

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80188; File No. SR-ISE-2017-16)

March 9, 2017

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 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on February 24, 2017, the International Securities Exchange, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. 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 Exchange proposes to amend the Exchange’s Schedule of Fees, as described in further detail below.

The text of the proposed rule change is available on the Exchange’s Website at 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 Exchange 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item IV below. The Exchange 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 purpose of the proposed rule change is to amend the Exchange’s Schedule of Fees to make changes to (1) the Market Maker Plus³ program, (2) Priority Customer⁴ regular order taker fees in Select Symbols,⁵ (3) Priority Customer complex order rebates in Select Symbols and Non-Select Symbols,⁶ and (4) the threshold of net zero complex contracts. Each of these changes is described below.

Market Maker Plus

In order to promote and encourage liquidity in Select Symbols, the Exchange offers Market Makers⁷ that meet the quoting requirements for Market Maker Plus enhanced rebates for

³ A “Market Maker Plus” is a Market Maker who is on the National Best Bid or National Best Offer a specified percentage 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. The specified percentage is at least 80% but lower than 85% of the time for Tier 1, at least 85% but lower than 95% of the time for Tier 2, and at least 95% of the time for Tier 3. 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, will be excluded in calculating whether a Market Maker qualifies for this rebate, if doing so will qualify a Market Maker for the rebate.

⁴ 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 ISE Rule 100(a)(37A).

⁵ “Select Symbols” are options overlying all symbols listed on the ISE that are in the Penny Pilot Program.

⁶ “Non-Select Symbols” are options overlying all symbols, excluding Select Symbols.

⁷ The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See ISE Rule 100(a)(25).

adding liquidity in those symbols. These Market Maker Plus rebates are provided on a per symbol basis in three tiers based on the time the Market Maker is quoting at the national best bid or offer (“NBBO”).⁸ Currently, the rebate is \$0.10 per contract for Tier 1, \$0.18 per contract for Tier 2, and \$0.22 per contract for Tier 3.⁹ The Exchange now proposes to increase the rebate for Tier 1 to \$0.15 per contract. The rebates for Tier 2 and Tier 3, including the special rebates for Market Makers that achieve Market Maker Plus in SPY or QQQ, will remain at the same amounts as described herein.

Priority Customer Taker Fees

The Exchange charges a taker fee for regular orders in Select Symbols. This fee is \$0.44 per contract for Market Maker orders, and \$0.45 per contract for Non-ISE Market Maker,¹⁰ Firm Proprietary¹¹ / Broker-Dealer,¹² and Professional Customer¹³ orders. For Priority Customer

⁸ For all Market Maker Plus tiers, a \$0.30 per contract fee applies when trading against Priority Customer complex orders that leg into the regular order book. No fee is charged or rebate provided when trading against non-Priority Customer complex orders that leg into the regular order book).

⁹ In addition, the Exchange also offers lower rebates for Market Makers that achieve Market Maker Plus in SPY or QQQ. Specifically, Market Makers that achieve Tier 2 or Tier 3 of Market Maker Plus in either SPY or QQQ will receive the SPY or QQQ rebate based on the highest Market Maker tier achieved in either product. For example, a Market Maker that achieves Tier 1 Market Maker Plus in QQQ but Tier 3 Market Maker Plus in SPY will receive a Tier 3 rebate in both SPY and QQQ. Instead of the Tier 2 and Tier 3 rebates described above, however, Market Maker Plus orders in SPY or QQQ are entitled to a rebate of \$0.16 per contract for Tier 2, and \$0.20 per contract for Tier 3.

¹⁰ 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.

¹¹ A “Firm Proprietary” order is an order submitted by a member for its own proprietary account.

