

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67973; File No. SR-ISE-2012-73)

October 3, 2012

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Non-Substantive Clarifications to the Exchange's Schedule of Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² 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 "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 make non-substantive clarifications to its Schedule of Fees. 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 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

On July 25 of this year, the Exchange submitted a rule filing to relocate various fees within the Exchange’s Schedule of Fees (the “old fee schedule”) to group fees so that the Exchange’s fees would be easily located within the fee schedule (the “re-formatted fee schedule”).³ The Exchange did not propose to make any substantive changes in that filing, and did not change the manner in which it assessed the fees as a result of the adoption of the re-formatted fee schedule. Nevertheless, some uncertainty as to the application of certain fees and rebates was introduced by the re-formatted fee schedule. The purpose of this proposed rule change is to make two clarifications on the re-formatted fee schedule. The Exchange is not proposing any substantive changes to its fees.

First, on the old fee schedule, there was a footnote to the crossing order execution fees for Select Symbols⁴ stating that a rebate of \$0.15 per contract for Facilitation and Solicited Orders, and \$0.25 per contract for PIM orders, applied to contracts that do not trade with their contra order. This footnote indicated that the rebate would be applied in lieu of the execution fee. On the re-formatted fee schedule, separate columns were added to the table of fees for Select Symbols to indicate these rebates. As a result, it might not be clear that the execution fee for

³ See Exchange Act Release No. 67545 (July 31, 2012), 77 FR 46776 (August 6, 2012) (SR-ISE-2012-65).

⁴ “Select Symbols” are options overlying C, BAC, SPY, IWM, XLF, GE, JPM, INTC, RIMM, T, VZ, UNG, FCX, CSCO, DIA, X, AA, AIG, AXP, BBY, CAT, CHK, DNDN, EEM, EFA, EWZ, F, FAS, FAZ, FSLR, GDX, GLD, IYR, MGM, MS, MSFT, MU, PBR, PG, POT, RIG, SLV, XLE, XOM, ABX, BMY, BP, DELL, FXI, HAL, IBM, KO, LVS, MCD, MO, MON, NOK, ORCL, PFE, QCOM, SLB, SNDK, TBT, USO, V, VALE, WFT, XLI, XRT, YHOO, AKAM, AMD, APC, BA, BRCM, GG, HPQ, LCC, NEM, NFLX, NVDA, QID, TEVA, TLT, UAL, WFC, XLB, SBUX, VVUS, MSI, AAPL, BIDU, and VXX.

crossing orders is not applied to contracts that receive the rebate. Accordingly, the Exchange proposes to add the following text in the footnotes to each rebate: “The fee for Crossing Orders is not applied to any contracts for which a rebate is provided.”

Second, on the old fee schedule, an execution fee of \$0.20 per contract was specified for Non-Select Symbols⁵ for “Customer (entered in response to special order broadcast).” This fee was adopted in January 2007 and has always been applied to “response messages” entered with respect to a particular broadcast message, but not to orders that are received on the limit order book after an auction commences.⁶ The Exchange later adopted a similar response fee for Regular Orders in Select Symbols,⁷ for complex orders in Select Symbols⁸ and then for Regular Orders in Special Non-Select Penny Pilot Symbols⁹ of \$0.40 per contract, and more recently, adopted a fee for complex orders in Non-Penny Pilot Symbols¹⁰ of \$0.70 per contract (\$0.75 per

⁵ “Non-Select Symbols” are options overlying all symbols excluding Select Symbols and Special Non-Select Penny Pilot Symbols.

⁶ See Exchange Act Release No. 55060 (Jan. 8, 2007), 72 FR 2050 (Jan. 17, 2007) (SR-ISE-2006-72).

⁷ See Exchange Act Release No. 63283 (Nov. 9, 2010), 75 FR 70059 (Nov. 16, 2010) (SR-ISE-2010-106).

⁸ See Exchange Act Release No. 65550 (October 13, 2011), 76 FR 64984 (October 19, 2012 [sic]) (SR-ISE-2011-65). In this filing, the Exchange also adopted a response fee for complex orders for symbols that are in the Penny Pilot Program.

⁹ See Exchange Act Release No. 67201 (June 14, 2012), 77 FR 37082 (June 20, 2012) (SR-ISE-2012-49). “Special Non-Select Penny Pilot Symbols” are options overlying ACI, AGNC, AMLN, AMZN, ANR, APA, ARNA, ATPG, AUY, BAX, BTU, CLF, COP, CRM, CVX, DAL, DD, DE, DIS, DOW, EBAY, FDX, GLW, GM, GMCR, GS, HD, HGSI, JCP, JOY, KBH, KGC, LULU, MA, MBI, MCP, MDT, MMR, MOS, MRK, NKE, PEP, QQQ, S, SD, SDS, SHLD, SINA, SIRI, SLW, SSO, TZA, UNP, UPS, USB, UTX, VLO, WAG, WDC, WLT, WYNN, XHB, XLK, XLU and ZNGA.

¹⁰ See Exchange Act Release No. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR-ISE-2011-84). This fee was later increased to \$0.75 per contract (\$0.78 per contract for Non-ISE Market Makers). See Exchange Act Release No. 66962 (May 10, 2012), 77 FR 28917 (May 16, 2012) (SR-ISE-2012-35).

contract for Non-ISE Market Makers (FarMM)) for responses to special orders,¹¹ but specified that a “response” is any contra-side interest submitted after the commencement of an auction. Thus, the fees for Regular Orders in Select Symbols and Special Non-Select Penny Pilot Symbols and all complex orders are applied to both response messages and to orders received on the limit order book after an auction commences, whereas the fees for Regular Orders in Non-Select Symbols are applied to response messages.

When the fee schedule was re-formatted, a single definition of “Response to Crossing Orders” that reflects the definition for Regular Orders in Select Symbols and Special Non-Select Penny Pilot Symbols and all complex orders was added to the Preface of the fee schedule. Because the defined terms in the Preface apply to all symbols, including Non-Select Symbols, it appears as though regular customer orders received after the commencement of an auction in Non-Select Symbols are now being charged the \$0.20 response fee when that is not the case. Accordingly, the Exchange proposes to amend the Preface of the fee schedule to clearly indicate that the current definition of “Responses to Crossing Order” is applicable to Regular Orders in Select Symbols and Special Non-Select Penny Pilot Symbols and all complex orders and to add the appropriate definition for Non-Select Symbols as follows:

- “Responses to Crossing Order” (other than Regular Orders in Non-Select Symbols) is any contra-side interest submitted after the commencement of an auction in the Exchange’s Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM.
- “Responses to Crossing Order” (for Regular Orders in Non-Select Symbols) is any response message entered with respect to a specific auction in the Exchange’s Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM.

¹¹ The term “special order” was changed to “crossing order” in the re-formatted fee schedule.

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”)¹² in general, and furthers the objectives of Section 6(b)(4) of the Act¹³ 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 its proposal to clarify the application of certain fees is both reasonable and equitable because members would benefit from clear guidance in the fee schedule that describes the manner in which the Exchange would assess fees. The Exchange believes the proposed rule change is also reasonable because it makes clarifying changes to the Preface and to footnotes and thereby provides greater transparency to the Exchange’s Schedule of Fees.

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.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

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.¹⁴ 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 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. Please include File Number SR-ISE-2012-73 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-2012-73. 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

¹⁴ 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-2012-73 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).