

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66961; File No. SR-ISE-2012-38)

May 10, 2012

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Transaction Fees and Rebates for Certain Complex Orders Traded on the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 9, 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 is proposing to amend transaction fees and rebates for certain complex orders traded on the Exchange. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses per contract transaction fees and rebates to market participants that add or remove liquidity from the Exchange (“maker/taker fees and rebates”) in a number of options classes (the “Select Symbols”).³ The Exchange’s maker/taker fees and rebates are applicable to regular and complex orders executed in the Select Symbols. The Exchange also currently assesses maker/taker fees and rebates for complex orders in symbols that are in the Penny Pilot program but are not a Select Symbol (Non-Select Penny Pilot Symbols)⁴ and for complex orders in all symbols that are not in the Penny Pilot Program (“Non-Penny Pilot Symbols”).⁵ The purpose of this proposed rule change is to amend the maker/taker fees and rebates for complex orders in the Non-Select Penny Pilot Symbols traded on the Exchange.

For complex orders in the Non-Select Penny Pilot Symbols, the Exchange currently charges a “taker” fee of: (i) \$0.34 per contract for ISE Market Maker,⁶ Market Maker Plus,⁷

³ Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange’s Schedule of Fees.

⁴ See Exchange Act Release No. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR-ISE-2011-72).

⁵ See Exchange Act Release Nos. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR-ISE-2011-84); and 66392 (February 14, 2012), 77 FR 10016 (February 21, 2012) (SR-ISE-2012-06).

⁶ The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See ISE Rule 100(a)(25).

⁷ A Market Maker Plus is an ISE Market Maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between \$0.03 and \$5.00 (for

Firm Proprietary and Customer (Professional)⁸ orders; and (ii) \$0.38 per contract for Non-ISE Market Maker⁹ orders. Priority Customer¹⁰ orders are not charged a “taker” fee for complex orders in the Non-Select Penny Pilot Symbols. For complex orders in these same symbols, the Exchange currently charges a “maker” fee of: (i) \$0.10 per contract for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) \$0.20 per contract for Non-ISE Market Maker orders. Priority Customer orders are not charged a “maker” fee for complex orders in these symbols.

The Exchange now proposes to increase the “taker” fee for complex orders in the Non-Select Penny Pilot Symbols to (i) \$0.35 per contract for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) \$0.39 for Non-ISE Market Maker orders.

options whose underlying stock’s previous trading day’s last sale price was less than or equal to \$100) and between \$0.10 and \$5.00 (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 and 80% of the time for series trading between \$0.03 and \$5.00 (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 \$5.00 (for options whose underlying stock’s previous trading day’s last sale price was greater than \$100) in premium across all expiration months in order to receive the rebate. The Exchange 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 during that month. If at the end of the month, a Market Maker meets the Exchange’s stated criteria, the Exchange rebates \$0.10 per contract for transactions executed by that Market Maker during that month. The Exchange 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 stated criteria.

⁸ A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

⁹ 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, as amended (“Exchange Act”), registered in the same options class on another options exchange.

¹⁰ 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).

Further, the Exchange currently provides volume-based tiered rebates for Priority Customer complex orders in the Non-Select Penny Pilot Symbols when these orders trade with non-Priority Customer orders in the complex order book. Specifically, the Exchange currently provides a rebate of \$0.26 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book.

Additionally, Members who achieve certain average daily volume (ADV) of Priority Customer complex order contracts across all symbols executed during a calendar month are provided a rebate of \$0.28 per contract per leg in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts, and \$0.30 per contract per leg in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month.

In order to enhance the Exchange's competitive position and to incentivize Members to increase the amount of Priority Customer complex orders in the Non-Select Penny Pilot Symbols that they send to the Exchange, the Exchange now proposes to increase the base amount of the rebate to \$0.28 per contract. Additionally, the Exchange proposes to increase the amount of that rebate even further, on a month-by-month and Member-by-Member basis, if such Member achieves an ADV of Priority Customer complex order contracts across all symbols executed during the calendar month, as follows: if the Member achieves an ADV of 75,000 Priority Customer complex order contracts, the rebate amount shall be \$0.30 per contract per leg; if the Member achieves an ADV of 125,000 Priority Customer complex order contracts, the rebate amount shall be \$0.32 per contract per leg.

Additionally, ISE Market Makers who remove liquidity in the Non-Select Penny Pilot Symbols from the complex order book by trading with orders that are preferenced to them are currently charged \$0.32 per contract. With the proposed increase to the “taker” fees for complex orders in the Non-Select Penny Pilot Symbols noted above, the Exchange also proposes to increase the fee charged to ISE Market Makers who remove liquidity in these symbols to \$0.33 per contract when trading with orders that are preferenced to them.

