

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-74970; File No. SR-ISE-2015-14)

May 14, 2015

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Schedule of Fees to Introduce a New "Retail" Designation for Priority Customer Orders

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 April 29, 2015, 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 the Schedule of Fees to introduce a new "Retail" designation for Priority Customer orders. 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 proposes to amend the Schedule of Fees to introduce a new “Retail” designation for Priority Customer orders. A “Priority Customer” is 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), as defined in Rule 100(a)(37A). This market participant type is one of six currently recognized for purposes of determining applicable fees and rebates, along with: Market Maker,<sup>3</sup> Non-ISE Market Maker,<sup>4</sup> Firm Proprietary,<sup>5</sup> Broker-Dealer,<sup>6</sup> and Professional Customer.<sup>7</sup> The Priority Customer designation was adopted by the Exchange to provide competitive pricing and market structure advantages to retail investors, and to level the playing field between retail investors and market professionals. As such, Priority Customer orders executed on the Exchange are generally afforded more favorable fees and rebates than other market participants, including Professional

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<sup>3</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Rule 100(a)(25).

<sup>4</sup> A “Non-ISE Market Maker” is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. See Schedule of Fees, Preface.

<sup>5</sup> A “Firm Proprietary” order is an order submitted by a member for its own proprietary account. See Schedule of Fees, Preface.

<sup>6</sup> A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. See Schedule of Fees, Preface.

<sup>7</sup> A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer. See Schedule of Fees, Preface.

Customers. The Exchange now believes that it is appropriate to introduce a further distinction between market participants that fall within the definition of Priority Customer.

In particular, the Exchange proposes to introduce a new “Retail” designation for Priority Customer orders for the purpose of determining applicable fees and rebates. As proposed, a Retail order is a Priority Customer order that originates from a natural person, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. The proposed definition of a Retail order is designed to mirror a similar concept introduced by the New York Stock Exchange (“NYSE”), NYSE Amex (“Amex”), and other equities exchanges to promote price improvement for orders submitted by retail investors.<sup>8</sup> The proposed rule change, however, is intended to provide benefits to retail options investors in the form of more favorable pricing rather than market structure changes.<sup>9</sup> While the Exchange is not amending fees and rebates applicable to Priority Customer orders that are designated Retail at this time, the Exchange intends to introduce special fees and rebates for Retail orders at a later date, such that Retail orders will potentially be entitled to the most favorable fees and rebates available on the Exchange. Until such time, Retail orders will be charged the same fees and provided the same rebates as other Priority Customer orders.

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<sup>8</sup> See Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR-NYSE-2011-55; SR-NYSEAmex-2011-84) (Approval Order). See also NYSE and Amex Rule 107C(a)(3).

NYSE and Amex define a “Retail Order” as an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

<sup>9</sup> In addition, the Exchange notes that unlike the related equities programs, all members will be eligible to mark orders as Retail provided that the orders meet the requirements discussed above.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>10</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act,<sup>11</sup> because is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the proposed rule change will allow the Exchange to potentially offer more favorable fees and rebates to Retail orders that originate from natural persons. Currently, the Exchange distinguishes between orders executed for two categories of Public Customer:<sup>12</sup> Priority and Professional Customers. Priority Customers are distinguished from Professional Customers by the requirement that they not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). Because of this limitation, Priority Customer orders are generally afforded more favorable fees and rebates than market professionals, including Professional Customers. The Exchange now believes that it is appropriate to distinguish further between orders that originate from a natural person (i.e., Retail orders) and other Priority Customer orders.

The equities markets already provide benefits to order flow that originates from a natural person and not a trading algorithm or any other computerized methodology. The Exchange

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> A “Public Customer” is a person or entity that is not a broker or dealer in securities. See Rule 100(a)(38).

believes that the proposed definition of a Retail order is appropriate as it is substantially similar to the definition already used in the equities context, and is therefore already familiar to market participants. The Exchange notes, however, that unlike equities exchanges such as NYSE and Amex, it is not proposing any market structure changes at this time to accompany the introduction of a Retail designation for Priority Customer orders. All Priority Customer orders will continue to benefit from the current market structure benefits that they receive on the Exchange. In addition, Priority Customer orders other than Retail orders will continue to benefit from pricing that is generally more favorable than pricing adopted for Professional Customer and non-Customer orders.

By adopting a definition of Retail order, the Exchange hopes to be able to offer potentially more favorable fees and rebates to retail investors. The Exchange believes that this will advance the goals identified when the Exchange first introduced the Priority Customer designation, by providing genuine retail investors with the best prices available on the Exchange. In this regard, the Exchange notes that the fees and rebates for Retail orders will initially be the same as fees and rebates for other Priority Customer orders; however, the Exchange will introduce additional pricing advantages for Retail orders at a later date pursuant to a proposed rule change filed with the Commission.

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

In accordance with Section 6(b)(8) of the Act,<sup>13</sup> the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposed Retail designation is an innovative change that evidences strong

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<sup>13</sup> 15 U.S.C. 78f(b)(8).

competition between options markets. In particular, the proposed rule change is designed to allow the Exchange to potentially offer the most favorable fees and rebates available to Retail orders that originate from natural persons. The Exchange 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 changes reflect 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 Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)<sup>14</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>15</sup> because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest, (ii) impose any significant burden on competition, and (iii) become operative for 30 days after its filing date, or such shorter time as the Commission may designate. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change.

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 proposal 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 No. SR-ISE-2015-14 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File No. SR-ISE-2015-14. 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 changes 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 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 No. SR-ISE-2015-14 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>16</sup>

Robert W. Errett  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).