

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70028; File No. SR-ISE-2013-46)

July 23, 2013

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Certain Market Maker Fees

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 July 11, 2013, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange 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 proposes to amend Market Maker fees for Regular Orders in Non-Select Symbols and Foreign Currency Options ("FX Options"). 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

The purpose of this proposed rule change is to amend certain Market Maker³ fees for Regular Orders⁴ in Non-Select Symbols⁵ and FX Options. The fee changes discussed below apply to both standard options and Mini Options traded on ISE. The Exchange's Schedule of Fees has separate tables for fees applicable to standard options and Mini Options. The Exchange notes that while the discussion below relates to fees for standard options, the fees for Mini Options, which are not discussed below, are and shall continue to be 1/10th of the fees for standard options, with the one following exception: when the Exchange commenced trading on Mini Options, it did not apply the Market Maker Discount Tiers in Section VI, C. to Market Maker orders in Mini Options. The Exchange now proposes to extend the Market Maker Discount Tiers to Mini Options and in doing so, proposes to adopt footnote 10 in Section III, Regular Order Fees and Rebates for Mini Options and proposes to adopt a discount fee table applicable to Mini Options in Section VI, Market Maker Discount Tiers.

For Regular Orders in Non-Select Symbols and in FX Options, the Exchange currently charges Market Makers a base execution fee of \$0.18 per contract and a lower fee based on a Member's trading activity during a calendar month. Specifically, the Exchange currently charges the following fee:

- First 1,000,000 contracts in a month - \$0.18 per contract

³ The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See ISE Rule 100(a)(25).

⁴ A Regular Order is an order that consists of only a single option series and is not submitted with a stock leg. See Schedule of Fees, Preface.

⁵ Non-Select Symbols are options overlying all symbols that are not in the Penny Pilot Program.

- 1,000,001 to 3,000,000 contracts in a month - \$0.16 per contract
- 3,000,001 to 5,000,000 contracts in a month - \$0.13 per contract
- 5,000,001 to 10,000,000 contracts in a month - \$0.03 per contract
- Above 10,000,000 contracts in a month - \$0.01 per contract⁶

The current sliding scale applies to all Market Makers⁷ for Regular Orders in Non-Select Symbols and in FX Options and is assessed to each Member based on total market maker volume executed by a Member during a calendar month. By way of example, if the Member executes 7,000,000 contracts in the month, the first 1,000,000 contracts will be charged \$0.18 per contract, the next 2,000,000 contracts (contracts 1,000,001 to 3,000,000) will be charged \$0.16 per contract, the next 2,000,000 contracts (contracts 3,000,001 to 5,000,000) will be charged \$0.13 per contract, and the last 2,000,000 contracts (contracts 5,000,001 to 7,000,000) will be charged \$0.03 per contract. Importantly, there is no retroactive application of the lowest per contract fee (in this example, \$0.03 per contract) to all contracts executed during the month.

The Exchange now proposes to collapse the current sliding scale of five tiers into only two tiers (thus eliminating entirely three tiers). Under this new proposed two tier arrangement, in the first tier the base execution fee of \$0.22 per contract will apply to Members who trade 250,000 contracts or less in a calendar month in Non-Select Symbols and FX Options, and in the second tier a fee of \$0.15 per contract will apply if a Member trades more than 250,000 contracts in Non-Select Symbols and FX Options in a calendar month. In addition (and in converse to the current sliding scale), once a Member reaches the highest tier, the fee applicable to that tier will apply retroactively to all Market Maker contracts for Regular Orders in Non-Select Symbols and

⁶ See Schedule of Fees, Section VI, C. ISE Market Maker Discount Tiers.

⁷ If a Member firm operates more than one Market Maker membership, all of the Member firm's market maker volume is aggregated for purposes of calculating the transaction fee.

FX Options. For example, a Member who executes 200,000 contracts in Non-Select Symbols and FX Options during a calendar month will be charged \$0.22 per contract for all 200,000 contracts. A Member who, however, executes 300,000 contracts in Non-Select Symbols and FX Options during a calendar month will be charged \$0.15 per contract for all 300,000 contracts. The Exchange is not proposing any change to the Fee for Regular Orders in Non-Select Symbols and in FX Options for other market participants.

