

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70872; File No. SR-ISE-2013-57)

November 14, 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"),¹ and Rule 19b-4 thereunder,² 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 and II 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 its Schedule of Fees. 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-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 purpose of this proposed rule change is to amend the Exchange's Schedule of Fees to increase the Market Maker Plus rebate for Market Makers³ that meet certain additional qualification standards. The Exchange 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 all symbols that are in the Penny Pilot program ("Select Symbols"). In order to promote and encourage liquidity in Select Symbols, the Exchange currently offers Market Makers that meet the quoting requirements for Market Maker Plus a rebate of \$0.10 per contract in Standard Options, and \$0.010 per contract in Mini Options, for adding liquidity in those symbols.⁴ The Exchange now proposes to pay a higher rebate of \$0.12 per contract and \$0.012 per

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

⁴ A Market Maker qualifies for Market Maker Plus if it 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 for all expiration months in that symbol during the current trading 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 Market Maker Plus, if doing so will qualify a Market Maker for the rebate.

contract for Standard and Mini Options, respectively, to Market Makers that meet the quoting requirements for Market Maker Plus and are affiliated with an Electronic Access Member that executes a total affiliated Priority Customer⁵ average daily volume (“ADV”) of 200,000 contracts in a calendar month.⁶ ISE Market Makers that qualify as Market Maker Plus, but whose affiliates do not meet the minimum Priority Customer ADV threshold, will continue to earn a rebate of \$0.10 per contract for Standard Options and \$0.010 per contract for Mini Options.

All eligible volume from affiliated Members will be aggregated in determining total affiliated Priority Customer ADV, provided there is at least 75% common ownership between the Members as reflected on each Member’s Form BD, Schedule A. The Exchange believes that aggregating Priority Customer ADV across Members that share at least 75% common ownership will allow Members to continue to execute orders on the Exchange through separate broker-dealer entities for different types of volume, while still qualifying for the benefit of the new higher Market Maker Plus rebate based on volume being executed across such entities. The requirement that affiliates share at least 75% common ownership is consistent with the definition of “affiliate” adopted on the

⁵ 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).

⁶ Priority Customer ADV includes all volume in all symbols and order types. Volume in Standard Options and Mini Options will be combined to calculate Priority Customer ADV but Market Makers will be rebated for all Standard Options traded at the Standard Option rebate amount and for all the Mini Options traded at the Mini Option rebate amount.

Topaz Exchange, LLC and other options exchanges,⁷ and as proposed today in another filing with respect to the ISE's Firm Fee Cap.⁸

The exchange is also proposing that, for purposes of determining total affiliated Priority Customer ADV, any day that the market is not open for the entire trading day may be excluded from such calculation. This is consistent with the Exchange's rules for calculating ADV in connection with tiered rebates for Priority Customer complex orders,⁹ and would allow the Exchange to exclude days where the Exchange declares a trading halt in all securities or honors a market-wide trading halt declared by another market.¹⁰ The Exchange will provide a notice, and post it on the Exchange's website, to inform Members of any day that is to be excluded from its ADV calculations in connection with this proposed rule change.

2. Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹¹ in general, and Section 6(b)(4) of the Act,¹² in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

⁷ See e.g. Securities Exchange Act Release No. 70670 (October 11, 2013), 78 FR 62815 (October 22, 2013) (SR-Topaz-2013-08).

⁸ See SR-ISE-56 [sic] (November 1, 2013).

⁹ See Securities Exchange Act Release No. 70657 (October 10, 2013), 78 FR 62899 (October 22, 2013) (SR-ISE-2013-51).

¹⁰ The Exchange will not be excluding days on which the Exchange closes early for holiday observance from its ADV calculation.

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4).

