

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67956; File No. SR-ISE-2012-78)

October 1, 2012

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's 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 September 25, 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, 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 the Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to note that responses to Non-Customer Flash Orders exposed to members are not charged a fee nor provided a credit. The text of the proposed rule change is available on the Exchange's Web site (<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

Under the intermarket linkage rules, the ISE cannot execute orders at a price that is inferior to the national best bid or offer (“NBBO”), nor can the Exchange place an order on its book that would cause the ISE best bid or offer to lock or cross another exchange’s quote.<sup>3</sup> How the Exchange handles orders in these circumstances depends on whether they are Public Customer Orders (i.e., orders for the account of a person that is not a broker-dealer)<sup>4</sup> or Non-Customer Orders (i.e., orders for the account of a broker-dealer).<sup>5</sup>

Currently, when ISE is not at the NBBO, Public Customer Order are exposed to all ISE members to give them an opportunity to match the NBBO<sup>6</sup> (“Flash Orders<sup>7</sup>”) before a Primary Market Maker (“PMM”) sends the order to another exchange for execution. The Exchange recently amended its rules to expose Non-Customer Orders in such circumstance before rejecting

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<sup>3</sup> See ISE Rules 1901 and 1902.

<sup>4</sup> See ISE Rule 100(a)(39).

<sup>5</sup> See ISE Rule 100(a)(28).

<sup>6</sup> See Securities Exchange Act Release Nos. 57812 (May 12, 2008), 73 FR 28846 (May 19, 2008) (SR-ISE-2008-50); 58038 (June 26, 2008), 73 FR 38261 (June July 3, 2008) (SR-ISE-2008-50).

<sup>7</sup> The term Flash Order is currently defined in the Preface of the Exchange’s Schedule of Fees as a Priority or Professional Customer order that is exposed at the National Best Bid or Offer by the Exchange to all members for execution, as provided under Supplementary Material .02 to ISE Rule 803.

them, similar to the process used to expose Public Customer Orders before those orders are sent for execution pursuant to intermarket linkage rules.<sup>8</sup>

For Public Customer Flash Orders, the Exchange currently charges a regular execution fee for orders that are flashed in Non-Select Symbols and a taker fee for orders that are flashed in all other symbols.<sup>9</sup> The Exchange also currently provides a credit for responses that trade against a flashed order.<sup>10</sup>

For Non-Customer Flash Orders, the Exchange will also charge a regular execution fee or a taker fee, as applicable, for the order that is flashed to Exchange Members. However, for responses that trade against Non-Customer Flash Orders, the Exchange will not provide a credit nor charge an execution fee. The purpose of this proposed rule change is to adopt rule text on the Exchange's Schedule of Fees to note that responses to Non-Customer Flash Orders will not be charged a fee or provided a credit.

## 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>11</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>12</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 rule change which seeks to

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<sup>8</sup> See Securities Exchange Act Release No. 67606 (August 7, 2012), 77 FR 48180 (August 13, 2012) (SR-ISE-2012-69). The Exchange anticipates implementing this functionality in October 2012.

<sup>9</sup> See ISE Schedule of Fees, Section I, Regular Order Fees and Rebates.

<sup>10</sup> See ISE Schedule of Fees, Section G, Credit for Responses to Flash Orders.

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

<sup>12</sup> 15 U.S.C. 78f(b)(4).

adopt clarifying text regarding the application of fees and credits for responses to certain flashed orders is both reasonable and equitable because members would benefit from clear guidance provided on the Exchange's fee schedule. Further, the Exchange does not believe it needs to provide an incentive to attract Non-Customer orders to the Exchange and therefore, has determined not to provide a credit for responses to Non-Customer Flash Orders. The Exchange provides a credit for responses to Customer Flash Orders as an incentive to attract Customer orders to the Exchange. The Exchange believes the proposed rule change is also reasonable because it makes clarifying changes to the Preface of the Schedule of Fees by amending the definition of Flash Orders to also include all orders, and to Section G of the Schedule of Fees thereby providing greater transparency to the Exchange's fees and rebates.

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>13</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

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

otherwise in furtherance of the purposes of the 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 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-2012-78 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-2012-78. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of ISE. 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-2012-78, 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>14</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).