¹² A “Broker-Dealer” order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

¹³ A “Professional Customer” is a person or entity that is not a broker/dealer and is not a Priority Customer.

orders this fee is \$0.31 per contract, or \$0.26 per contract for members with a total affiliated Priority Customer average daily volume (“ADV”) that equals or exceeds 200,000 contracts.¹⁴

The Exchange now proposes to increase the taker fee for Priority Customer orders in Select Symbols to \$0.40 per contract for all such orders regardless of volume. As such, the Exchange also proposes to delete the volume-based incentive for Priority Customer orders in Select Symbols, specifically the taker fee of \$0.26 per contract for members that achieve the higher Priority Customer ADV tier.

Priority Customer Complex Order Rebates

Currently, the Exchange provides rebates to Priority Customer complex orders that trade with non-Priority Customer complex orders in the complex order book or trade with quotes and orders on the regular order book. Rebates are tiered based on a member’s ADV executed during a given month as follows: 0 to 29,999 contracts (“Tier 1”), 30,000 to 59,999 contracts (“Tier 2”), 60,000 to 99,999 contracts (“Tier 3”), 100,000 to 149,999 (“Tier 4”), 150,000 to 199,999 contracts (“Tier 5”), and 200,000 or more contracts (“Tier 6”). In Select Symbols the rebate is \$0.30 per contract for Tier 1, \$0.35 per contract for Tier 2, \$0.41 per contract for Tier 3, \$0.44 per contract for Tier 4, \$0.46 per contract for Tier 5, and \$0.47 per contract for Tier 6. In Non-Select Symbols the rebate is \$0.63 per contract for Tier 1, \$0.71 per contract for Tier 2, \$0.79 per

¹⁴ 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 or the Exchange instructs members in writing to route their orders to other markets 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.

contract for Tier 3, \$0.81 per contract for Tier 4, \$0.83 per contract for Tier 5, and \$0.84 per contract for Tier 6.¹⁵

The Exchange now proposes to (i) introduce two additional volume-based tiers of Priority Customer complex order rebates and (ii) in the existing tiers, amend the volume requirements necessary for achieving higher Priority Customer complex order rebates. As proposed, the ADV thresholds will be as follows: 0 to 14,999 contracts (“Tier 1”), 15,000 to 44,999 contracts (“Tier 2”), 45,000 to 59,999 contracts (“Tier 3”), 60,000 to 74,999 contracts (“Tier 4”), 75,000 to 99,999 contracts (“Tier 5”), 100,000 to 124,999 contracts (“Tier 6”), 125,000 to 224,999 contracts (“Tier 7”), and 225,000 or more contracts (“Tier 8”).

Under the proposal, the rebate amounts provided for Priority Customer complex orders in both Select Symbols and Non-Select Symbols will be amended to reflect the tier changes described above. In Select Symbols, the proposed rebate will be \$0.26 per contract for Tier 1, \$0.30 per contract for Tier 2, \$0.36 per contract for Tier 3, \$0.41 per contract for Tier 4, \$0.42 per contract for Tier 5, \$0.44 per contract for Tier 6, \$0.46 per contract for Tier 7, and \$0.49 per contract for Tier 8. In Non-Select Symbols, the proposed rebate will be \$0.40 per contract for Tier 1, \$0.60 per contract for Tier 2, \$0.70 per contract for Tier 3, \$0.75 per contract for Tier 4, \$0.75 per contract for Tier 5, \$0.80 per contract for Tier 6, \$0.81 per contract for Tier 7, and \$0.85 per contract for Tier 8. Other rebate amounts—specifically, the Price Improvement Mechanism (“PIM”) Break-up Rebates for both Select and Non-Select Symbols and the Facilitation and Solicitation Break-up Rebate for Select Symbols—will remain unchanged from their current levels, including the rebate amounts for the two proposed additional tiers.

¹⁵ For both Select Symbols and Non-Select Symbols, these rebates are provided per contract per leg if the order trades with non-Priority Customer orders in the complex order book, or trades with quotes and orders on the regular order book.

