

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69337; File No. SR-ISE-2013-29)

April 8, 2013

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”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 27, 2013, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) 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 proposes to amend 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

The purpose of this proposed rule change is to amend the manner in which the fees for Crossing Orders³ and the Fee for Responses to Crossing Orders⁴ is [sic] applied for regular and complex orders traded on the Exchange. The fee for Crossing Orders and the fee for Responses to Crossing Orders discussed below apply to both standard options and Mini options traded on the Exchange. The Exchange's Schedule of Fees has separate tables for fees and rebates applicable to standard options and Mini Options. The Exchange notes that while the discussion below notes the fees and rebates for standard options, the fees and rebates for Mini Options, which are not discussed below, are 1/10th of the fees and rebates for standard options.⁵

First, the Exchange currently charges a fee of \$0.20 per contract to Market Maker, Market Maker Plus, Non-ISE Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders (except for Priority Customer, this fee is currently \$0.00 per contract) for regular Crossing Orders in the Select Symbols.

³ A Crossing Order is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (PIM) or submitted as a Qualified Contingent Cross order. For purposes of the Schedule of Fees, orders executed in the Block Order Mechanism are also considered Crossing Orders. See Preface, ISE Schedule of Fees.

⁴ "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. See Preface, ISE Schedule of Fees.

⁵ See SR-ISE-2013-28 (not yet published).

The Exchange also currently charges a fee of \$0.20 per contract (for largest leg only) to Market Maker, Non-ISE Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders (except for Priority Customer, this fee is currently \$0.00 per contract) for complex Crossing Orders in all symbols.

As an incentive to attract crossing orders for execution in the Exchange's various auction mechanisms, the Exchange currently provides a per contract rebate. This rebate is provided to those contracts that do not trade with the contra order in the Exchange's Facilitation Mechanism, Price Improvement Mechanism and Solicited Order Mechanism. This rebate currently applies to regular and complex orders in the Select Symbols. For the Facilitation and Solicited Order Mechanisms, the rebate is currently \$0.15 per contract. For the Price Improvement Mechanism, the rebate is currently \$0.25 per contract. The Exchange does not currently charge an execution fee for contracts that receive the rebate.

The Exchange now proposes to apply the existing crossing order fees for the full size of a crossing order, regardless if a portion of the order also receives a rebate. For example, assume a member enters a facilitation order for 1000 contracts; a market maker responds and trades 200 contracts; and the remaining 800 contracts are traded by the member that entered the order. Currently, the member that entered the order is charged a crossing fee for the 800 contracts it executed and receives a rebate for the 200 contracts that were executed by the market maker. Under this proposed rule change, the member that entered the order will be charged an execution fee for the full size of the order (1000 contracts) and receive a rebate for any portion of the order it did not execute (200 contracts).

Second, the Exchange currently charges a Fee for Responses to Crossing Orders for regular orders in Non-Select Symbols, as follows: i) \$0.20 per contract to Market Maker (for

orders sent by Electronic Access Members), Firm Proprietary / Broker-Dealer, Professional Customer, Priority Customer and Priority Customer (Singly Listed Symbols) orders; ii) \$0.45 per contract for Non-ISE Market Maker orders; and iii) \$0.18 per contract for Market Maker orders. 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 of \$0.40 per contract, and for complex orders in Non-Select Symbols⁹ for responses to special orders,¹⁰ 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 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.

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, 2011 [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. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR-ISE-2011-84). This fee has since increased and is currently \$0.82 per contract for Market Makers (\$0.84 per contract for Non-ISE Market Maker, Firm Proprietary / Broker-Dealer and Professional Customer orders, and \$0.00 per contract for Priority Customer orders). See Exchange Act Release No. 68627 (January 11, 2013), 78 FR 3934 (January 17, 2013) (SR-ISE-2013-01).

¹⁰ The term “special order” was changed to “crossing order” when the Exchange re-formatted its Schedule of Fees. See Exchange Act Release No. 67545 (July 31, 2012), 77 FR 46776 (August 6, 2012) (SR-ISE-2012-65).

The distinction noted above is reflected in the Preface of the fee schedule where “Responses to Crossing Order” (other than Regular Orders in Non-Select Symbols) is defined as 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, while “Responses to Crossing Order” (for Regular Orders in Non-Select Symbols) is defined as any response message entered with respect to a specific auction in the Exchange’s Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM.

The Exchange now proposes to charge the Fee for Responses to Crossing Orders in a consistent manner across all symbols. Accordingly, the Exchange proposes to adopt a single definition that applies to regular and complex orders in all symbols by removing the term “Responses to Crossing Order” (for Regular Orders in Non-Select Symbols) entirely and renaming the term “Responses to Crossing Order” (other than Regular Orders in Non-Select Symbols) as simply “Responses to Crossing Order.” The Exchange is not proposing any change to the level of fees charged for responses to crossing orders; this proposed rule change only amends the manner in which the current fee is applied.

The Exchange has designated this proposed rule change to be operative on April 1, 2013.

2. Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities and [sic] Exchange Act of 1934 (the “Exchange Act”)¹¹ in general, and furthers the objectives of Section 6(b)(4) of the 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.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

The Exchange believes it is reasonable and equitable to charge the existing crossing order fees to the full size of a crossing order to recoup some of its costs of providing rebates to crossing orders and will result in a more equitable distribution among market participants of the costs associated with crossing orders. The Exchange believes the proposed fee to charge the existing crossing order fees to the full size of a crossing order is not unfairly discriminatory because the fee would apply uniformly to all categories of participants in the same manner. All market participants who execute crossing orders would be uniformly subject to these fees and all market participants whose orders are broken-up will continue to receive the break-up rebate at current levels.

The Exchange believes that its proposal to modify the application of the Fee for Responses to Crossing Orders in the Non-Select Symbols is both reasonable and equitable because the Exchange already applies this fee to the Select Symbols in the manner in which it proposes to apply to the Non-Select Symbols. With this proposed rule change, this fee will now be applied in a consistent manner across all symbols. The Exchange believes its proposal to uniformly apply the Fee for Responses to Crossing Order across all symbols is not unfairly discriminatory because the fee would apply uniformly to all categories of participants in the same manner. All market participants that submit a contra-side interest after the commencement of an auction in the Exchange's various auction mechanisms would be uniformly subject to these fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This proposed rule change, which proposes to apply fees to a full size of a crossing order and which

proposes to apply an existing fee uniformly across all symbols, does not impose any burden on competition. With this proposed rule change, market participants that trade on the Exchange will be subject to fees for the full size of a crossing order and will continue to receive the rebate for the portion of the order that was not previously charged a fee. With this proposed rule change, market participants that respond to crossing orders will be subject to fees that are already in place on the Exchange. Therefore, this proposed rule change does not impose any additional burden on competition that is not necessary or appropriate in furthering 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 Act¹³ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹⁴ because it establishes a due, fee, or other charge imposed by ISE.

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.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

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-2013-29 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-2013-29. 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 such filing also will be available for inspection and copying at the principal office of the 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-2013-29 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).