

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-74975; File No. SR-ISE-2015-17)

May 15, 2015

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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 1, 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 tiered Market Maker Plus rebates based on the time quoting at the national best bid or offer ("NBBO") in specified series. 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

In order to promote and encourage liquidity in Select Symbols,<sup>3</sup> the Exchange currently offers Market Makers<sup>4</sup> that meet the quoting requirements for Market Maker Plus<sup>5</sup> enhanced rebates for adding liquidity in those symbols. In particular, Market Makers that qualify for Market Maker Plus are currently provided a maker rebate of \$0.20 per contract in Select Symbols instead of the \$0.10 per contract maker fee that applies to orders from other Market Makers in those symbols.<sup>6</sup> The Exchange now proposes to introduce three tiers of Market Maker Plus rebates based on time quoting at the NBBO. As proposed, a Market Maker will qualify for a “Tier 1” Market Maker Plus rebate of \$0.10 per contract if the Market Maker is on the NBBO at least 80% but lower than 85% of the time for series trading between \$0.03 and \$3.00 (for options

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<sup>3</sup> “Select Symbols” are options overlying all symbols listed on the ISE that are in the Penny Pilot Program.

<sup>4</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See ISE Rule 100(a)(25).

<sup>5</sup> A Market Maker Plus is a Market Maker that is on the National Best Bid or National Best Offer at least 80% of the time for series trading between \$0.03 and \$3.00 (for options whose underlying stock’s previous trading day’s last sale price was less than or equal to \$100) and between \$0.10 and \$3.00 (for options whose underlying stock’s previous trading day’s last sale price was greater than \$100) in premium in each of the front two expiration months. A Market Maker’s single best and single worst quoting days each month based on the front two expiration months, on a per symbol basis, are excluded in calculating whether a Market Maker qualifies for this rebate, if doing so will qualify a Market Maker for the rebate.

<sup>6</sup> A \$0.10 per contract fee applies when trading against Priority Customer complex orders that leg into the regular order book. There will be no fee charged or rebate provided when trading against non-Priority Customer complex orders that leg into the regular order book.

whose underlying stock's previous trading day's last sale price was less than or equal to \$100) and between \$0.10 and \$3.00 (for options whose underlying stock's previous trading day's last sale price was greater than \$100) in premium in each of the front two expiration months. If the Market Maker is instead on the NBBO at least 85% but lower than 95% of the time for applicable series described above, that Market Maker will qualify for a "Tier 2" Market Maker Plus rebate of \$0.18 per contract. Finally, a Market Maker that is on the NBBO at least 95% of the time, will qualify for a "Tier 3" Market Maker Plus rebate of \$0.22 per contract.

In addition, the Exchange notes that Market Makers that qualify for Market Maker Plus and execute a total affiliated Priority Customer average daily volume ("ADV")<sup>7</sup> of 200,000 contracts or more are currently provided an increased Market Maker Plus rebate of \$0.22 per contract. The Exchange now proposes to eliminate this enhanced rebate based on affiliated Priority Customer volume.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and Section 6(b)(4) of the Act,<sup>9</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

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<sup>7</sup> Priority Customer ADV includes all volume in all symbols and order types. All eligible volume from affiliated Members will be aggregated in determining total affiliated Priority Customer ADV, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A.

For purposes of determining Priority Customer ADV, any day that the regular order book is not open for the entire trading day may be excluded from such calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

The Exchange believes that it is reasonable and equitable to offer tiered Market Maker Plus rebates as these rebates would reward members based on maintaining tight markets in series that they quote on ISE. The Exchange believes that maintaining tight markets benefits all market participants that trade on ISE, and has therefore determined to reflect this more fully in the rebates offered. With this proposal, Market Makers that qualify for Market Maker Plus will receive rebates that reflect the liquidity that they provide at the NBBO. The Exchange notes that it already provides a Market Maker Plus rebate for Market Makers that quote at the NBBO. The proposed rule change merely allows the Exchange to further incentivize Market Makers by reserving the very best rebates for Market Makers that maintain quotes that are at the NBBO the vast majority of the time. In this regard, the Exchange notes that Market Makers that are on the lower end of the current Market Maker Plus requirement will receive lower rebates than they do today, while Market Makers that routinely quote at the NBBO will receive higher rebates than currently offered. The Exchange does not believe that this is unfairly discriminatory as all Market Makers are eligible to receive the higher tier Market Maker Plus rebates based on the percentage of time that they maintain quotes at the NBBO. Furthermore, the Exchange does not believe that it is unfairly discriminatory to offer these rebates only to Market Makers as Market Makers, and, in particular, those Market Makers that achieve Market Maker Plus status, are subject to additional requirements and obligations (such as quoting requirements) that other market participants are not.

The Exchange further believes that it is reasonable, equitable, and not unfairly discriminatory to eliminate the higher Market Maker Plus rebate currently provided to Market Makers that qualify for Market Maker Plus and execute a total affiliated Priority Customer ADV of 200,000 contracts or more as this incentive is no longer needed. Market Makers that wish to

receive higher rebates may continue to do so by qualifying for the new highest tier of Market Maker Plus rebate offered to Market Makers that are on the NBBO in applicable series at least 95% of the time. The Exchange believes that this will be a more effective incentive for Market Makers to actively participate in the Market Maker Plus program as it is based on the quality of markets quoted and not tied to affiliated member volume.

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

In accordance with Section 6(b)(8) of the Act,<sup>10</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. The Exchange believes that the proposed Market Maker Plus rebates provide a valuable incentive for Market Makers to maintain tight markets on ISE and will thereby help the Exchange maintain its competitive standing. 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 fee 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.

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<sup>10</sup> 15 U.S.C. 78f(b)(8).

### 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>11</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>12</sup> 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.

### 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-2015-17 on the subject line.

#### Paper Comments:

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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

All submissions should refer to File No. SR-ISE-2015-17. 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-2015-17 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>13</sup>

Robert W. Errett  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).