

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70859; File No. SR-ISE-2013-54)

November 13, 2013

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

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 November 1, 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 decrease its Options Regulatory Fee. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to decrease its Options Regulatory Fee ("ORF"). The Exchange has reevaluated the current amount of the ORF in light of increased trading volumes year-to-date. In order to ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs, the Exchange is proposing to decrease the ORF from \$0.0042 per contract to \$0.0039 per contract. The Exchange is also proposing to remove language from its Schedule of Fees that indicates that the ORF is effective starting on January 1, 2010 as this effective date has passed.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of members' customer options business, including performing routine surveillance and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the proposed ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange notes that its regulatory responsibilities with respect to member compliance with options sales practice rules have been allocated to the Financial Industry Regulatory Authority ("FINRA") under a 17d-2 Agreement. The ORF is not designed to cover the cost of options sales practice regulation.

The ORF is assessed by the Exchange to each member for all options transactions in both Standard Options and Mini Options executed or cleared by the member that are cleared by The Options Clearing Corporation ("OCC") in the customer range, i.e., transactions that clear in the customer account of the member's clearing firm at OCC, regardless of the exchange on which the transaction occurs. In other words, ISE imposes the ORF on all customer-range transactions

executed by a member, even if the transactions do not take place on the Exchange.<sup>3</sup> The ORF also is charged for transactions that are not executed by a member but are ultimately cleared by a member. In the case where a non-member executes a transaction and a member clears the transaction, the ORF will be assessed to the member who clears the transaction. In the case where a member executes a transaction and another member clears the transaction, the ORF will similarly be assessed to the member who clears the transaction.

The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange. As a practical matter, it is not feasible or reasonable for the Exchange (or any SRO) to identify each executing member that submits an order on a trade-by-trade basis. There are countless executing market participants, and each day such participants can and often do drop their connection to one market center and establish themselves as participants on another. It is virtually impossible for any exchange to identify each executing participant on a given trading day. Clearing members, however, are distinguished from executing participants because they remain identified to the Exchange regardless of the identity of the initiating executing participant, their location, and the market center on which they execute transactions. Therefore, the Exchange believes it is more efficient for the operation of the Exchange and for the marketplace as a whole to collect the ORF indirectly from members through their clearing firms.

The Exchange also believes that its broad regulatory responsibilities with respect to a member's activities supports applying the ORF to transactions cleared but not executed by a member. The Exchange's regulatory responsibilities are the same regardless of whether a

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<sup>3</sup> Exchange rules require each member to submit trade information in order to allow the Exchange to properly prioritize and match orders and quotations and report resulting transactions to the OCC. See ISE Rule 712. The Exchange represents that it has surveillance in place to verify that members comply with the rule.

member executes a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activities, including performing surveillance for position limit violations, manipulation, front-running, contrary exercise advice violations and insider trading.

The Exchange further believes it is reasonable and appropriate for the Exchange to charge the ORF for options transactions regardless of the exchange on which the transactions occur. The Exchange has a statutory obligation to enforce compliance by members and their associated persons under the Act and the rules of the Exchange, and to surveil for other manipulative conduct by market participants (including non-members) trading on the Exchange. Many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running and contrary exercise advice violations/expiring exercise declarations. The Exchange cannot effectively surveil for such conduct without looking at and evaluating activity across all options markets. Also, the Exchange and the other options exchanges are required to populate a consolidated options audit trail ("COATS") system in order to surveil a member's activities across markets.<sup>4</sup>

The Exchange believes that charging the ORF across markets will avoid having members direct their trades to other markets in order to avoid the fee and to thereby avoid paying for their fair share for regulation. If the ORF did not apply to activity across markets then a member would send their orders to the least cost, least regulated exchange. Other exchanges do impose a similar fee on their member's activity, including the activity of those members on the ISE.<sup>5</sup>

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<sup>4</sup> COATS effectively enhances intermarket options surveillance by enabling the options exchanges to promptly reconstruct the market to effectively surveil certain rules.

<sup>5</sup> See e.g. Securities Exchange Act Release Nos. 61133 (Dec. 9, 2009), 74 FR 66715 (December 16, 2009) (SR-Phlx-2009-100); 68711 (Jan. 23, 2013), 78 FR 6155 (Jan. 29, 2013) (SR-MIAX-2013-01)).

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange expects to monitor its regulatory costs and revenues at a minimum on an annual basis. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange will notify members of adjustments to the ORF via circular.

## 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>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act<sup>7</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 Exchange believes that the proposed fee is reasonable in that it would help the Exchange to ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs in light of increased trading volumes. The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business.

The Exchange believes the ORF is equitable and not unfairly discriminatory because it is objectively allocated to members in that it is charged to all members on all their transactions that clear as customer at the OCC. Moreover, the Exchange believes the ORF ensures fairness by assessing fees to those members that require more Exchange regulatory services based on the

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component of its regulatory program (e.g., member proprietary transactions).

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. The proposed rule change is not designed to address any competitive issues. Rather, the proposed rule change is designed to help the Exchange to adequately fund its regulatory activities while seeking to ensure that total regulatory revenues do not exceed total regulatory costs.

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>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>9</sup> because it establishes a due, fee, or other charge imposed by ISE.

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

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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:

- 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-2013-54 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-2013-54. 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-2013-54 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).