

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68068; File No. SR-ISE-2012-86)

October 18, 2012

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Maker Fees for Certain Complex Orders Executed on the Exchange

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 October 10, 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 amend maker fees for certain complex orders executed on the Exchange. 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

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 a number of option classes (the “Select Symbols”).<sup>3</sup> The Exchange’s maker/taker fees and rebates are applicable to regular and complex orders executed in the Select Symbols<sup>4</sup> and in the Special Non-Select Penny Pilot Symbols.<sup>5</sup> The Exchange also currently assesses 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>6</sup> and for complex orders in all symbols that are not in the Penny Pilot Program (“Non-Penny Pilot Symbols”).<sup>7</sup> The purpose of this proposed rule change is to amend the complex order maker fees charged by the Exchange for certain complex orders executed on the Exchange. Specifically, the Exchange proposes to adopt

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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> These fees also apply to SPY. While the Exchange currently has a distinct taker fee for SPY, the maker fee for SPY is currently the same as the maker fee for all Select Symbols, as SPY is a Select Symbol.

<sup>5</sup> See Exchange Act Release Nos. 67201 (June 14, 2012), 77 FR 37082 (June 20, 2012) (SR-ISE-2012-49); and 67627 (August 9, 2012), 77 FR 49046 (August 15, 2012) (SR-ISE-2012-70).

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

<sup>7</sup> See Exchange Act Release Nos. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR-ISE-2011-84); 66392 (February 14, 2012), 77 FR 10016 (February 21, 2012) (SR-ISE-2012-06); 66961 (May 10, 2012), 77 FR 28914 (May 16, 2012) (SR-ISE-2012-38); and 67400 (July 11, 2012), 77 FR 42036 (July 17, 2012) (SR-ISE-2012-63).

complex order maker fees for orders that trade against Priority Customer orders in the Select Symbols, SPY, Non-Select Penny Pilot Symbols and Non-Penny Pilot Symbols. Section II of the current Schedule of Fees provides the fees and rebates for complex orders traded on the Exchange, with the rebates provided in one table and the fees in another. With this proposed rule change, the Exchange is separating the fees table into two tables, one for maker fees and another for taker fees with the latter retaining the other fees applicable to complex orders, i.e., Fee for Crossing Orders and Fees for Responses to Crossing Orders. The Exchange is not proposing any change to the complex order taker fees or rebates applicable for executions in these symbols.

For Select Symbols (including SPY) and Penny Pilot symbols, the Exchange currently charges a complex order maker fee of: i) \$0.10 per contract for Market Maker,<sup>8</sup> Firm Proprietary / Broker-Dealer and Professional Customer<sup>9</sup> orders; ii) \$0.20 per contract for Non-ISE Market Maker<sup>10</sup> orders; and iii) \$0.00 per contract for Priority Customer<sup>11</sup> orders. For Non-Penny Pilot Symbols, the Exchange currently charges a complex order maker fee of: i) \$0.10 per contract for Market Maker, Firm Proprietary / Broker-Dealer, Professional Customer and Non-ISE Market Maker orders; and ii) \$0.00 for Priority Customer orders.

The Exchange now proposes to amend the maker fee for the group of symbols noted above when orders in these symbols trade against Priority Customer complex orders.

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<sup>8</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See ISE Rule 100(a)(25).

<sup>9</sup> A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

<sup>10</sup> A Non-ISE Market Maker, or Far Away Market Maker (“FARMM”), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended (“Exchange Act”), registered in the same options class on another options exchange.

<sup>11</sup> A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

Specifically, the Exchange proposes to adopt the following maker fees for complex orders that trade against Priority Customer orders in the Select Symbols (excluding SPY):

- \$0.37 per contract for Market Maker orders;
- \$0.39 for Firm Proprietary / Broker-Dealer, Professional Customer and Non-ISE Market Maker orders;
- \$0.00 for Priority Customer orders.

For complex orders that trade against Priority Customer complex orders in SPY, the Exchange proposes to adopt the following maker fees:

- \$0.38 per contract for Market Maker orders;
- \$0.40 for Firm Proprietary / Broker-Dealer, Professional Customer and Non-ISE Market Maker orders;
- \$0.00 for Priority Customer orders.

For complex orders that trade against Priority Customer complex orders in Non-Select Penny Pilot Symbols, the Exchange proposes to adopt the following maker fees:

- \$0.37 per contract for Market Maker orders;
- \$0.39 for Firm Proprietary / Broker-Dealer, Professional Customer and Non-ISE Market Maker orders;
- \$0.00 for Priority Customer orders.

For orders that trade against Priority Customer complex orders in Non-Penny Pilot Symbols, the Exchange proposes to adopt the following complex order maker fees:

- \$0.80 per contract for Market Maker orders;
- \$0.83 for Firm Proprietary / Broker-Dealer, Professional Customer and Non-ISE Market Maker orders;

- \$0.00 for Priority Customer orders.

The Exchange also proposes to increase the maker fee for Non-ISE Market Maker orders in the Non-Penny Pilot Symbols from \$0.10 per contract to \$0.20 per contract when trading against a non-Priority Customer. With this change, the Exchange seeks to standardize the maker fee for complex orders in Non-Penny Pilot Symbols with the fee currently charged for complex orders in Select Symbols and Penny Pilot Symbols for Non-ISE Market Maker orders when trading against a non-Priority Customer order.

