

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80080; File No. SR-ISE-2017-10)

February 22, 2017

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 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on February 10, 2017, the International Securities Exchange, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. 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 Exchange proposes to amend the Exchange’s Schedule of Fees, as described in further detail below.

The text of the proposed rule change is available on the Exchange’s Website at 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 in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item IV below. The Exchange 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 the proposed rule change is to amend the Exchange’s Schedule of Fees to increase, for all symbols other than FX Option Symbols,³ the fees applicable to Professional Customers⁴ for the initiating or contra side of Qualified Contingent Cross (“QCC”) orders or orders executed in the Solicited Order Mechanism (“Solicitation” orders). Accordingly, the proposed rule change will also increase the rebates that the Exchange currently provides to members using QCC and/or other solicited crossing orders, including solicited orders executed in the Solicitation, Facilitation, and Price Improvement Mechanisms (“solicited crossing orders”), in each case between Professional Customers or between a Professional Customer and a Priority Customer.⁵

Currently, the Exchange does not charge a fee to Professional Customers for QCC and Solicitation orders.⁶ As such, Professional Customer volume in QCC and Solicitation orders are rebated in accordance with the standard “Customer to Customer” rebate tiers, which are lower

³ “FX Option Symbols” are options overlying AUM, GBP, EEU and NDO.

⁴ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

⁵ A “Priority Customer” is a person or entity that: (i) is not a broker or dealer in securities; and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in ISE Rule 100(a)(37A).

⁶ See Securities Exchange Act Release No. 79811 (January 17, 2017), 82 FR 8244 (January 24, 2017) (SR-ISE-2017-01) (eliminating the Professional Customer fee for the initiating or contra side of a QCC or Solicitation order) (the “January Fee Filing”).

than the rebates provided for QCC and other solicited crossing orders to all other market participants than Professional and Priority Customers, as further described below.

The Exchange presently offers members rebates in QCC and other solicited crossing orders. These rebates are provided for each originating contract side of a crossing order, based on a member's volume in the crossing mechanisms during a given month. The applicable rebates will be applied on QCC and other solicited crossing order traded contracts once the specified volume threshold is met. Members receive the Non-“Customer to Customer” Rebate for all QCC and/or other solicited crossing orders except for QCC and other solicited crossing orders between two Priority and/or Professional Customers. QCC and other solicited crossing orders between two Priority and/or Professional Customers receive the “Customer to Customer” Rebate or “Customer to Customer” Rebate PLUS,⁷ respectively. Currently, for the Non-“Customer to Customer” Rebate, for members that execute 0 to 99,999 originating contract sides (“Tier 1”) the rebate is \$0.00 per contract, for members that execute 100,000 to 199,999 originating contract sides (“Tier 2”) the rebate is \$0.05 per contract, for members that execute 200,000 to 499,999 originating contract sides (“Tier 3”) the rebate is \$0.07 per contract, for members that execute 500,000 to 699,999 originating contract sides (“Tier 4”) the rebate is \$0.08 per contract, for members that execute 700,000 to 999,999 originating contract sides (“Tier 5”) the rebate is \$0.09 per contract, and for members that execute 1,000,000 originating contract sides or more (“Tier

⁷ The PLUS rebates currently apply to “Customer to Customer” Orders (i.e. QCC and other solicited crossing orders between two Priority and/or Professional Customers) executed by members with 1) a specified volume of QCC and other solicited crossing orders in a given month and 2) 175,000 or more unsolicited originating Facilitation contract sides per month. The Exchange notes that members may receive either the “Customer to Customer” Rebate or the “Customer to Customer” Rebate PLUS – not both.

6”) the rebate is \$0.11 per contract.⁸ Also, for the “Customer to Customer” Rebate, for Tier 1 the rebate is \$0.00, for Tiers 2 and 3 the rebate is \$0.01, and for Tiers 4 through 6 the rebate is \$0.03. Lastly, for the “Customer to Customer” Rebate PLUS, for Tier 1 the rebate is \$0.00, and for Tiers 2 through 6 the rebate is \$0.05.

The Exchange now proposes to charge a fee of \$0.10 per contract to Professional Customers for QCC and Solicitation orders. Accordingly, the Exchange also proposes that Professional Customer volume in QCC and Solicitation orders, as well as other solicited crossing orders, be rebated in the higher amounts set forth in the Non-“Customer to Customer” Rebate tiers as described above. As a result of the proposed changes, members would receive the “Customer to Customer” Rebate and the “Customer to Customer” Rebate PLUS for QCC and/or other solicited crossing orders between two Priority Customers only.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is reasonable and equitable to increase the fee for Professional Customer QCC and Solicitation orders because the proposed fee is designed to be attractive to Professional Customers that trade on ISE, and is generally lower than the fees

⁸ The rebate is applied to the originating contract side of QCC and other solicited crossing orders traded in a given month once a member reaches the specified volume threshold/tier during that month.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

applicable to other market participants, except for Priority Customers. Although the Exchange is increasing the Professional Customer fee for QCC and Solicitation orders, it is also increasing the associated rebates that the Exchange provides to members using such orders with the intent to attract greater order flow to ISE, which would ultimately benefit all market participants that trade on the Exchange.

In addition, the Exchange believes that it is equitable and not unfairly discriminatory to continue to provide lower fees for Priority Customer orders. 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 than Priority Customers. The Exchange notes that a recent modification to its rules caused a number of its Priority Customers to be re-classified as Professional Customers.¹¹ Under the rule change, such market participants who were previously classified as Priority Customers, and incurred no fees for executing QCC and Solicitation orders, would have started incurring such fees after being re-classified as Professional Customers. The Exchange therefore decided to treat these market participants the same as Priority Customers for purposes of the QCC and Solicitation orders as a means of easing the transition process for such participants. Following the one month period, the Exchange has determined that it is reasonable to begin assessing fees for Professional Customer QCC and Solicitation orders, which are still lower than the original amounts assessed prior to the January Fee Filing.

¹¹ See Securities Exchange Act Release No. 78788 (September 8, 2016), 81 FR 63252 (September 14, 2016) (SR-ISE-2016-19).

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the degree to which fee changes in this market may impose any burden on competition is extremely limited.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

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,¹² and Rule 19b-4(f)(2)¹³ thereunder. 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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

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. Please include File Number SR-ISE-2017-10 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-2017-10. 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-2017-10 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.¹⁴

Eduardo A. Aleman
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).