

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77593; File No. SR-ISE-2016-09)

April 12, 2016

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” or “Exchange Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 1, 2016, the International Securities Exchange, LLC (the “Exchange” or “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

ISE proposes to amend the Schedule of Fees as described in more detail below. The text of the proposed rule change is available on the Exchange’s Internet website at <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 Exchange 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 purpose of this proposed rule change is to amend the Schedule of Fees to modify the Regular Order Fee for Responses to Crossing Orders in Select³ and Non-Select Symbols and Fee for Non-Select Symbols.

The Exchange proposes the following two fee changes. First, the Exchange proposes to change the Fee for Responses to Crossing Orders in Select and Non-Select Symbols for all members from \$0.47 per contract to \$0.50 per contract. Next, the Exchange proposes to change the Fees in Non-Select Symbols charged to Non-ISE Market Maker (“FarMM”),⁴ Firm Proprietary⁵ / Broker-Dealer,⁶ and Professional Customer⁷ from \$0.50 per contract to \$0.72 per contract.

³ “Select Symbols” are options overlying all symbols listed on the ISE that are in the Penny Pilot Program.

⁴ A Non-ISE Mercury 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.

⁵ A Firm Proprietary order is an order submitted by a member for its own proprietary account.

⁶ A Broker-Dealer order is an order submitted by a member for a non-member broker-dealer account.

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general, and Section 6(b)(4) of the Act,⁹ 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.

The Exchange believes that the proposed fee increases are reasonable and equitable as the proposed fees are set at levels that the Exchange believes will continue to be attractive to market participants that trade on ISE. Moreover, the proposed fees are competitive with fees charged by other options exchanges and remain attractive to members for this reason. For example, ISE's proposed Fee for Responses to Crossing Orders in Select Symbols is the same as ISE Mercury's Fee for Responses to Crossing Orders (excluding Market Makers) in Penny Symbols.¹⁰ Further, ISE's proposed Fee for Responses to Crossing Orders in Non-Select Symbols is less than ISE Mercury's Fee for Responses to Crossing Orders (excluding Market Makers) in Non-Penny Symbols.¹¹ Additionally, the Regular Order Non-Select Symbol Fee of \$0.72 is less than the Electronic, Non-Penny Classes fee of \$0.75 charged by the Chicago Board Options Exchange.¹²

The Exchange also notes that the proposed Fees for Responses to Crossing Orders are not unfairly discriminatory because they apply equally to all members. Additionally, the Exchange further notes that for the Non-Select Symbol Fee, Priority Customers will continue to be charged

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ See ISE Mercury Fee Schedule, Regular Order Fees and Rebates, Table 2 at http://www.ise.com/assets/mercury/documents/OptionsExchange/legal/fee/Mercury_Fee_Schedule.pdf.

¹¹ Id.

¹² See CBOE Fee Schedule, Equity Options Rate Table, Transaction Fee Per Contract at <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>.

no fee, while other market participants will continue to pay a fee. The Exchange does not believe that this is unfairly discriminatory as a Priority Customer is by definition not a broker or 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). This limitation does not apply to participants whose behavior is substantially similar to that of market professionals, including Professional Customers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers. With respect to Market Maker orders, the Exchange believes that it is reasonable and equitable to keep their fees the same because Market Makers are subject to additional requirements and obligations (such as quoting requirements) that other market participants are not.

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

In accordance with Section 6(b)(8) of the Act,¹³ 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. The Exchange believes that the proposed fees remain competitive with fees charged by other options exchanges as discussed above. 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.

¹³ 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,¹⁴ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹⁵ 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

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-ISE-2016-09 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISE-2016-09. 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-2016-09 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.¹⁶

Robert W. Errett
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).