

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67627; File No. SR-ISE-2012-70)

August 9, 2012

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 1, 2012, the International Securities Exchange, LLC (the “ISE” or the “Exchange”) 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 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 is proposing to amend 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 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 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 101 options classes (the “Select Symbols”).<sup>3</sup> The Exchange also currently assesses maker/taker fees and rebates for certain regular orders in 25 option classes (“Special Non-Select Penny Pilot Symbols”).<sup>4</sup> The purpose of this proposed rule change is to amend the list of Select Symbols and Special Non-Select Penny Pilot Symbols in order to attract additional order flow to the Exchange. Specifically, the Exchange proposes to remove the following eight (8) symbols from the list of Select Symbols and add them to the list of Special Non-Select Penny Pilot Symbols: Amazon.com, Inc. (“AMZN”), ConocoPhillips (“COP”), ProShares QQQ Trust Series 1 (“QQQ”), Sprint Corporation (“S”), ProShares UltraShort S&P 500 (“SDS”), Sirius XM Radio, Inc. (“SIRI”), ProShares Ultra S&P 500 (“SSO”) and Direxion Small Cap Bear 3X (“TZA”) (“Proposed Deleted Select Symbols”).

Additionally, the Exchange proposes to add the following 32 symbols to the list of Special Non-Select Penny Pilot Symbols: Arch Coal, Inc. (“ACI”), American Capital Agency Corporation (“AGNC”), Amylin Pharmaceuticals, Inc. (“AMLN”), Alpha Natural Resources, Inc. (“ANR”), Apache Corporation (“APA”), Arena Pharmaceuticals, Inc. (“ARNA”), ATP Oil & Gas Corporation (“ATPG”), Yamana Gold, Inc. (“AUY”), Baxter International, Inc. (“BAX”), Delta Airlines, Inc. (“DAL”), E.I. du Pont de Nemours and Company (“DD”), The Walt Disney

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

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

Company (“DIS”), Dow Chemical Company, Inc. (“DOW”), Human Genome Sciences, Inc. (“HGSI”), JC Penney Co., Inc. (“JCP”), Joy Global, Inc. (“JOY”), KB Home (“KBH”), Kinross Gold Corporation (“KGC”), Mastercard, Inc. (“MA”), MBIA, Inc. (“MBI”), Medtronic, Inc. (“MDT”), Nike, Inc. (“NKE”), Pepsico, Inc. (“PEP”), SandRidge Energy, Inc. (“SD”), Union Pacific Corporation (“UNP”), United Technologies Corporation (“UTX”), Valero Energy Corporation (“VLO”), Walgreen Co. (“WAG”), Western Digital Corporation (“WDC”), Walter Energy, Inc. (“WLT”), Utilities Select Sector SPDR Fund (“XLU”) and Zynga, Inc. (“ZNGA”) (“Additional Special Non-Select Symbols”).

With this proposed rule change, the 40 symbols noted above, i.e., the Proposed Deleted Select Symbols and the Additional Special Non-Select Symbols, together with the 25 symbols that are already designated as Special Non-Select Penny Pilot Symbols, will now be subject to the fees for Special Non-Select Penny Pilot Fees listed in Section I of the Schedule of Fees.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>6</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable to remove the Proposed Deleted Select Symbols from its list of Select Symbols and add them to the list of Special Non-Select Penny Pilot Symbols. The Exchange also believes it is reasonable to add the Additional Special Non-Select Symbols to the current list of Special Non-Select Penny Pilot Symbols. The Exchange believes that applying the fees applicable to Special Non-Select Penny Pilot Symbols to the

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

Proposed Deleted Select Symbols and to the Additional Special Non-Select Symbols will attract additional order flow to the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to remove the Proposed Deleted Symbols and to amend its list of Special Non-Select Penny Pilot Symbols to add the Additional Special Non-Select Symbols because the list of Select Symbols and Special Non-Select Penny Pilot Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols and the Special Non-Select Penny Pilot Symbols would be uniformly subject to the fees and rebates applicable to those 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 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 Act.<sup>7</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 Act. If the Commission takes such action, the

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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 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-2012-70 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-2012-70. 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-2012-70 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>8</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).