

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69757; File No. SR-ISE-2013-36)

June 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 June 3, 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 the 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-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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend certain fees for regular orders in Non-Select Symbols<sup>3</sup> and in FX Options traded on the Exchange. 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 1/10<sup>th</sup> of the fees for standard options.<sup>4</sup>

For regular orders in Non-Select Symbols, the Exchange currently charges an execution fee of: i) \$0.18 per contract for Market Maker<sup>5</sup> orders; ii) \$0.20 per contract for Market Maker orders (for orders sent by Electronic Access Members); iii) \$0.30 per contract for Firm Proprietary / Broker-Dealer and Professional Customer<sup>6</sup> orders; iv) \$0.45 per contract for Non-ISE Market Maker<sup>7</sup> orders; and v) \$0.00 per contract for Priority Customer<sup>8</sup> orders (for Singly

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<sup>3</sup> Non-Select Symbols are options overlying all symbols that are not in the Penny Pilot Program.

<sup>4</sup> See Securities Exchange Act Release No. 69270 (April 2, 2013), 78 FR 20988 (April 8, 2013) (SR-ISE-2013-28).

<sup>5</sup> The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See ISE Rule 100(a)(25).

<sup>6</sup> A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

<sup>7</sup> A Non-ISE 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 registered in the same options class on another options exchange.

<sup>8</sup> 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).

Listed Symbols, this fee is \$0.20 per contract). The Exchange now proposes to lower the execution fee for regular Firm Proprietary / Broker-Dealer and Professional Customer orders, from \$0.30 per contract to \$0.20 per contract, when these market participants provide liquidity in the Non-Select Symbols. The Exchange is not proposing any change to the execution fee for other market participants.

For regular orders in FX Options, the Exchange currently charges an execution fee of: i) \$0.18 per contract for Market Maker and Priority Customer orders; ii) \$0.20 per contract for Market Maker orders (for orders sent by Electronic Access Members); iii) \$0.30 per contract for Firm Proprietary / Broker-Dealer and Professional Customer orders; iv) \$0.45 per contract for Non-ISE Market Maker orders; v) \$0.40 per contract for Priority Customer orders in Early Adopter FX Option Symbols; and vi) \$0.00 per contract for Early Adopter Market Maker orders. The Exchange now proposes to lower the execution fee for regular Firm Proprietary / Broker-Dealer and Professional Customer orders, from \$0.30 per contract to \$0.20 per contract, when these market participants provide liquidity in FX Options. The Exchange is not proposing any change to the execution fee for other market participants.

Finally, the Exchange proposes to remove a reference to a number of index options that previously traded on ISE pursuant to a license agreement and that have now been delisted by the Exchange. Specifically, ISE is removing reference to the following index options in Section VI. B. of the Schedule of Fees: the Russell 2000® Index (“RUT”), the Russell 1000® Index (“RUT”), the Mini Russell 2000® Index (“RMN”), the Morgan Stanley Retail Index (“MVR”), the Morgan Stanley High Tech Index (“MSH”), the KBW Mortgage Finance Index (“MFX”), the S&P® MidCap 400 Index (“MID”), and the S&P® SmallCap 600 Index (“SML”).

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities and Exchange Act of 1934 (the “Act”)<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</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 its proposal to assess a \$0.20 per contract fee for regular Firm Proprietary / Broker-Dealer and regular Professional Customer orders in Non-Select Symbols and in FX Options when they provide liquidity is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, NASDAQ Options Market (“NOM”) currently charges a fee of \$0.45 per contract for similar orders in non-Penny Pilot options that provide liquidity in its regular order book,<sup>11</sup> while NASDAQ OMX PHLX LLC (“PHLX”) charges \$0.60 per contract for its foreign currency options regardless of whether the order provides liquidity or takes liquidity.<sup>12</sup> The proposed fee is also reasonable and equitably allocated because it is identical to the fee currently charged by the Exchange for regular Crossing Orders in Non-Select Symbols and in FX Options.<sup>13</sup> With

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

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> See NOM fee schedule at [http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp\\_1\\_1\\_15&manual=%2Fnasdaq%2Fmain%2Fnasdaq-optionsrules%2F](http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp_1_1_15&manual=%2Fnasdaq%2Fmain%2Fnasdaq-optionsrules%2F).

