

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68034; File No. SR-ISE-2012-85)

October 11, 2012

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Fees for Certain 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 October 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 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 per contract transaction fees and 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 The Exchange’s maker/taker fees and rebates are applicable to regular and complex orders executed in the Select Symbols. 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”)⁴ and in all symbols that are not in the Penny Pilot Program (“Non-Penny Pilot Symbols”).⁵ The purpose of this proposed rule change is to amend maker/taker fees and rebates for complex orders in the Select Symbols, Non-Select Penny Pilot Symbols and Non-Penny Pilot Symbols.

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

⁴ See Exchange Act Release Nos. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR-ISE-2011-72); 66597 (March 14, 2012), 77 FR 16295 (March 20, 2012) (SR-ISE-2012-17); 66961 (May 10, 2012), 77 FR 28914 (May 16, 2012) (SR-ISE-2012-38); and 67628 (August 9, 2012), 77 FR 49049 (August 15, 2012) (SR-ISE-2012-71).

⁵ 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); 66962 (May 10, 2012), 77 FR 28917 (May 16, 2012) (SR-ISE-2012-35); 67400 (July 11, 2012), 77 FR 42036 (July 17, 2012) (SR-ISE-2012-63) and 67628 (August 9, 2012), 77 FR 49049 (August 15, 2012) (SR-ISE-2012-71).

For complex orders in the Select Symbols (excluding SPY), the Exchange currently charges a taker fee of: (i) \$0.37 per contract for Market Maker,⁶ Firm Proprietary / Broker-Dealer and Professional Customer⁷ orders; and (ii) \$0.39 per contract for Non-ISE Market Maker⁸ orders. Priority Customer⁹ 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) to \$0.39 per contract for Firm Proprietary / Broker-Dealer and Professional Customer orders. The Exchange is not proposing any change to the complex order taker fee in the Select Symbols (excluding SPY) for Market Maker, Non-ISE Market Maker and Priority Customer orders.

For complex orders in SPY, the Exchange currently charges a taker fee of: (i) \$0.38 per contract for Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders, and (ii) \$0.40 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 to \$0.40 per contract for Firm Proprietary / Broker-Dealer and Professional Customer orders. The Exchange is not proposing any change to the complex order taker fee in SPY for Market Maker, Non-ISE Market Maker and Priority Customer orders.

⁶ The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See ISE Rule 100(a)(25).

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

⁸ 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 (“Exchange Act”), registered in the same options class on another options exchange.

⁹ 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).

For complex orders in the Non-Select Penny Pilot Symbols, the Exchange currently charges a taker fee of: (i) \$0.37 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 to \$0.39 per contract for Firm Proprietary / Broker-Dealer and Professional Customer orders. The Exchange is not proposing any change to the complex order taker fee in the Non-Select Penny Pilot Symbols for Market Maker, Non-ISE Market Maker and Priority Customer orders.

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

For Responses to Crossing Orders¹⁰ in the Non-Penny Pilot Symbols, ISE currently charges \$0.73 per contract for Market Maker, Firm Proprietary / Broker-Dealer and Professional

¹⁰ A Response to a Crossing Order (other than Regular Orders in Non-Select Penny Pilot Symbols) is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM. See ISE Schedule of Fees, Preface. The term Response to Crossing Orders was recently amended. See SR-ISE-2012-73.

Customer orders. For Non-ISE Market Maker orders, this fee is currently \$0.78 per contract.

The Exchange now proposes to increase the fee for Responses to Crossing Orders for Non-Penny Pilot Symbols to \$0.80 per contract for Market Maker Orders, and to \$0.83 per contract to Firm Proprietary / Broker-Dealer, Professional Customer and Non-ISE Market Maker orders.

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 in the Select Symbols, SPY, Non-Select Penny Pilot Symbols and Non-Penny Pilot Symbols from the complex order book. Market Makers that remove liquidity from the complex order book by trading against Priority Customer orders that are preferenced to them will be charged: (i) \$0.35 per contract in the Select Symbols; (ii) \$0.36 per contract in SPY; (iii) \$0.35 per contract in the Non-Select Penny Pilot Symbols; and (iv) \$0.78 per contract in the Non-Penny Pilot Symbols Select Symbols.

