

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71914; File No. SR-ISE-2014-20)

April 9, 2014

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 April 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 amend the 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.

¹ 15 U.S.C. 78s(b)(1).

² 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 the proposed rule change is to amend the Schedule of Fees as described in more detail below. The fee changes discussed apply to both Standard Options and Mini Options traded on Exchange. 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 1/10th of the fees for Standard Options.

1. Market Maker Plus

In order to promote and encourage liquidity in symbols that are in the penny pilot program (“Select Symbols”), the Exchange currently offers Market Makers³ that meet the quoting requirements for Market Maker Plus⁴ a rebate of \$0.20 per contract for adding liquidity in those symbols. In addition, the Exchange pays a higher rebate of \$0.22 per contract to Market Makers that meet the quoting requirements for Market Maker Plus and are affiliated with an

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 Plus is a Market Maker who is on the National Best Bid or National Best Offer at least 80% of the time for series trading between \$0.03 and \$3.00 (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 \$3.00 (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.

Electronic Access Member (“EAM”) that executes a total affiliated Priority Customer⁵ average daily volume (“ADV”) of 200,000 contracts or more in a calendar month.⁶

The Exchange proposes to modify the criteria used to determine which days may be excluded from the Market Maker Plus calculation. Currently, in determining whether a Market Maker qualifies for Market Maker Plus, the Exchange excludes the member’s single best and single worst overall quoting days each month, on a per symbol basis, if doing so will qualify a member for the rebate. When the Exchange modified the qualification requirements for Market Maker Plus to look solely to the front two months,⁷ however, it did not change the method used to determine a Market Maker’s best and worst quoting days. As such, this calculation is still based on members’ overall quotation statistics, including expiration months other than the front two months used to determine if a Market Maker qualifies for Market Maker Plus. The Exchange believes that this could unintentionally make it more difficult for Market Makers to achieve the Market Maker Plus rebates,⁸ and therefore proposes to base the calculation for excluding a Market Maker’s best and worst days on the front two expiration months only, consistent with the criteria used to qualify Market Makers for Market Maker Plus rebates.⁹

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 See Securities Exchange Act Release No. 70872 (November 14, 2013), 78 FR 69718 (November 20, 2013) (SR-ISE-2013-57).

⁷ See Securities Exchange Act Release No. 71765 (March 21, 2014), 79 FR 17216 (March 27, 2014) (SR-ISE-2014-17).

⁸ For example, if a day is excluded where a Market Maker exceeds the Market Maker Plus quoting threshold based on the front two expiration months, but has a lower performance in other expirations.

⁹ The Exchange currently determines whether a Market Maker qualifies as a Market Maker Plus at the end of each month by looking back at each Market Maker’s quoting statistics per symbol during that month. The Exchange will continue to monitor each Market Maker’s quoting statistics to determine whether a Market Maker qualifies for a rebate

The Exchange also notes that when it increased the Market Maker Plus rebate to \$0.22 per contract for members that meet the total affiliated Priority Customer ADV threshold described above,¹⁰ it did not update its fee schedule to reflect the equivalent rebate for Mini Options. As explained in that filing, the fees and rebates for Mini Options are and shall continue to be 1/10th of the fees for Standard Options. The Exchange therefore proposes to clarify that this rebate is \$0.022 per contract in Mini Options, consistent with the rebate provided for Standard Options.

2. Crossing Order Fees: Clean-Up Changes

On March 3, 2013 the Exchange filed an immediately effective rule change that introduced a new fee for orders of one hundred or fewer contracts submitted to the Price Improvement Mechanism (“PIM”).¹¹ The Exchange now proposes to clarify that all Firm Proprietary and Non-ISE Market Maker contracts traded in the PIM are subject to the Firm Fee Cap, and that the new fee for PIM orders of 100 or fewer contracts applies to both the originating and contra order. In connection with this change, the Exchange also proposes to clarify that the fee for Crossing Orders applies to both the originating and contra order for both regular and complex orders.