The Exchange already provides a rebate to Market Makers that meet the Exchange's stated quoting criteria, and is now proposing to pay a higher rebate to certain Market Makers that meet an additional affiliated Priority Customer ADV threshold. The Exchange believes that providing higher rebates to Market Makers whose affiliated companies execute more Priority Customer volume on the ISE will attract additional Priority Customer order flow to the Exchange, which will ultimately benefit all market participants that trade on the ISE. The proposed rebate will also provide Market Makers an extra incentive to qualify for Market Maker Plus in additional symbols. The Exchange believes the proposed rule change will encourage Market Makers to post tighter markets in Select Symbols and thereby maintain liquidity and attract additional order flow to the Exchange. The Market Maker Plus rebate is competitive with incentives provided by other exchanges, and has proven to be an effective incentive for Market Makers to provide liquidity in Select Symbols. Furthermore, the Exchange believes that the new Market Maker Plus rebate is not unfairly discriminatory because all Market Makers can achieve the new higher rebate by satisfying the current quoting requirements and executing the required Priority Customer volume on the ISE through its [sic] affiliates.

The language permitting aggregation of volume amongst corporate affiliates for purposes of the total affiliated Priority Customer ADV calculation is intended to avoid disparate treatment of firms that have divided their various business activities between separate corporate entities as compared to firms that operate those business activities within a single corporate entity. By way of example, many firms that are Members of the Exchange operate several different business lines within the same corporate entity. In contrast, other firms may be part of a corporate structure that separates those business

lines into different corporate affiliates, either for business, compliance or historical reasons. Those corporate affiliates, in turn, are required to maintain separate memberships with the Exchange in order to access the Exchange. The Exchange believes that corporate affiliates should be aggregated in determining whether Members qualify for this new Market Maker Plus rebate. The Exchange notes that the proposed definition of “affiliate” is consistent with definitions used by other options exchanges, including the Topaz Exchange, LLC, the Chicago Board Options Exchange, Inc., and the MIAX Options Exchange.¹³

The Exchange believes that it is equitable and reasonable to permit the Exchange to eliminate from the calculation days on which the market is not open the entire trading day because it preserves the Exchange’s intent behind adopting volume-based pricing. In particular, the Exchange notes that if it did not have the ability to exclude aberrant low volume days when calculating ADV for the month, Members may experience an unintended cost increase due to the artificially low trading volume on those days. Moreover, as stated above, this is consistent with the Exchange’s rules for calculating ADV in connection with tiered rebates for Priority Customer complex orders.

The Exchange notes that it has determined to charge fees and provide rebates in Mini Options at a rate that is 1/10th the rate of fees and rebates the Exchange provides for trading in Standard Options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees and rebates to provide market participants an incentive to trade Mini Options on the Exchange. The Exchange believes the proposed

¹³ See ISE Gemini Schedule of Fees, Section I, Regular Order Fees and Rebates for Standard Options, and Section II, Regular Order Fees and Rebates for Mini Options; CBOE Fee Schedule, Volume Incentive Program (VIP); MIAX Fee Schedule, Transaction Fees, Exchange Fees, Priority Customer Rebate Program.

rebates 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, is providing rebates for Mini Options that are 1/10th of those applicable to Standard Options.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁴ the Exchange 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 does not believe the proposed fee change will impose a burden on intramarket competition because the proposed rebate applies equally to all Market Makers that satisfy the quoting requirements and whose affiliates execute the required Priority Customer volume on the ISE. With respect to intermarket competition, the Exchange believes that this new Market Maker Plus rebate is competitive with incentives provided by other exchanges. The Exchange 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. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

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.

¹⁴ 15 U.S.C. 78f(b)(8).

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) of the Act¹⁵ and paragraph (f) of Rule 19b-4 thereunder.¹⁶ At any time within 60 days of the filing of the 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.

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 No. SR-ISE-2013-57 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2013-57. This file number should be included on the subject line if e-mail is used. To help the Commission process and

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f).

review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions 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 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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-2013-57 and should be submitted by
[insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to
delegated authority.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).