Further, pursuant to Securities and Exchange Commission (“SEC”) approval, the Exchange currently allows Market Makers to enter quotations for complex order strategies in the complex order book.¹¹ The Exchange has adopted maker fees that apply to transactions in the complex order book when they interact with Priority Customer orders in a number of option classes, including XOP.¹² Specifically, the Exchange currently charges \$0.30 per contract in XOP for ISE Market Maker orders when these orders interact with Priority Customer orders. ISE Market Makers who add liquidity in XOP from the complex order book by trading with Priority Customer orders that are preferenced to them are charged \$0.28 per contract. In order to maintain the two cent differential, the Exchange proposes to amend the rule text in footnote 12 on page 20 of the Exchange’s Schedule of Fees. Specifically, the Exchange proposes to remove “(excluding XOP)” from the first sentence of footnote 12 in order to specify that the two cent discount for ISE Market Makers who remove liquidity from the complex order book by trading with orders that are preferenced to them applies to XOP. Further, the Exchange proposes to remove “remove or” from the second sentence of footnote 12 since the discounted fee for ISE

¹¹ See Securities Exchange Act Release No. 65548 (October 13, 2011), 76 FR 64980 (October 19, 2011) (SR-ISE-2011-39).

¹² See Securities Exchange Act Release Nos. 65958 (December 15, 2011), 76 FR 79236 (December 21, 2011) (SR-ISE-2011-81); and 66406 (February 16, 2012), 77 FR 10579 (February 22, 2012) (SR-ISE-2012-07). The Exchange notes that XOP is currently a Non-Select Penny Pilot Symbol.

Market Makers who remove liquidity in XOP is already addressed in the first sentence. As a result, the second sentence of footnote 12 will only address the fee for ISE Market Makers who add liquidity in XOP from the complex order book by trading with orders that are preferenced to them and that rate is currently \$0.28 per contract, which is two cents less than the rate currently charged to non-preferenced ISE Market Makers, which is \$0.30 per contract.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Exchange Act¹³ in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act¹⁴ 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 impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to interact with and respond to certain types of orders.

The Exchange believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade with Non-Priority Customer complex orders in the complex order book because paying a rebate would continue to attract additional order flow to the Exchange and create liquidity in the symbols that are subject to the rebate, which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange already provides these types of rebates, and is now merely proposing to increase those rebate amounts. The Exchange believes that the proposed rebates are competitive with rebates provided by other exchanges and are therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

The Exchange believes that its proposal to assess a \$0.35 per contract “taker” fee for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders in the Non-Select Penny Pilot Symbols that are subject to the Exchange’s maker/taker fees and rebates is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes and in some cases, is lower than the fees assessed by other exchanges. For example, NASDAQ OMX PHLX, Inc. (“PHLX”) currently charges \$0.37 per contract for removing liquidity in complex orders for Specialist orders and \$0.38 per contract for Firm and Professional orders.¹⁵ Therefore, while ISE is proposing a fee increase for ISE Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders, the resulting fee remains lower than the fee currently charged by PHLX for similar orders. ISE’s proposed increase for Non-ISE Market Maker orders to \$0.39 per contract is a nominal increase over the rate currently in place at PHLX. PHLX currently charges \$0.35 per contract for these orders.¹⁶ In addition, the Exchange believes that charging Non-ISE Market Maker orders a higher rate than the fee charged to ISE Market Maker, Firm Proprietary and Customer (Professional) 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, it is appropriate and not unfairly discriminatory to assess a higher transaction fee on 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.

¹⁵ See PHLX Fee Schedule at <http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf>.

¹⁶ Id.

The Exchange believes that it is reasonable and equitable to provide a two cent discount to ISE Market Makers on preferenced orders as an incentive for them to quote in the complex order book. The Exchange notes that PHLX currently provides a similar discount. Accordingly, ISE Market Makers who remove liquidity in the Non-Select Penny Pilot Symbols from the complex order book will be charged \$0.33 per contract when trading with orders that are preferenced to them. For XOP, which is a Non-Select Penny Pilot Symbol, ISE Market Makers who remove liquidity in this symbol from the complex order book by trading with orders that are preferenced to them will also be charged \$0.33 per contract while ISE Market Makers who add liquidity in this symbol from the complex order book by trading with Priority Customer orders that are preferenced to them will be charged \$0.28 per contract. ISE notes that with this proposed fee change, the Exchange will continue to maintain a two cent differential that was previously in place.

The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes that this proposed rule change will continue to attract additional complex order business in the Non-Select Penny Pilot Symbols traded on the Exchange.

The Exchange further believes that the Exchange's maker/taker fees and rebates are not unfairly discriminatory because the fee structure is consistent with fee structures that exist today at other options exchanges. Additionally, 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 option exchanges. 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. With this proposed fee

change, the Exchange believes it remains an attractive venue for market participants to trade complex orders in the Non-Select Penny Pilot Symbols.

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 Exchange 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 Exchange Act.¹⁷ 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 Exchange 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 Exchange Act. Comments may be submitted by any of the following methods:

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2012-38 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-2012-38. 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-2012-38 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.¹⁸

Kevin M. O'Neill
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).