Additionally, the Exchange provides Market Makers with a two cent discount when trading against Priority Customer orders that are preferenced to them. This discount is currently applicable when Market Makers remove liquidity in the Select Symbols, SPY, Non-Select Penny Pilot Symbols and Non-Penny Pilot Symbols from the complex order book. The Exchange also currently provides Market Makers with a two-cent discount when they make liquidity in a select group of option classes (“Complex Quoting Symbols”).<sup>12</sup> The Exchange now proposes to provide Market Makers with a two-cent discount when they also add liquidity in the Select Symbols, SPY, Non-Select Penny Pilot Symbols and Non-Penny Pilot Symbols when trading against Priority Customer orders. Accordingly, Market Makers that add or remove liquidity from the complex order book by trading against Priority Customer orders that are preferenced to them will be charged: i) \$0.35 per contract in the Select Symbols; ii) \$0.36 per contract in SPY; iii) \$0.35 per contract in the Non-Select Penny Pilot Symbols; and iv) \$0.78 per contract in the Non-Penny Pilot Symbols Select Symbols.

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<sup>12</sup> See Exchange Act Release Nos. 65958 (December 15, 2011), 76 FR 79236 (December 21, 2012 [sic]) (SR-ISE-2011-81); 66406 (February 16, 2012), 77 FR 10579 (February 22, 2012) (SR-ISE-2012-07); and 67316 (June 29, 2012), 77 FR 40136 (July 6, 2012) (SR-ISE-2012-59).

The maker fees proposed herein are identical to the taker fees currently charged by the Exchange.<sup>13</sup> With this proposed rule change, complex orders that trade against Priority Customer orders in the Select Symbols, SPY, Non-Select Penny Pilot Symbols, and Non-Penny Pilot Symbols will now be charged the same fee for making and taking liquidity.

With this proposed rule change, the Exchange will be better positioned to maintain its attractive rebate structure for Priority Customer complex orders. The number of non-Priority Customer maker participants has continued to grow, separately and in addition to the growth in symbols where the Exchange allows complex quoting and has already implemented a fee structure where makers trading against Priority Customer orders pay the taker fee equivalent. This has resulted in an increased number of non-Priority Customer complex maker orders trading with Priority Customer Complex orders. Charging non-Priority Customer orders the equivalent of the taker fee when interacting with Priority Customer complex orders will allow the Exchange to support this model and continue to attract additional orders and liquidity to its Complex Orderbook.

Since the rate changes to the Schedule of Fees pursuant to this proposal will be effective upon filing, for the transactions occurring in October 2012 prior to the effective date of this filing members will be assessed the rates in effect immediately prior to those proposed by this filing. For transactions occurring in October 2012 on and after the effective date of this filing, members will be assessed the rates proposed by this filing.

The Exchange's maker/taker fees and rebates for complex orders have proven to be an effective method of attracting order flow to the Exchange. The Exchange believes this proposed

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<sup>13</sup> The Exchange has submitted a proposed rule change to increase the taker fees for complex orders in Select Symbols, SPY, Non-Select Penny Pilot Symbols and Non-Penny Pilot Symbols that mirror the proposed maker fees in this filing. See SR-ISE-2012-85.

rule change will also serve to enhance its competitive position and enable it to attract additional volume in these symbols.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Exchange Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act<sup>15</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 impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in the symbols that are subject to the fees proposed herein.

The Exchange believes it is reasonable and equitable to charge a maker fee of \$0.37 per contract for Market Maker orders that trade against Priority Customer interest in the Select Symbols and Penny Pilot symbols and \$0.39 per contract for Non-ISE Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer orders that trade against Priority Customer interest in the Select Symbols and Non-Select Penny Pilot Symbols. The Exchange believes it is reasonable and equitable to charge a maker fee of \$0.38 per contract for Market Maker orders that trade against Priority Customer interest in SPY and \$0.40 per contract for Non-ISE Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer orders that trade against Priority Customer interest in SPY. The Exchange believes it is reasonable and equitable to charge a maker fee of \$0.80 per contract for Market Maker orders that trade against Priority Customer interest in the Non-Penny Pilot Symbols and \$0.83 per contract for Non-ISE

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<sup>14</sup> 15 U.S.C. 78f(b).

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

Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer orders that trade against Priority Customer interest in the Non-Penny Pilot Symbols.

The Exchange notes that it already charges an identical maker and taker fee for Complex Quoting Symbols and is now simply extending that pricing model to complex orders in the Select Symbols, SPY, in the Non Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols. The Exchange believes that it is reasonable and equitable to charge the fees proposed herein as they are already applicable to complex orders in the Complex Quoting Symbols; with this proposed rule change, the Exchange is simply extending its current pricing model to complex orders in a larger group of option classes.

The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes that adopting distinct maker fees for orders that trade against Priority Customer orders in the Select Symbols, SPY, Non Select Penny Pilot Symbols and Non-Penny Pilot Symbols will attract additional business to the Exchange. Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges. The Exchange believes it remains an attractive venue for market participants to trade complex orders despite its proposed fee change as its fees remain competitive with those charged by other exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

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>16</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 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

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2012-86 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-2012-86. 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-2012-86 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>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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