

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66406; File No. SR-ISE-2012-07]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Certain Complex Orders Executed on the Exchange

February 16, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 1, 2012, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "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 ISE is proposing to amend fees for certain complex orders executed on the Exchange. 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.

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

###### 1. Purpose

The Exchange currently assesses a per contract transaction fee to market

participants that add or remove liquidity in the Complex Order Book ("maker/taker fees") in symbols that are in the Penny Pilot program. Included therein is a subset of 101 symbols that are assessed a slightly higher taker fee (the "Select Symbols").<sup>3</sup> Specifically, the Exchange charges ISE market maker orders,<sup>4</sup> firm proprietary orders and Customer (Professional Orders)<sup>5</sup> \$0.10 per contract for providing liquidity on the Complex Order Book and \$0.30 per contract (\$0.32 per contract in the Select Symbols) for taking liquidity from the Complex Order Book. ISE market makers who take liquidity from the Complex Order Book by trading with orders that are preferenced to them are charged \$0.28 per contract (\$0.30 per contract in the Select Symbols). Non-ISE Market Makers<sup>6</sup> are currently charged \$0.20 per contract for providing liquidity and \$0.35 per contract (\$0.36 per contract in the Select Symbols) for taking liquidity from the Complex Order Book. Priority Customer orders are not charged a fee for trading in the Complex Order Book and receive a rebate of \$0.25 per contract (\$0.30 per contract in the Select Symbols) when those orders trade with non-customer orders in the Complex Order Book.

The Exchange also recently adopted fees for complex orders in two of the most actively-traded index option products, the NASDAQ 100 Index option ("NDX") and the Russell 2000 Index option ("RUT").<sup>7</sup> Specifically, the Exchange charges ISE market maker orders, firm proprietary orders and Customer (Professional Orders) \$0.25 per contract for providing liquidity on the Complex Order Book in NDX and RUT and \$0.70 per contract for taking liquidity from the Complex Order Book in NDX and RUT. Non-ISE Market Makers are charged \$0.25 per contract for providing liquidity and \$0.75 per contract for taking liquidity from the Complex Order Book in NDX and RUT. ISE market makers who remove liquidity from the Complex Order Book in NDX and RUT by trading with orders that are preferenced to them are charged

<sup>3</sup> The Select Symbols are identified by their ticker symbol on the Exchange's Schedule of Fees.

<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> The term "Professional Order" means an order that is for the account of a person or entity that is not a Priority Customer. See ISR [sic] Rule 100(a)(37C).

<sup>6</sup> The term "Non-ISE Market Maker" means a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934 (the "Act") registered in the same options class on another options exchange. See Schedule of Fees, page 4.

<sup>7</sup> See Securities Exchange Act Release No. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR-ISE-2011-84).

\$0.68 per contract. Priority Customer orders are not charged a fee for trading in the Complex Order Book in NDX and RUT and receive a rebate of \$0.50 per contract when those orders trade with non-Priority Customer orders in the Complex Order Book in NDX and RUT.

Further, pursuant to Securities and Exchange Commission ("SEC") approval, the Exchange allows market makers to enter quotations for complex order strategies in the Complex Order Book.<sup>8</sup> Given this enhancement to the complex order functionality, and in order to maintain a competitive fee and rebate structure for Priority Customer orders, the Exchange recently amended fees that apply to transactions in the Complex Order Book in the following three symbols: XOP, XLB and EFA.<sup>9</sup> Specifically, the Exchange amended its maker fees for complex orders in these three symbols when these orders interact with Priority Customers.<sup>10</sup> In SR-ISE-2011-81, the Exchange increased its maker fee from \$0.10 per contract to \$0.30 per contract in XOP (\$0.32 per contract in XLB and EFA) for ISE market maker orders, firm proprietary orders, and Customer (Professional Orders) when these orders interact with Priority Customer orders. The Exchange also increased its maker fee from \$0.20 per contract to \$0.30 per contract in XOP (\$0.32 per contract in XLB and EFA) for Non-ISE Market Makers orders when these orders interact with Priority Customer orders. The Exchange did not make any change to fees for Priority Customer orders that trade in the Complex Order Book.

