

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 67168; File No. SR-ISE-2012-46)

June 8, 2012

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

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 June 1, 2012, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I and II below, which items have been prepared by the self-regulatory organization. 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 eliminate three fees from its Schedule of 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

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 purpose of this proposed rule change is to eliminate three fees from the Exchange's Schedule of Fees. First, the Exchange currently has a fee of \$0.25 per contract applicable to customers that transact in complex orders, *i.e.*, customer complex orders that interact with complex orders residing on the complex order book thereby taking liquidity from the complex order book ("Complex Order Taker Fee").³ This fee was introduced before the Exchange introduced the Professional Customer category with the intent to charge non-broker dealer customers that use highly developed trading systems and are quickly able to hit the bid or lift an offer thereby taking liquidity, *i.e.*, interacting with complex orders resident on the complex order book. The Exchange adopted this fee to put Professional Customers on more equal footing with broker dealer orders that were already subject to this fee. The purpose of this fee was not to charge retail investors, who are now known on the Exchange as Priority Customers, and therefore the Exchange adopted a waiver from this fee for the first 1,000 orders that a Member, acting on behalf of one or more of its customers, transacts in one month that takes liquidity from the complex order book. Now that the Exchange is able to distinguish between Priority and non-Priority Customers, the Exchange believes this fee is no longer necessary and proposes to eliminate it.

³ See Exchange Act Release Nos. 34-54751 (November 14, 2006), 71 FR 67667 (November 22, 2006) (SR-ISE-2006-56); 55247 (February 6, 2007), 72 FR 7099 (February 14, 2007) (SR-ISE-2007-03); 59576 (March 13, 2009), 74 FR 11982 (March 20, 2009) (SR-ISE-2009-07); and 60778 (October 2, 2009), 74 FR 51896 (October 8, 2009) (SR-ISE-2009-72).

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”)⁴ in a number of options classes (the “Select Symbols”).⁵ 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)⁶ 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”).⁷ Now that the Exchange has adopted maker/taker fees and rebates, which are designed to attract complex orders to the Exchange, and has a specific taker fee for Customer (Professional) complex orders, the Complex Order Taker Fee has become a disincentive for Members to execute Priority Customer complex orders to take advantage of rebates offered by the Exchange because once Priority Customers orders reach the 1000 order threshold, those orders become subject to the Complex Order Taker Fee. As noted above, the Exchange did not intend to charge Priority Customer orders the Complex Order Taker Fee and this proposed rule change will fully accomplish that goal. Therefore, the Exchange proposes to eliminate this fee and remove it from its Schedule of Fees.

⁴ See Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR-ISE-2010-25).

⁵ The Select Symbols are identified by their ticker symbol on the Exchange’s Schedule of Fees.

⁶ See Exchange Act Release No. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR-ISE-2011-72).

⁷ 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).

Second, the Exchange currently has a fee pursuant to which Exchange Primary Market Makers (PMMs) are subject to a minimum fee of \$50,000 per options group (“Minimum PMM Fee”). To the extent that aggregate execution fees in a group or bin of options do not total at least \$50,000 per month, the PMM for that bin must pay a fee representing the difference between \$50,000 and the aggregate actual execution fees. The Exchange adopted this fee during its early years in order to encourage PMMs to ramp up their operations as quickly as possible and to avoid a potential revenue shortfall. ISE’s PMMs have been fully operating all of their PMM trading rights for a number of years and generate revenue greater than the Minimum PMM Fee. The Exchange does not believe there is a need for this fee any more. Therefore, the Exchange proposes to eliminate this fee and remove it from its Schedule of Fees.

Finally, when the Exchange adopted its maker/taker fees and rebates, it also adopted a distinction between small size Priority Customer orders, i.e., Priority Customer orders of less than 100 contracts, and large size Priority Customer orders, i.e., Priority Customer orders of 100 or more contracts.⁸ The purpose for this distinction was to allow the Exchange to charge small size Priority Customer orders and large size Priority Customer orders different rates. And for a period of time, the Exchange charged a higher fee for large size Priority Customer orders.⁹ However, in January 2011, the Exchange standardized the fee for Priority Customer orders¹⁰ and no longer charges different rates for these orders. The Exchange now proposes to eliminate this distinction from its Schedule of Fees and will continue to apply the same level of fees to Priority Customer orders, regardless of size.

⁸ See supra note 4 [sic].

⁹ See supra note 4 [sic].

¹⁰ See Exchange Act Release No. 63664 (January 6, 2011), 76 FR 2170 (January 12, 2011) (SR-ISE-2010-120).

2. 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”)¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act¹² 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 to remove the three fees that are the subject of this proposed rule change from the Exchange’s Schedule of Fees because they are either no longer applicable, in the case of the Minimum PMM fee and the fee for Priority Customer orders, or are a disincentive for order flow, as in the case of the Complex Order Taker Fee. The Complex Order Taker Fee, since its adoption, was intended for Professional Customer orders, as evidenced by the waiver the Exchange adopted that waived this fee for the first 1,000 orders from customers that take liquidity from the complex order book. The presumption was that Priority Customer orders would not exceed this threshold and thus would not be subject to the fee. This proposed rule change accomplishes that goal because Professional Customer complex orders that take liquidity are now charged a fee under the Exchange’s maker/taker fees and by removing this fee from the Exchange’s Schedule of Fees, Priority Customer orders will no longer be subject to this fee.

The Exchange believes that this proposed rule change which seeks to amend the text of the Schedule of Fees to clarify the applicability of certain fees is also both reasonable and equitable because Members would benefit from clear guidance in the rule text describing the manner in which the Exchange would assess fees. The Exchange further believes the proposed

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

rule change is reasonable because removing these fees from the Schedule of Fees will provide clarity and greater transparency regarding the Exchange's fees. 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 the three fees 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.¹³ 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.

¹³ 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. Please include File No. SR-ISE-2012-46 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-2012-46. 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-2012-46 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).