

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67087; File No. SR-ISE-2012-43)

May 31, 2012

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Options Regulatory Fee

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 25, 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, II, and III 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 increase its Options Regulatory Fee. 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.

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

<sup>2</sup> 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 this proposed rule change is to amend the Options Regulatory Fee (“ORF”) to increase it from \$0.0035 per contract to \$0.0042 per contract in order to recoup increased regulatory expenses while also ensuring that the ORF will not exceed costs.

The ORF is assessed by the Exchange to each member for all options transactions executed or cleared by the member that are cleared by The Options Clearing Corporation (“OCC”) in the customer range, i.e., transactions that clear in the customer account of the member’s clearing firm at OCC, regardless of the marketplace of execution. In other words, ISE imposes the ORF on all customer-range transactions executed by a member, even if the transactions do not take place on the Exchange.<sup>3</sup> The ORF also is charged for customer-range transactions that are not executed by an ISE member but are ultimately cleared by an ISE member. In the case where an ISE member executes a transaction and an ISE member clears the transaction, the ORF is assessed to the member who executed the transaction. In the case where a non-ISE member executes a transaction and an ISE member clears the transaction, the ORF is assessed to the ISE member who clears the transaction.

The dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with other regulatory fees and

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<sup>3</sup> Exchange rules require each member to submit trade information in order to allow the Exchange to properly prioritize and match orders and quotations and report resulting transactions to the OCC. See ISE Rule 712. The Exchange represents that it has surveillances in place to verify that members comply with the rule.

finer, does not exceed regulatory costs. The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange notes that its regulatory responsibilities with respect to member compliance with options sales practice rules have been allocated to FINRA under a 17d-2 agreement. The ORF is not designed to cover the cost of options sales practice regulation. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee filing change to the Commission. 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>4</sup> in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act<sup>5</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 Exchange believes that the proposed fee change is reasonable because the Exchange's collection of the ORF has declined due to a decrease in industry volume and the adjustment would serve to

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

provide the Exchange with additional ORF. The additional ORF will help offset regulatory expenses, but does not exceed regulatory costs.

The Exchange believes that the ORF is equitable and not unfairly discriminatory because it is objectively allocated to Exchange members in that it would continue to be charged to all members on all of their transactions that clear as customer at OCC. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those member firms that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity. Surveillance and regulation of non-customer trading activity tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are anticipated to be higher than the costs associated with administering the non-customer component of its regulatory program. As such, the Exchange proposes assessing higher fees to those firms that will require more Exchange regulatory services based on the amount of customer options business they conduct. The ORF is not charged for orders that clear in categories other than the customer range (e.g., market maker orders) because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees which go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation.

As previously stated, OCC collects the ORF on behalf of ISE through each member's clearing firm. In addition, the ORF seeks to recover the costs of supervising and regulating members, including performing routine surveillances, investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange will continue to monitor the

amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee filing change to the Commission.

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>6</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.

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

#### 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:

##### 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-2012-43 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-2012-43. 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-2012-43 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>7</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).