Further, for Priority Customer complex orders in XOP, the Exchange currently provides a rebate of \$0.25 per contract (\$0.30 per contract for XLB and EFA) when these orders trade with non-Priority Customer orders in the Complex Order Book.

Further, the Exchange provides ISE market makers with a two cent discount when trading against orders that are preferenced to them. Prior to SR-ISE-2011-81, this discount was only applicable when ISE Market Makers removed liquidity from the Complex Order Book. Pursuant to SR-ISE-2011-

<sup>8</sup> See Securities Exchange Act Release No. 65548 (October 13, 2011), 76 FR 64980 (October 19, 2011) (SR-ISE-2011-39).

<sup>9</sup> See Securities Exchange Act Release No. 65958 (December 15, 2011), 76 FR 79236 (December 21, 2011) (SR-ISE-2011-81). The Exchange notes that XOP is currently in the Penny Pilot program and XLB and EFA are currently Select Symbols.

<sup>10</sup> The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account. See ISE Rule 100(a)(37A).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

81, the Exchange began to provide this fee discount when ISE Market Makers added or removed liquidity from the Complex Order Book. As a result, the Exchange currently provides this fee discount when ISE market makers add or remove liquidity from the Complex Order Book in XOP, XLB and EFA. Specifically, ISE market makers that add or remove liquidity in XLB and EFA in the Complex Order Book are charged \$0.30 per contract (\$0.28 per contract in XOP) when trading with orders that are preferred to them.

Additionally, to incentivize members to trade in the Exchange's various auction mechanisms, the Exchange currently provides a per contract rebate to those contracts that do not trade with the contra order in the Exchange's Facilitation Mechanism,<sup>11</sup> Price Improvement Mechanism<sup>12</sup> and Solicited Order Mechanism.<sup>13</sup> This rebate currently applies to all complex orders in symbols that are subject to the Exchange's maker/taker fees. 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. Accordingly, a per contract rebate at the current levels currently applies to those contracts in XOP, XLB, and EFA that do not trade with the contra order in the Exchange's Facilitation Mechanism, Price Improvement Mechanism and Solicited Order Mechanism.

The Exchange now proposes to extend the fees for complex orders adopted in SR-ISE-2011-81 to the following additional seven symbols: AA, ABX, MSFT, MU, NVDA, VZ, and WFC.<sup>14</sup> The Exchange proposes to expand the pricing structure and fees applicable to these orders in a manner that is gradual and measured. For that reason, the Exchange selected symbols that have moderate trading activity. In this case, each of the seven symbols selected by the Exchange has an average daily trading volume in complex orders of 500 contracts to 10,000 contracts on the Exchange.

Specifically, the Exchange proposes to increase its maker fee from \$0.10 per

contract to \$0.32 per contract in AA, ABX, MSFT, MU, NVDA, VZ, and WFC for ISE market maker orders, firm proprietary orders, and Customer (Professional Orders) when these orders interact with Priority Customer orders. The Exchange proposes to increase its maker fee from \$0.20 per contract to \$0.32 per contract in AA, ABX, MSFT, MU, NVDA, VZ, and WFC for Non-ISE Market Makers orders when these orders interact with Priority Customer orders. The Exchange does not propose any change to fees for Priority Customer orders that trade in the Complex Order Book.

Further, the Exchange provides ISE market makers with a two cent discount when trading against orders that are preferred to them. Accordingly, the Exchange currently provides this fee discount when ISE Market Makers add or remove liquidity from the Complex Order Book in AA, ABX, MSFT, MU, NVDA, VZ, and WFC.<sup>15</sup> Specifically, ISE market makers that add or remove liquidity in AA, ABX, MSFT, MU, NVDA, VZ, and WFC in the Complex Order Book are charged \$0.30 per contract when trading with orders that are preferred to them.

Further, for Priority Customer complex orders in AA, ABX, MSFT, MU, NVDA, VZ, and WFC, the Exchange currently provides a rebate of \$0.30 per contract when these orders trade with non-Priority Customer orders in the Complex Order Book. The Exchange does not propose any change to this rebate.