For Crossing Orders in Non-Select Symbols and FX Options, the Exchange currently charges a fee of \$0.18 per contract for Market Maker orders. The Exchange now proposes to increase the base execution fee to \$0.22 per contract and amend the current discount tiers such that the base execution fee of \$0.22 per contract will apply if a Member trades 250,000 contracts or less in Non-Select Symbols and FX Options in a calendar month, and a fee of \$0.15 per contract will apply if a Member trades more than 250,000 contracts in Non-Select Symbols and FX Options in a calendar month. The Exchange is not proposing any change to the Fee for Crossing Orders for other market participants.

For Responses to Crossing Orders in Non-Select Symbols and FX Options, the Exchange currently charges a fee of \$0.18 per contract for Market Maker orders. The Exchange now proposes to increase the base execution fee to \$0.22 per contract and amend the current discount tiers such that the base execution fee of \$0.22 per contract will apply if a Member trades 250,000 contracts or less in Non-Select Symbols and FX Options in a calendar month, and a fee of \$0.15 per contract will apply if a Member trades more than 250,000 contracts in Non-Select Symbols and FX Options. The Exchange is not proposing any change to the Fee for Responses to Crossing Orders for other market participants.

As noted above, the highest tier achieved by a Member (in terms of volume and fee) for the current calendar month will apply retroactively to all Market Maker orders executed by the Member during such calendar month. For purposes of the Market Maker Discount Tiers, volume in standard options and Mini Options will be combined to calculate the tier a Member has reached. Based on the tier achieved, the Member will be charged for that tier for all the standard options traded at the standard option fee amount and for all the Mini Options traded at the Mini Option fee amount.

With this proposed rule change, the Market Maker fee that is the subject of this proposed rule change will no longer be based on total market maker volume executed by a Member across all symbols traded on the Exchange. The Exchange, therefore, proposes to delete the following text from Section VI, C. of the Schedule of Fees: “Fee assessed on each member based on total market maker volume executed by each such member during a calendar month.” The Exchange also proposes to remove text from this section of the Schedule of Fees which states that “For Complex Orders, only the volume for the leg of a trade consisting of the most contracts is considered for purpose of calculating the volume tiers and the corresponding fee charged” because the fee discount in this section does not apply to complex orders. Fees for all complex orders for all market participants are found in Section II for standard options and in Section IV for Mini Options.

This proposed rule change will result in an increase in the amount of Market Maker fees paid by a Member for Regular Orders in Non-Select Symbols and FX Options. The Exchange, however, expects this increase to be nominal because the proposed fee will be applied to a group of symbols that are not very actively traded and account for less than twenty percent (20%) of industry volume.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act⁹ 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 Exchange believes that the proposed rule change is reasonable and equitably allocated because the resulting fee is within the range of fees assessed by other exchanges. For example, the Chicago Board Options Exchange (“CBOE”) currently charges Market Makers a fee of \$0.25 per contract for the first 100,000 contracts and \$0.17 per contract for 100,001 to 2,000,000 contracts.¹⁰ The Exchange notes, however, that CBOE excludes certain products from its Market Maker tiers, such as mini-options, VIX options, etc., so the pricing range comparison between ISE and CBOE is not without a few limited exceptions, however the Exchange believes that by not excluding certain products from its Market Maker tiers makes its pricing more competitive as Market Makers have a greater opportunity to achieve the lower tier rate, as certain products are not excluded.

The Exchange's proposal to increase the Market Maker fees for Regular Orders in Non-Select Symbols and FX Options is also reasonable because it should incentivize Members to increase the amount of Regular Orders in Non-Select Symbols and FX Options traded on the Exchange to obtain a lower execution fee. The Exchange's proposed fee change is also equitable and not unfairly discriminatory because while Members will have to transact a greater number of

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ See CBOE Fees Schedule at <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>

contracts to achieve the tier 2 fee of \$0.15 per contract, that fee will apply retroactively to all Regular Orders in Non-Select Symbols and FX Options for that month once a Member reaches the threshold of 250,000 contracts. Further, the Exchange has already established tiers to discount Market Maker fees for Regular Orders in Non-Select Symbols and FX Options, and is now proposing to simplify the tiers and how the fee is applied. The Exchange believes its proposal to amend the Market Maker Discount Tiers is not unfairly discriminatory because the resulting Market Maker fee would apply uniformly to all Regular Orders in Non-Select Symbols and FX Options in the same manner. The Exchange expects this increase to be nominal because the proposed fee will be applied to a group of symbols that are not very actively traded and account for less than twenty percent (20%) of industry volume. Finally, by applying the lower fee retroactively to all Regular Orders in Non-Select Symbols and FX Options for that month once a Member reaches the threshold of 250,000 contracts (as opposed to the current sliding scale which does not retroactively apply the lower fee to all contracts), the Exchange expects that this, too, will cause the increase to be nominal.