<sup>12</sup> See PHLX Fee Schedule at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F4%5F1&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2Drulesbrd%2F>.

<sup>13</sup> See ISE Schedule of Fees, Section I, Regular Order Fees and Rebates for Standard Options, and Section V, FX Options Fees and Rebates.

this proposed rule change, regular Firm Proprietary / Broker-Dealer and regular Professional Customer orders will be charged the same fee when they provide liquidity as regular Market Maker (for orders sent by Electronic Access Members) orders and regular Priority Customer orders (for Singly Listed Symbols) are charged when they provide liquidity in Non-Select Symbols and in FX Options. The Exchange further notes that regular Firm Proprietary / Broker-Dealer and Professional Customer orders will now pay a lower fee than the fee currently charged to these orders, which the Exchange believes will serve as an incentive for market participants to direct this order flow to ISE rather than to a competing exchange.

The Exchange believes its proposal to decrease the execution fee for regular Firm Proprietary / Broker-Dealer and regular Professional Customer orders in Non-Select Symbols and in FX Options when they provide liquidity is not unfairly discriminatory because the lower fee would apply uniformly to all regular Firm Proprietary / Broker-Dealer and Professional Customer orders in the same manner.

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 today.

The Exchange believes that the price differentiation between the various market participants is justified. As for Priority Customers, for the most part, the Exchange does not charge Priority Customers a fee (Priority Customers have traditionally traded options on the

Exchange without a fee) and to the extent they pay a transaction fee, those fees are lower than or the same as fees charged to other market participants. The Exchange believes charging lower fees, or no fees, to Priority Customer orders attracts that order flow to the Exchange and thereby creates liquidity to the benefit of all market participants who trade on the Exchange. With respect to fees to Non-ISE Market Maker orders, the Exchange believes that charging Non-ISE Market Maker orders a higher rate than the fee charged to Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer regular orders is appropriate and not unfairly discriminatory because Non-ISE Market Makers are not subject to many of the non-transaction based fees that these other categories of membership are subject to, e.g., membership fees, access fees, API/Session fees, market data fees, etc. Therefore, the Exchange believes it is appropriate and not unfairly discriminatory to assess a higher transaction fee to Non-ISE Market Makers because the Exchange incurs costs associated with these types of orders that are not recovered by non-transaction based fees paid by members. With respect to fees for Market Maker 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.

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

Finally, the Exchange's proposal to remove references to RUT, RUI, RMN, MVR, MSH, MFX, MID, and SML in Section VI.B. of the Schedule of Fees is reasonable, equitable and not unfairly discriminatory because the Exchange has delisted these products and these products no longer trade on the Exchange. The reference to a license surcharge on the Exchange's Schedule of Fees for these products is therefore unnecessary.

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 the proposed fee is consistent with fees charged by other exchanges. The proposed fee change for regular orders in Non-Select Symbols, which the Exchange believes is lower than fees charged by its competitors for similar orders, will encourage competition and attract additional order flow in these symbols to ISE. The Exchange believes that the proposed fee change for regular orders in FX Options will not impose any unnecessary burden on competition because even though these options are solely listed on ISE, the Exchange operates in a highly competitive market, comprised of eleven exchanges, any of which can determine to trade similar products.

At least one other exchange currently trades foreign currency options.<sup>14</sup> While PHLX World Currency Options® are not fungible with FX Options, they provide investors with a choice to trade in a competing product.

The Exchange also believes the proposed fee for regular orders in Non-Select Symbols and in FX Options does not impose a burden on competition because it sets the same rate and therefore, will apply uniformly to all regular Firm Proprietary / Broker-Dealer and Professional Customer orders in Non-Select Symbols and in FX Options traded on the Exchange.

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. For the reasons described above, the Exchange believes that the proposed fee change reflects 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.

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>15</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>16</sup> because it establishes a due, fee, or other charge imposed by ISE.

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<sup>14</sup> See PHLX World Currency Options® at <http://www.nasdaqtrader.com/Micro.aspx?id=PHLXFOREXOptions>.

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

<sup>16</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-2013-36 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-2013-36. 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 20549-1090, 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 offices of 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-2013-36, 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>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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