Finally, the Exchange proposes to update a footnote for Mini Options that states that the fee for Crossing Orders is applied to any contracts for which a PIM break-up rebate is provided.

under the standards proposed herein. The Exchange also currently provides Market Makers a report on a daily basis with quoting statistics so that Market Makers can determine whether or not they are meeting the Exchange’s current stated criteria. Again, the Exchange will continue to provide Market Makers a daily report so that Market Makers can track their quoting activity to determine whether or not they qualify for the Market Maker Plus rebate.

¹⁰ See supra note 5.

¹¹ See supra note 5.

As already reflected in the fee schedule with respect to Standard Options, PIM orders of one hundred or fewer contracts are now subject to a separate fee, and this fee, not the fee for Crossing Orders, is applied to those orders when a break-up rebate is provided.¹²

3. Broker Dealer Definition

A “Broker-Dealer” order is presently defined as an order submitted by a member for a non-member broker-dealer account. In some instances, however, a member may submit orders for the account of another broker-dealer that is also an ISE member. Currently these orders would not fall into any of the market participant categories on the fee schedule. The Exchange believes that these orders should also be marked as Broker-Dealer orders, and therefore proposes to amend the definition of a Broker-Dealer order to include all orders submitted by a member for a broker-dealer account that is not its own proprietary account.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹³ in general, and Section 6(b)(4) of the Act,¹⁴ 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.

1. Market Maker Plus

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to base the calculation for excluding a Market Maker’s best and worst days on the front two

¹² The Exchange also proposes to modify another footnote with respect to Mini Options to state that the fee for Crossing Orders, rather than the “applicable fee” is applied to contracts for which the Facilitation and Solicitation break-up rebate is provided. While the current wording is correct, this language will now mirror language adopted for Standard Options.

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4).

expiration months only as the proposed change is consistent with the criteria now used to qualify Market Makers for the rebate, and may help additional Market Makers achieve Market Maker Plus. 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 to the benefit of all market participants that trade on the ISE. With this proposed change, the Exchange hopes to encourage participation in Market Maker Plus by making the Market Maker Plus calculation internally consistent and more transparent to members, as well as easier attain.

In addition, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to clarify the Market Maker Plus rebate in Mini Options for members that meet the total affiliated Priority Customer ADV threshold. As has always been the case, the fees and rebates for Mini Options are and shall continue to be 1/10th of the fees for Standard Options.

2. Crossing Order Fees: Clean-Up Changes

The Exchange believes that the proposed clarification regarding the fees for Crossing Orders is reasonable, equitable, and not unfairly discriminatory. The Schedule of Fees currently contains footnotes that explain which fees are applicable to orders executed in the ISE's crossing mechanisms. The proposed change inserts these footnotes where applicable throughout the Schedule of Fees, and makes additional changes to ensure consistency between footnotes applicable to Standard and Mini Options. The Exchange believes that these changes will further increase transparency for both members and investors.

3. Broker Dealer Definition

The Exchange believes that the proposed amendment to the definition of a Broker-Dealer order is reasonable, equitable, and not unfairly discriminatory as this is a technical change

intended to clarify how members should mark their orders. With this clarification, orders from a member broker-dealer executed through another member will be properly marked as Broker-Dealer orders, while orders submitted by a member for its own proprietary account will continue to be marked Firm Proprietary. This change is necessary to reduce member confusion, as the current definitions of market participant types do not account for the scenario described above.

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 fees and 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 fees and 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,¹⁵ 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 rule change is pro-competitive as it is designed to attract additional order flow to the ISE. 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 to remain

¹⁵ 15 U.S.C. 78f(b)(8).

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.

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 Act¹⁶ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹⁷ 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:

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁷ 17 CFR 240.19b-4(f)(2).

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-2014-20 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISE-2014-20. 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, D.C. 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 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-2014-20 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.¹⁸

Kevin M. O'Neill
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).