

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67039; File No. SR-ISE-2012-39)

May 22, 2012

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Qualification Standards for Market Makers to Receive a Rebate

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 15, 2012, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission (“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 the qualification standards for market makers to receive a rebate under the Exchange’s modified maker/taker pricing structure. 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 purpose of this proposed rule change is to amend the qualification standards for market makers to receive a rebate under the Exchange’s maker/taker pricing structure. The Exchange currently assesses per contract transaction fees and provides 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”).<sup>3</sup> The maker/taker fees and rebates apply to the following categories of market participants: (i) Market Maker;<sup>4</sup> (ii) Market Maker Plus; (iii) Non-ISE Market Maker;<sup>5</sup> (iv) Firm Proprietary; (v) Customer (Professional);<sup>6</sup> (vi) Priority Customer,<sup>7</sup> 100 or more contracts; and (vii) Priority Customer, less than 100 contracts.

In order to promote and encourage liquidity in the Select Symbols, the Exchange currently offers a \$0.10 per contract rebate to Market Makers if the quotes they sent to the

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

<sup>4</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See ISE Rule 100(a)(25).

<sup>5</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, as amended (“Exchange Act”), registered in the same options class on another options exchange.

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

<sup>7</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).

Exchange qualify the Market Maker to become a Market Maker Plus.<sup>8</sup> A Market Maker Plus is a Market Maker who is on the National Best Bid or National Best Offer (NBBO) 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 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 for all expiration months in that symbol during the current trading month.<sup>9</sup>

The Exchange now proposes to amend the Market Maker Plus qualification standards in order for a Market Maker to qualify for the \$0.10 per contract rebate when providing liquidity (making) in the Select Symbols. Specifically, ISE proposes to exclude from the NBBO calculation a Market Maker's single best and single worst overall quoting days in a symbol if doing so qualifies the Market Maker for the rebate. In effect, this variation to the current qualification standards will give a Market Maker the better of the NBBO average of all days in a month or the NBBO average of the month excluding the best and worst days, on a per symbol basis. The Exchange believes this proposed change will further encourage Market Makers to

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<sup>8</sup> The concept of incenting market makers with a rebate is not novel. In 2008, the CBOE established a program for its Hybrid Agency Liaison whereby it provides a \$0.20 per contract rebate to its market makers provided that at least 80% of the market maker's quotes in a class during a month are on one side of the national best bid or offer. Market makers not meeting CBOE's criteria are not eligible to receive a rebate. See Securities Exchange Act Release No. 57231 (January 30, 2008), 73 FR 6752 (February 5, 2008). The CBOE has since lowered the criteria from 80% to 60%. See Securities Exchange Act Release No. 57470 (March 11, 2008), 73 FR 14514 (March 18, 2008).

<sup>9</sup> See Securities Exchange Act Release No. 62507 (July 15, 2010), 75 FR 42802 (July 22, 2010) (SR-ISE-2010-68).

continue to quote aggressively in a class throughout the entire month despite an individual poor-performing day.

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. 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 in that symbol executed by that Market Maker as a maker 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 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.

The Exchange believes the proposed rule change will also encourage Market Makers to post tighter markets in the Select Symbols and thereby increase liquidity and attract additional order flow to the Exchange.

The Exchange has designated this proposal to be operative on June 1, 2012.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Exchange Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) of

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

the Exchange Act<sup>11</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 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 add or remove liquidity in the Select Symbols.

The Exchange believes that it is reasonable and equitable to provide rebates to Market Makers 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 a rebate to Market Makers who meet the Exchange's stated quoting criteria, and is now merely proposing to broaden the qualification standards (not quoting requirements) that Market Makers have to meet in order to qualify for the rebate.

The Exchange believes that amending the qualification standards for Market Makers to qualify for a rebate will encourage these market participants to continue to post tighter markets in the Select Symbols and thereby increase liquidity and attract additional order flow to the Exchange. The Market Maker Plus rebate employed by the Exchange has proven to be an effective incentive for Market Makers to provide liquidity in the Select Symbols. The Exchange further believes that the Exchange's Market Maker Plus rebate is not unfairly discriminatory because this rebate program is consistent with rebates that exist today at other options exchanges. The Exchange believes that the Market Maker Plus rebate is a competitive rebate and equivalent to incentives provided by other exchanges and is therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange. The

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<sup>11</sup> 15 U.S.C. 78f(b)(4).

Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem rebate levels at a particular exchange to be low.

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.<sup>12</sup> 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:

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<sup>12</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2012-39 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-2012-39. 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-2012-39 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>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).