

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67167; File No. SR-ISE-2012-47)

June 8, 2012

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees

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 June 1, 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 change the treatment of certain orders executed in the Exchange’s Facilitation and Solicited Order Mechanisms. 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

In 2010, the Exchange began assessing per contract transaction fees and rebates to market participants that add or remove liquidity from the Exchange (“maker/taker fees and rebates”)<sup>3</sup> in a number of options classes (the “Select Symbols”).<sup>4</sup> The Exchange’s maker/taker fees and rebates are applicable to regular and complex orders executed in the Select Symbols. The Exchange subsequently adopted 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”)<sup>5</sup> and then adopted maker/taker fees and rebates for complex orders in all symbols that are not in the Penny Pilot Program (“Non-Penny Pilot Symbols”).<sup>6</sup>

Pursuant to Commission approval, the Exchange will soon introduce a new order type called “Add Liquidity Order” or “ALO.”<sup>7</sup> ALOs are limit orders that will only be executed as a “maker” on the Exchange. An ALO allows market participants to specify that they only seek to provide liquidity, thus avoiding taker fees. Currently, when a Facilitation or Solicitation order interacts with pre-existing orders and quotes, the pre-existing order or quote is treated as taker of liquidity and the Facilitation or Solicitation order that interacts with the pre-existing order or

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<sup>3</sup> See Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR-ISE-2010-25).

<sup>4</sup> The Select Symbols are identified by their ticker symbol on the Exchange’s Schedule of Fees.

<sup>5</sup> See Exchange Act Release No. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR-ISE-2011-72).

<sup>6</sup> 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).

<sup>7</sup> See Exchange Act Release No. 66617 (March 19, 2012), 77 FR 17102 (March 23, 2012) (SR-ISE-2012-20). The Exchange expects to launch ALO on June 4, 2012.

quote is provided with a rebate.<sup>8</sup> The Exchange believes that all pre-existing orders and quotes in the Select Symbols, the Non-Select Penny Pilot Symbols and the Non-Penny Pilot Symbols should be treated as “maker,” not “taker,” and this distinction becomes more pertinent when the Exchange introduces ALO. As proposed, Facilitation and Solicitation orders that previously received a “break-up” rebate when they interacted with pre-existing orders and quotes that were being treated as “taker” will no longer receive such a rebate. The Exchange believes it is appropriate, and generally expected by market participants, to treat pre-existing orders and quotes as maker, rather than taker. The Exchange proposes to adopt rule text in its Schedule of Fees to make clear that incoming Facilitation and Solicitation orders that interact with pre-existing orders and quotes on the Exchange’s orderbooks will not receive the “break-up” rebate for contracts they don’t interact with. With this proposed rule change, pre-existing orders and quotes, when interacting with Facilitation and Solicitation orders in the Select Symbols, the Non-Select Penny Pilot Symbols and the Non-Penny Pilot Symbols will be subject to the Exchange’s maker fee, as noted in the Exchange’s Schedule of Fees. Orders and quotes which arrive at the exchange after the commencement of a Facilitation or Solicitation order will continue to be charged taker fees.

Further, the “break-up” rebate noted in footnote 2 on page 19 of the Exchange’s Schedule of Fees relates to orders executed on the Exchange’s Facilitation Mechanism, Solicited Order Mechanism and Price Improvement Mechanism and does not apply to complex orders executed on the Exchange. Therefore, the Exchange proposes to remove the reference to footnote 2 from all the complex order fee columns on page 19 of the Exchange’s Schedule of Fees.

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<sup>8</sup> Currently, the Exchange provides a rebate of \$0.15 to contracts that do not trade with the contra order in the Facilitation Mechanism and Solicited Order Mechanism. This rebate currently applies to the Select Symbols and to Non-Select Penny Pilot Symbols and does not apply to Non-Penny Pilot Symbols.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities and Exchange Act of 1934 (the “Exchange Act”)<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act<sup>10</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 it is reasonable and equitable and not unfairly discriminatory to treat pre-existing orders and quotes as maker, rather than taker, and thus charge the appropriate maker fees. The Exchange believes that the proposed fees it charges for options overlying the Select Symbols, the Non-Select Penny Pilot Symbols and the Non-Penny Pilot Symbols remain competitive with fees charged by other exchanges and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. The Exchange further notes that market participants generally expect pre-existing orders and quotes in the Exchange’s Facilitation Mechanism and Solicited Order Mechanism to be treated as maker not taker. The Exchange believes this distinction is even more pertinent in the context of the Exchange’s planned launch of the ALO order type. Market participants who choose to utilize ALO will fully expect the Exchange to treat their orders as providers of liquidity; to treat these orders differently will be contrary to the intent of the ALO order type and the expectation of these market participants.

The Exchange believes that treating a Facilitation or Solicitation order that interacts with pre-existing orders and quotes as takers of liquidity (as opposed to makers of liquidity which is how these orders are currently treated), thus charging these orders a taker fee furthers the objectives of Section 6(b)(5) of the Exchange Act, in that it is designed to make the Exchange’s

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

fee structure for ALO orders consistent with its overall maker/taker fee structure, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The Exchange believes it is reasonable and equitable to remove footnote 2 from the complex order fee columns on the Exchange's Schedule of Fees because doing so will clarify that footnote 2 is not applicable to complex orders executed on the Exchange and therefore, Members would benefit from clear guidance in the rule text describing the manner in which Exchange fees and rebates are assessed. The Exchange further believes the proposed rule change is reasonable because removing footnote 2 from the complex order fee columns on the Schedule of Fees will provide clarity and greater transparency regarding the Exchange's fees and rebates. The Exchange notes that the proposed rule change is also equitably allocated and not unfairly discriminatory in that it treats similarly situated market participants in the same manner, i.e., the removal of footnote 2 from the complex order fee column will impact all market participants equally on the Exchange.

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>11</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:

#### 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-2012-47 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-2012-47. 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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2012-47 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>12</sup>

Kevin M. O'Neill  
Deputy Secretary

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