The Exchange has determined to charge fees for Regular Orders in Mini Options at a rate that is 1/10th the rate of fees the Exchange currently provides for trading in standard options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees to provide market participants an incentive to trade Mini Options on the Exchange. The Exchange believes the proposed fees are reasonable and equitable in light of the fact that Mini Options have a smaller exercise and assignment value, specifically 1/10th that of a standard option contract, and, as such, levying fees that are 1/10th of what market participants pay to trade standard options.

The Exchange believes it is reasonable and equitable to charge a Market Maker fee of \$0.22 per contract for Regular Orders in Non-Select Symbols and FX Options and also when such members are responding to crossing orders because the fee is also within the range of fees assessed by other exchanges employing similar pricing schemes. By comparison, the proposed fees are lower than the rates assessed by CBOE for similar orders.¹¹ The Exchange notes that an execution resulting from a response to a crossing order is akin to an execution and therefore its proposal to establish execution fees and fees for responses to crossing orders that are identical is reasonable and equitable. The Exchange believes its proposal to increase the execution fee and fee for responses to crossing orders for Market Makers for Regular Orders in Non-Select Symbols and FX Options is not unfairly discriminatory because the proposed fees would apply uniformly to all Market Maker orders in the same manner.

The Exchange believes that the price differentiation between the various market participants is justified. With respect to Market Maker fees for Regular Orders, the Exchange believes that the price differentiation between the various market participants is appropriate and not unfairly discriminatory because Market Makers have different requirements and obligations to the Exchange that the other market participants do not (such as quoting requirements and paying membership-related non-transaction fees). The Exchange believes that it is equitable and not unfairly discriminatory to assess a higher fee to market participants that do not have such requirements and obligations that Exchange Market Makers do, with the exception of orders for Priority Customers for which there are no transaction fees. As discussed further in section 4. below regarding intra-market competition, in this instance, there is no reason to adjust the fee for Market Maker orders entered by Electronic Access Members, as such orders have a distinct

¹¹ Id.

business purpose and are also affected by various other fees and rebates on the Exchange, and thus it is reasonable to make no adjustment at this time.

Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because they 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 activities. 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

ISE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed fee change does not impose a burden on competition because it is consistent with fees charged by other exchanges. The proposed fees, which the Exchange believes are comparable to fees charged by its competitors for similar orders, will encourage competition and continue to attract additional order flow in these symbols to ISE.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. Since competitors of the Exchange are free to modify their own fees in response, and because market participants may readily adjust their order routing

practices, ISE believes that the degree to which fee changes in this market may impose a burden on competition is limited. In this instance, ISE is instituting a nominal increase. If the fee change is unattractive to market participants, it is likely that ISE will not attract additional order flow in the symbols that are subject to the proposed fee change. For the reasons described above, the Exchange believes that the proposed fee change reflects this competitive environment.

The Exchange believes the proposed Market Maker fee change will not impose any unnecessary burden on intramarket competition because, while it only applies to Market Maker orders, Market Makers take on a number of obligations and responsibilities, significant regulatory burdens, and financial obligations that other market participants are not required to undertake. The proposed Market Maker fee change may attract increased order flow in Non-Select Symbols and FX Options to the Exchange, which will provide increased volume and greater trading opportunities for all market participants. With respect to the price differentiation between Market Makers entering Regular Orders directly versus entering Regular Orders through an Electronic Access Member (“EAM”), the Exchange notes that such fees have historically been at different levels and have been adjusted from time to time. EAMs representing Market Makers is a distinct business activity, different from when Market Makers are directly trading on the Exchange by submitting quotations in the course of regular market making. Using an EAM as the executing broker to submit an order, the Market Maker may be participating in a crossing transaction or ‘working’ an order, which may involve different non-Exchange costs or discounts. Because of this different dynamic, while the fee for a Market Maker entering a Regular Order through an EAM is different from the fee for a Market Maker entering a Regular Order directly, the fees are in the same range, but the former is recognized as a distinct business and thus is a distinct item on the Exchange’s Schedule of Fees. Therefore, the

Exchange believes that any potential effects on intramarket competition that the proposed fee change may cause are justified.

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 Act¹² and subparagraph (f)(2) of Rule 19b-4 thereunder,¹³ because it establishes a due, fee, or other charge imposed by ISE.

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:

Electronic comments:

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

- 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-2013-46 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-2013-46. 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 such 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-2013-46 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).