

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66734; File No. SR-ISE-2012-29)

April 4, 2012

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Additions to 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 2, 2012, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission (the “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 ISE proposes to add notes to its Schedule of Fees with respect to two fees. The text of 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 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 Exchange proposes to add notes to its Schedule of Fees with respect to the application of two fees currently assessed by ISE. The first note relates to Non-ISE Market Maker fees, which apply to regular and complex orders, and how those fees are applied to execution of complex orders on the Exchange.³ Non-ISE Market Maker fees were adopted by ISE in 2006.⁴ Prior to this fee change, Non-ISE Market Makers were subject to the fee listed on the Schedule of Fees under “firm proprietary” for both regular and complex orders. In order to attract complex orders to the Exchange, ISE charged an execution fee only on the largest leg of a complex order. Most of the execution fees for complex orders on the Exchange’s Schedule of Fees currently note that for complex orders, this fee is “charged for the leg of the trade consisting of the most contracts.” However, in 2006, when ISE carved out the fee for Non-ISE Market Makers as a separate line item on the Schedule of Fees, the Exchange inadvertently failed to note that the Exchange only charges an execution fee on the largest leg of a trade for complex orders sent to the Exchange. The Exchange continued to charge Non-ISE Market Makers only for the largest leg of a complex order. The Exchange now proposes to add the following note under the Non-ISE Market Maker line item: “For Complex Orders, fee charged only for the leg of the trade consisting of the most contracts.”

The second note relates to a fee for executions in symbols that are subject to the Exchange’s modified maker/taker fees. The Exchange initially adopted modified maker/taker

³ A Non-ISE Market Maker is a market maker as defined in Section 3(a)(38) of the Act, registered in the same options class on another options exchange.

⁴ See Securities Exchange Act Release No. 53630 (April 11, 2006), 71 FR 19918 (April 18, 2006) (SR-ISE-2006-18).

fees in April 2010⁵ and has since amended these fees regularly in response to competitive changes made by other options exchanges. These fees apply to market participants that add or remove liquidity from the Exchange in 101 options classes.⁶ When the Exchange adopted modified maker/taker fees, it did not specify how the maker/taker fees would apply to executions by Primary Market Makers (PMMs) when they provide away market price protection for marketable public customer orders when the ISE market is not at the NBBO in accordance with their obligations under ISE rules and the Intermarket Linkage Plan.⁷ Since the PMM is performing its linkage obligations when it executes (i.e., “trade reports”) such public customer orders, it is neither a taker nor maker of liquidity as those terms are used within the framework of the ISE’s maker/taker pricing model. Accordingly, when PMMs are performing this intermarket price protection function, the Exchange has not charged any fees or provided any rebates for PMM trade reports since the adoption of the maker/taker fees. The Exchange now proposes to specify in a note that: “Primary Market Makers do not receive a maker rebate nor pay a taker fee when trade reporting a public customer order in accordance with their obligation to provide away market price protection pursuant to ISE Rule 803(c)(2).”

⁵ See Securities Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR-ISE-2010-25).

⁶ Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange’s Schedule of Fees.

⁷ The Intermarket Linkage Plan prohibits an exchange from allowing the automatic execution of public customer orders at a price that is inferior to the best prices being publically displayed by another exchange. Under ISE Rule 803(c)(2), it is the responsibility of the PMM to either execute an order at a price that matches or betters the NBBO, or obtain such better prices on behalf of the public customer.

2. Statutory Basis

The Exchange believes that its proposal to clarify its Schedule of Fees is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act⁹ 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. In particular, the proposal will correct an ambiguity that was created by the adoption of a separate Non-ISE Market Maker fee that failed to specify the fee's application to complex orders. Non-ISE Market Makers were only charged for the largest leg of a complex order prior to that fee change, and continued to be charged only for the largest leg of a complex order after the fee change. Accordingly, the Exchange's application of the transaction fee to complex orders remained consistent, and Non-ISE Market Makers continued to be treated in a non-discriminatory manner with respect to the execution of complex orders.

The Exchange also believes it is fair and equitable not to charge a taker fee, nor provide a maker rebate, to PMMs when they trade report a public customer order in compliance with their linkage obligations. The PMM neither receives a financial benefit in the form of a rebate from performing its obligations, nor is it subject to the burden of paying the taker fee. The Exchange believe this is the most fair way to approach the PMM trade report function under the maker/taker pricing model, as categorizing the PMM trade report as a maker or taker would either provide an inequitable benefit to PMMs or place an inequitable burden on PMMs. The proposal to codify the application of the maker/taker pricing model to PMM trade reports will add transparency to the Exchange's Schedule of Fees.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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.¹⁰ 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

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2012-29 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-2012-29. 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-2012-29 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.¹¹

Kevin M. O'Neill
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).