Net Zero Complex Orders

Today, the Exchange does not provide rebates for Priority Customer complex orders that trade at a net price at or near \$0.00 (i.e., net zero complex orders) that are entered on behalf of originating market participants that execute an ADV of at least 10,000 net zero complex orders in a given month. For purposes of determining which complex orders qualify as “net zero,” the Exchange counts all complex orders that leg in to the regular order book and are executed at a net price that is within a range of \$0.01 credit and \$0.01 debit.¹⁶ While these complex orders would generally not find a counterparty in the complex order book, they may leg in to the regular market where they are executed by Market Makers or other market participants on the individual legs who pay a fee to trade with this order flow. The fee Market Makers pay when a complex order legs into their quote is substantially higher than their fee or rebate for non-complex orders that trade against their quotes. The 10,000 contract threshold exists to differentiate market participants that are entering legitimate complex orders from those that are entering net zero complex orders solely to earn a rebate.

The Exchange now proposes to lower the threshold of net zero complex contracts from 10,000 to 2,000 contracts. As such, net zero priced complex orders that leg into the regular order book and are entered by firms with an ADV in this type of activity of 2,000 contracts or more in a given month will not earn the Priority Customer complex order rebate.

¹⁶ For example, a market participant could enter a net zero complex order that buys 500 contracts of the \$193 March 6, 2016 SPY Put at a price of \$0.03 and sells 500 contracts of the \$193.50 March 6, 2016 SPY Put at a price of \$0.03 for a net price of \$0.00.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Market Maker Plus Program

The Exchange believes that it is reasonable and equitable to increase the Tier 1 Market Maker Plus rebate because it will encourage Market Makers to post tighter markets in Select Symbols and thereby maintain liquidity and attract additional order flow to the ISE, which will ultimately benefit all market participants that trade on the Exchange. The Tier 1 Market Maker Plus rebate has proven to be an effective incentive for Market Makers to provide liquidity in Select Symbols. The Exchange believes that the proposed Tier 1 Market Maker Plus rebate is reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange. The Exchange also believes that the proposed Tier 1 Market Maker Plus rebate is not unfairly discriminatory because all Market Makers can achieve the higher rebate by satisfying the applicable Market Maker Plus requirements.

Priority Customer Taker Fees

The Exchange believes that the proposed changes to increase the Priority Customer taker fee and eliminate the Priority Customer taker fee discount program for members with a total affiliated Priority Customer ADV of more than 200,000 contracts are reasonable and equitable because the proposed fees remain lower than the fees charged to other market participants that

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

remove liquidity on the Exchange. In addition, the Exchange believes that it is equitable and not unfairly discriminatory to continue to provide lower fees for Priority Customer orders. A Priority Customer is by definition not a broker or 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). This limitation does not apply to participants whose behavior is substantially similar to that of market professionals, including Professional Customers, who will generally submit a higher number of orders than Priority Customers.

Priority Customer Complex Order Rebates

The Exchange believes that it is reasonable and equitable to make the proposed changes, both to the volume requirements necessary to achieve the Priority Customer complex order rebates and to the rebate amounts, as the proposals are designed to attract additional Priority Customer complex order volume to the Exchange. Although the Exchange is lowering the rebates for Priority Customer complex orders, it is also generally lowering the associated volume thresholds to make it easier for members to achieve the higher tiers. While the proposed rebate amounts are lower in some categories, the Exchange believes that the proposed changes are reasonable and equitable when looking at the overall program for both Non-Select Symbol and Select Symbol rebates. For example, a member who received a \$0.71 Non-Select Symbol rebate for executing an ADV of 45,000 Non-Select Symbol contracts in a given month under the existing program would receive a \$0.70 Non-Select Symbol rebate under the proposed program. However, a member who would have received a \$0.35 Select Symbol rebate under the existing program for executing the same ADV for Select Symbol contracts in a given month would receive a \$0.36 Select Symbol rebate under the proposed program. Therefore, the Exchange believes that the overall amendments to its rebate program for Priority Customer complex orders is reasonable and equitable as proposed. In addition, the Exchange believes that introducing an

additional volume-based tier with higher rebate amounts will incentivize members to send additional order flow to the Exchange in order to achieve these rebates for their Priority Customer complex order volume, creating additional liquidity to the benefit of all members that trade complex orders on the Exchange.

