchange believes paying these rebates would also attract additional order flow to the Exchange.

The Exchange believes that the proposed fee change will generally allow the Exchange and its Members to better compete for order flow and thus enhance competition. Specifically, the Exchange believes that its proposal, which, among other things, adopts a lower base level, and lowers the highest ADV threshold, so Members can qualify for rebates, is reasonable as it will encourage Members to increase the amount of Priority Customer complex orders that they send to the Exchange instead of sending this order flow to a competing exchange. The Exchange believes that with the proposed amended tiers, which provides for additional volume thresholds, more Members are now likely to qualify for higher rebates.

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.

The Exchange believes that the proposed rebates are fair, equitable and not unfairly discriminatory because they are consistent with price differentiation and fee structures that exists today at other option exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem rebate levels at a particular exchange to be low. With this proposed rebate change, the Exchange believes it remains an attractive venue for market participants to trade complex orders.

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.<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

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

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 Number SR-ISE-2012-72 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-2012-72. 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-2012-72 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>10</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).