

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71053; File No. SR-ISE-2013-63)

December 12, 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 27, 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 exclude from its ADV calculations any trading day on which the Exchange is closed early for holiday observance. 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

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

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

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 proposes to exclude from its average daily volume (“ADV”) calculations any trading day on which the Exchange is closed early for holiday observance. The Exchange provides volume-based tiered rebates for Priority Customer complex orders when these orders trade with non-Priority Customer orders in the complex order book, or trade with quotes and orders on the regular order book. These complex order rebates are provided to members in six tiers in both Standard and Mini Options based on the member’s ADV in Priority Customer complex contracts. On September 30, 2013 the Exchange filed with the Commission an immediately effective rule filing that, among other things, amended its Schedule of Fees to permit the Exchange to exclude from its ADV calculation, when determining Priority Customer complex order tiers, any day that the market is not open for the entire trading day.<sup>3</sup> On November 1, 2013 the Exchange further amended its Schedule of Fees to increase its Market Maker Plus rebate in Standard Options and Mini Options for 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 Customer ADV of 200,000 contracts in a calendar month.<sup>4</sup> When introducing this new Market Maker Plus rebate the Exchange also included language indicating 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

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<sup>3</sup> See Securities Exchange Act Release No. 70657 (October 10, 2013), 78 FR 62899 (October 22, 2013) (ISE-2013-51).

<sup>4</sup> See Securities Exchange Act Release No. 70872 (November 14, 2013), 78 FR 69718 (November 20, 2013) (ISE-2013-57).

calculation. Currently, each of these provisions allows 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. In these filings, however, the Exchange noted that, in contrast to the NASDAQ OMX PHLX, LLC (“PHLX”) and NASDAQ Options Market (“NOM”) filings on which this language was based,<sup>5</sup> it would not exclude days on which the Exchange is closed early for holiday observance. The Exchange has since determined that it would be more equitable to exclude these days as well. While members are aware in advance of days subject to an early scheduled close – for example, the Friday after Thanksgiving – these are still low volume days, and including these days in the ADV calculation would have the detrimental effect of lowering members’ daily and monthly ADV and thereby qualifying members for lower rebates. The Exchange believes that this effective cost increase during months where the Exchange has scheduled early market closes is undesirable to the Exchange and its members, and is therefore proposing to interpret this provision in the same manner as NOM and PHLX.<sup>6</sup> The Exchange notes that it will not be making any textual changes to its fees as this proposed change brings its interpretation in line with that of other markets with substantially similar language to that already included in the Schedule Fees [sic].<sup>7</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and Section 6(b)(4) of the Act,<sup>9</sup> in particular, in that it is

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<sup>5</sup> See Securities Exchange Act Release Nos. 70472 (September 23, 2013), 78 FR 59738 (September 27, 2013) (PHLX-2013-93); 70470 (September 23, 2013), 78 FR 59740 (September 27, 2013) (NASDAQ-2013-117).

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> 15 U.S.C. 78f.

designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that it is equitable and reasonable to eliminate days subject to an early scheduled closed [sic] from its ADV calculation because it preserves the Exchange's intent behind adopting volume-based pricing, and conforms the rules of the Exchange with those of other markets. The Exchange further believes that the proposed change is non-discriminatory because it applies equally to all members and to all volume tiers.

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

In accordance with Section 6(b)(8) of the Act,<sup>10</sup> the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed modification to its ADV calculation is pro-competitive and will result in lower total costs to end users, a positive outcome of competitive markets. Moreover, this proposed rule change conforms the rules of the Exchange with those of other markets that have adopted substantially similar rules for excluding certain days from their ADV calculations. 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.

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<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78f(b)(8).

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>11</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>12</sup> 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:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2013-63 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-2013-63. 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-2013-63 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>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).