

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69395; File No. SR-ISE-2013-31)

April 18, 2013

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

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 April 10, 2013, 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 Substance of the Proposed Rule Change

The ISE proposes to amend its Schedule of Fees to increase certain complex order rebates. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to increase the rebate levels for Priority Customer complex orders that trade with quotes and orders on the regular orderbook in all symbols traded on the Exchange. The rebates 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 rebates for standard options, the rebates for mini options, which are not discussed below, are and shall continue to be 1/10th of the rebates for standard options.³

In order to enhance the Exchange's competitive position and to incentivize Members to increase the amount of Priority Customer complex orders that they send to the Exchange, the Exchange provides volume-based tiered rebates for Priority Customer complex orders that trade with quotes and orders on the regular order book in all symbols traded on the Exchange. Specifically, the Exchange currently provides a base rebate of \$0.06 per contract, per leg, for Priority Customer complex orders in all symbols traded on the Exchange (excluding SPY) when these orders trade against quotes or orders in the regular orderbook. The current average daily volume (ADV) threshold for the base tier is

³ See Securities Exchange Act Release No. 69270 (April 2, 2013), 78 FR 20988 (April 8, 2013) (SR-ISE-2013-28).

0-39,999 Priority Customer complex contracts and the base rebate of \$0.06 per contract, per leg, applies to this tier. The Exchange is not proposing any change to the rebate for this tier. The current ADV threshold for the second tier is 40,000-74,999 Priority Customer complex contracts. The rebate amount for this tier is currently \$0.08 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.12 per contract, per leg. The current ADV threshold for the third tier is 75,000-124,999 Priority Customer complex contracts. The rebate amount for this tier is currently \$0.09 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.13 per contract, per leg. The current ADV threshold for the fourth tier is 125,000-224,999 Priority Customer complex contracts. The rebate amount for this tier is currently \$0.10 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.17 per contract, per leg. Finally, the current ADV threshold for the fifth tier is 225,000 or more Priority Customer complex contracts. The rebate amount for this tier is currently \$0.11 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.18 per contract, per leg. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex orders that trade against quotes or orders in the regular orderbook during such calendar month.

For SPY, the Exchange currently provides a base rebate of \$0.07 per contract, per leg, for Priority Customer complex orders traded on the Exchange when these orders trade against quotes or orders in the regular orderbook. The current ADV threshold for the base tier is 0-39,999 Priority Customer complex contracts and the base rebate of \$0.07 per contract, per leg, applies to this tier. The Exchange is not proposing any change to the rebate for this tier. The current ADV threshold for the second tier is

40,000-74,999 Priority Customer complex contracts. The rebate amount for this tier is currently \$0.09 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.13 per contract, per leg. The current ADV threshold for the third tier is 75,000-124,999 Priority Customer complex contracts. The rebate amount for this tier is currently \$0.10 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.14 per contract, per leg. The current ADV threshold for the fourth tier is 125,000-224,999 Priority Customer complex contracts. The rebate amount for this tier is currently \$0.11 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.18 per contract, per leg. Finally, the current ADV threshold for the fifth tier is 225,000 or more Priority Customer complex contracts. The rebate amount for this tier is currently \$0.12 per contract, per leg. The Exchange proposes to increase the rebate for this tier to \$0.19 per contract, per leg. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex orders that trade against quotes or orders in the regular orderbook during such calendar month.

The Exchange believes this proposed change will enhance the Exchange's competitive position and incentivize Members to increase the amount of Priority Customer complex orders that they send to the Exchange.

The Exchange is not proposing any other changes in this filing.

Since the rate changes to the Schedule of Fees pursuant to this proposal will be effective upon filing, for the transactions occurring in April 2013 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 April 2013 on and after the effective date of this filing, members will be assessed the rates proposed by this filing.

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 “Act”)⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act⁵ 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 options overlying the symbols that are subject to the Exchange’s maker/taker fees and rebates.

The Exchange has determined to charge fees and provide rebates for regular orders in mini options at a rate that is 1/10th the rate of fees and rebates the Exchange currently provides for trading in standard options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees and rebates to provide market participants an incentive to trade mini options on the Exchange. The Exchange believes the proposed fees and rebates are reasonable and equitable in light of the fact that mini options have a smaller exercise and assignment value, specifically 1/10th that of a standard option contract, and, as such, levying fees that are 1/10th of what market participants pay today.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

The Exchange believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade against quotes or orders in the regular orderbook because paying a rebate would continue to attract additional order flow to the Exchange and create liquidity in the symbols that are subject to the rebate, which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange has already established a volume-based incentive program, and is now merely proposing to increase the rebate amounts in that program. The Exchange believes that the proposed rebates are competitive with rebates provided by other exchanges and are therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange. The Exchange believes paying these rebates would also attract additional order flow to the Exchange.

The Exchange believes that the proposed fee change will generally allow the Exchange and its Members to better compete for order flow and thus enhance competition. Specifically, the Exchange believes that its proposal, which increases rebate amounts, so Members can qualify for larger rebates, is reasonable as it will encourage Members to increase the amount of Priority Customer complex orders that they send to the Exchange instead of sending this order flow to a competing exchange. The Exchange believes that with the proposed rebate levels, Members are now likely to qualify for larger rebates.

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 this proposed rule change will continue to attract additional complex order business in the symbols that are subject to this proposed rule change.

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. Additionally, the Exchange believes it remains an attractive venue for market participants to direct their order flow in the symbols that are subject to this proposed rule change as its fees are competitive with those charged by other exchanges for similar trading strategies. 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

ISE believes that the proposed rule change, which will maintain fees that are competitive and are within the range of fees charged by other exchanges for similar orders, will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, the Exchange believes that the proposed changes will promote competition, as they are designed to allow ISE to better compete for order flow and improve the Exchange's competitive position.

The Exchange does not believe providing increased rebates to market participants is an undue burden on competition as the Exchange already provides these rebates and is now merely increasing the level of these rebates in response to increased rebates provided by other markets to attract Priority Customer order flow. Further, the Exchange believes the adjustment of the rebate for Priority Customer orders that trade with quotes and orders on the regular orderbook in all symbols reduces the burden on competition by

providing additional incentives for Priority Customer orders traded on the Exchange. This incents competition because non-Priority Customers wish to have Priority Customer orders attracted to the Exchange by having attractive rebates.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee change reflects this competitive environment.

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 Act⁶ and subparagraph (f)(2) of Rule 19b-4 thereunder,⁷ 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

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

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-2013-31 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-2013-31. 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 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-2013-31, 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.⁸

Kevin M. O'Neill
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).