Finally, as noted above, to incentivize members to trade in the Exchange's various auction mechanisms, the Exchange currently provides a per contract rebate 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 all complex orders in symbols that are subject to the Exchange's maker/taker fees. 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. Accordingly, a per contract rebate at the current levels currently applies to those contracts in AA, ABX, MSFT, MU,

NVDA, VZ, and WFC that do not trade with the contra order in the Exchange's Facilitation Mechanism, Price Improvement Mechanism and Solicited Order Mechanism. The Exchange does not propose any change to this rebate.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act<sup>16</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>17</sup> 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 AA, ABX, MSFT, MU, NVDA, VZ, and WFC in the Complex Order Book.

The Exchange believes that increasing the fees applicable to orders executed in the Complex Order Book when trading against Priority Customers in AA, ABX, MSFT, MU, NVDA, VZ, and WFC is appropriate given the new functionality that allows market makers to quote in the Complex Order Book. Additionally, the Exchange's fees remain competitive with fees charged by other exchanges and are therefore reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. Specifically, the Exchange believes that its proposal to assess a 'make' fee of \$0.32 per contract for AA, ABX, MSFT, MU, NVDA, VZ, and WFC when orders in these symbols interact with Priority Customers is reasonable and equitable because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, the 'make' fee for a broker/dealer complex order in MSFT when trading against a Priority Customer at NASDAQ OMX PHLX ("PHLX") is \$0.20 per contract<sup>18</sup> while the same order that is electronically delivered at the Chicago Board Options Exchange ("CBOE") is \$0.45 per contract.<sup>19</sup> Furthermore, one of the primary goals of this fee change, as well as the fees adopted in SR-ISE-2011-81, is to maintain the attractive and competitive economics for Priority Customer

<sup>11</sup> See Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR-ISE-2010-25).

<sup>12</sup> See Exchange Act Release No. 62048 (May 6, 2010), 75 FR 26830 (May 12, 2010) (SR-ISE-2010-43). The Exchange subsequently increased this rebate to \$0.25 per contract. See Exchange Act Release No. 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR-ISE-2010-106).

<sup>13</sup> See Exchange Act Release No. 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR-ISE-2010-106).

<sup>14</sup> The Exchange notes that AA, ABX, MSFT, MU, NVDA, VZ, and WFC are currently Select Symbols.

<sup>15</sup> ISE acknowledged that it does not currently provide this fee discount for the seven symbols included in this proposal. Instead, the proposal establishes this discount for these seven symbols. Telephone conversation among Boris Ilyevsky, Managing Director, ISE; Samir Patel, Assistant General Counsel, ISE; Victoria Crane, Assistant Director, Commission; Yvonne Fraticelli, Special Counsel, Commission; and Kathleen Gross, Counsel, Commission on February 13, 2012.

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(4).

<sup>18</sup> See PHLX Fee Schedule, Section I, Part B., at <http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf>.

<sup>19</sup> See CBOE Fees Schedule, Section 1.VI. at <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>.

complex orders, while introducing an enhancement to the way complex orders trade on the Exchange.

The Exchange also believes that it is reasonable and equitable to provide a two cent discount to ISE market makers on preferenced orders because this will provide an incentive for market makers to quote in the Complex Order Book. The Exchange believes that it is reasonable and equitable to continue to provide rebates for Priority Customer complex orders because paying a rebate will continue to attract additional order flow to the Exchange and thereby create liquidity that ultimately will benefit all market participants who trade on the Exchange.

The Exchange believes that it is reasonable and equitable to charge the fees proposed herein as they are already applicable to complex orders in XOP, XLB and EFA; with this proposed rule change, the Exchange is simply extending its current fees to an additional seven symbols. 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. The Exchange believes it remains an attractive venue for market participants to trade complex orders despite its proposed fee change as its fees remain 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*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange 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 Exchange Act.<sup>20</sup> 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 Exchange 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 Exchange 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2012-07 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-2012-07. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 a.m. and 3 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-2012-07 and should be submitted on or before March 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66401; File No. SR-NYSE-2012-03]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 123C(4) To Provide for How Certain Interest Is Included in the Calculation of MOC and LOC Imbalances**

February 15, 2012.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on February 2, 2012, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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 Exchange proposes to amend Exchange Rule 123C(4) to provide for how certain interest is included in the calculation of MOC and LOC

<sup>21</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A)(ii).