Finally, the Exchange currently allows Market Makers to enter quotations for complex order strategies in the complex order book.¹¹ 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 \$0.37 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

¹¹ See Securities Exchange Act Release No. 65548 (October 13, 2011), 76 FR 64980 (October 19, 2011) (SR-ISE-2011-39).

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 Non-ISE Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders in the Complex Quoting Symbols from \$0.37 per contract to \$0.39 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 Market Maker and Priority Customer orders in the Complex Quoting Symbols that trade in the complex order book. Additionally, as noted above, the Exchange provides Market Makers with a two cent discount when trading against Priority Customer orders that are preferenced to them. For Complex Quoting Symbols, this discount is applicable when Market Makers add or remove liquidity from the complex order book. 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 Exchange Act¹² in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act¹³ 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 it is reasonable and equitable to charge Firm Proprietary / Broker-Dealer and Professional Customer orders a taker fee of \$0.39 per contract for complex orders in

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

the Select Symbols and Non-Select Penny Pilot Symbols, \$0.40 per contract in SPY and \$0.83 per contract in Non-Penny Pilot Symbols because the Exchange is seeking to recoup the cost associated with paying increased rebates for Priority Customer complex orders. The Exchange believes the proposed fees are also reasonable and equitably allocated because they are within the range of fees assessed by other exchanges employing similar pricing schemes schemes and in some cases, is lower than the fees assessed by other exchanges. For example, NASDAQ OMX PHLX, Inc. (“PHLX”) currently charges \$0.45 and \$0.60 per contract for Firm and Broker Dealer orders, respectively, for non-Penny Pilot symbols traded electronically on that exchange.¹⁴ Therefore, while ISE is proposing a fee increase for Firm Proprietary / Broker-Dealer and Professional Customer orders, the resulting fee remains lower than the fee charged by PHLX for similar orders.

The Exchange believes it is reasonable and equitable to charge a fee of \$0.80 per contract for Market Maker orders (\$0.83 per contract for Non-ISE Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders) when such members are responding to crossing orders because a response to a crossing order is akin to taking liquidity, thus the Exchange is proposing to adopt an identical fee for Responses to Crossing Orders in the Non-Penny Pilot Symbols as that for taking liquidity in these symbols.

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 that remove liquidity from the complex order book by trading against Priority Customer orders that are preferenced to them will be charged: (i) \$0.35

¹⁴ See NASDAQ OMX PHLX LLC Pricing Schedule at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F4%5F1&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2Drulesbrd%2F>.

per contract in the Select Symbols; (ii) \$0.36 per contract in SPY; (iii) \$0.35 per contract in the Non-Select Penny Pilot Symbols; and (iv) \$0.78 per contract in the Non-Penny Pilot Symbols Select Symbols. ISE notes that with this proposed fee change, the Exchange will continue to maintain a two cent differential that was previously in place.

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 while at the same time create a certain level of standardization in complex order pricing across symbols that make up the majority of the daily volume in options trading. With this proposed rule change, the Exchange is standardizing the complex order taker fee for Non-ISE Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders in the Select Symbols, SPY, Non-Select Penny Pilot Symbols and Non-Penny Pilot Symbols. With this proposed rule change, the Exchange is also standardizing the fee for Responses to Crossing Orders for Non-ISE Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders in the Non-Penny Pilot Symbols.

The Exchange further believes that the Exchange's maker/taker fees are not unfairly discriminatory because the fee structure is consistent with fee structures that exist today at other options exchanges. Additionally, 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 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 fee levels at a particular exchange to be excessive. With this proposed fee

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.¹⁵ 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.

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:

¹⁵ 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. Please include File Number SR-ISE-2012-85 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-2012-85. 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-2012-85 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.¹⁶

Kevin M. O'Neill
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).