The Exchange further believes that it is equitable and not unfairly discriminatory to continue to provide a rebate only for Priority Customer complex orders. A Priority Customer is by definition not a broker or 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). This limitation does not apply to participants whose behavior is substantially similar to that of market professionals, including Professional Customers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers.

Net Zero Complex Orders

The Exchange believes that the proposed change to lower the threshold of net zero complex contracts is reasonable, equitable, and not unfairly discriminatory as it is designed to remove financial incentives for market participants to engage in rebate arbitrage by entering valueless complex orders on the Exchange that do not have any economic purpose. The Exchange has determined that the current threshold is still too high to effectively discourage market participants from engaging in rebate arbitrage, and believes that the lower threshold proposed in this filing more accurately reflects the Exchange's original intent. No market participants meet the current ADV threshold, as firms have modified their activity to ensure that their complex ADV in the net zero range is lower than the 10,000 ADV threshold set in the original net zero filing. In January 2017, for example, the market participant with the largest ADV in net zero contracts executed an ADV of 1,250 net zero contracts. By comparison the average net zero ADV of market participants that traded complex orders in January 2017 was

only 12 contracts, with the vast majority of these market participants executing no net zero contracts. The continued submission of a high volume of net zero complex orders that leg into the regular order book by these firms has generated complaints from the Market Makers that trade against these orders in the regular order book, as firms recognize these net zero complex orders as essentially non-economic.

The Exchange believes that lowering the threshold will make it more difficult for firms to continue to enter net zero complex orders purely to earn a rebate. In particular, the Exchange notes that any firm that engages in this activity will be prevented from doing so with an ADV of more than 2,000 net zero complex orders. This will reduce the cost of these trades to the Exchange and its members as firms are limited in the amount of this net zero complex order activity that they can conduct on the Exchange. While the proposed threshold is still higher than current activity seen in January 2017, the Exchange believes that it is important to lower the ADV threshold to ensure that market participants do not further increase this activity. The Exchange believes that market participants will stop entering net zero complex orders when they reach the proposed ADV threshold as these firms are entering these orders solely for the purpose of earning a rebate. Indeed, this is consistent with the Exchange's experience with this rule to date, as firms that were previously entering a high volume of net zero complex orders have reduced their volume in activity covered by this rule.

To the extent that market participants enter legitimate complex orders, however, they will continue to receive the same rebates that they do today. In addition, market participants that enter an insubstantial volume of net zero complex orders will also continue to receive rebates. The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to continue to provide rebates where appropriate based on the market participant executing only a low ADV of

net zero complex orders. While the Exchange could prohibit rebates for any net zero complex orders without an ADV threshold, doing so would disadvantage innocent market participants that are not engaged in rebate arbitrage. The Exchange believes that the decision to allow rebates for firms with a limited ADV in net zero complex orders properly balances the need to encourage market participants to send order flow to the Exchange, and the need to prevent activity that is harmful to the market. Moreover, all market participants will be treated the same based on their net zero ADV.

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

In accordance with Section 6(b)(8) of the Act,¹⁹ 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 fees and rebates remain competitive with those on other options markets, and will continue to attract order flow to the Exchange. 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

No written comments were either solicited or received.

¹⁹ 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,²⁰ and Rule 19b-4(f)(2)²¹ thereunder. 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 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-2017-16 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2017-16. 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

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 17 CFR 240.19b-4(f)(2).

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-2017-16 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.²²

Eduardo A. Aleman
Assistant Secretary

²² 17 CFR 200.30-3(a)(12).