2012–38 and should be submitted on or before June 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66962; File No. SR–ISE–2012–35]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Transaction Fees and Rebates for Complex Orders Executed on the Exchange

May 10, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 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 transaction fees and rebates for 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 per contract transaction fees and rebates to market participants that add or remove liquidity from the Exchange (''maker/taker fees and rebates'') in a number of options classes (the ''Select Symbols'').[3] The Exchange's maker/taker fees and rebates are applicable to regular and complex orders executed in the Select Symbols. The Exchange also currently assesses maker/taker fees and rebates for complex orders in symbols that are in the Penny Pilot program but are not a Select Symbol (Non-Select Penny Pilot Symbols) [4] and for complex orders in all symbols that are not in the Penny Pilot Program (''Non-Penny Pilot Symbols'').[5] The purpose of this proposed rule change is to amend maker/taker fees and rebates for complex orders in the Non-Penny Pilot Symbols.

For complex orders in the Non-Penny Pilot Symbols, the Exchange currently charges a ''taker'' fee of: (i) $0.70 per contract for ISE Market Maker,[6] Firm Proprietary and Customer (Professional) [7] orders; and (ii) $0.75 per contract for Non-ISE Market Maker [8] orders. Priority Customer [9] orders are not charged a ''taker'' fee for complex orders in the Non-Penny Pilot Symbols. For complex orders in these same symbols, the Exchange currently charges a ''maker'' fee of $0.10 per contract for ISE Market Maker, Non-ISE Market Maker, Firm Proprietary and Customer (Professional) orders. Priority Customer orders are not charged a ''maker'' fee for complex orders in these symbols.

The Exchange now proposes to increase the ''taker'' fee for complex orders in the Non-Penny Pilot Symbols to (i) $0.73 per contract for ISE Market Maker, Firm Proprietary and Customer (Professional) orders; and (ii) $0.78 per contract for Non-ISE Market Maker orders.

For responses to special orders in the Non-Penny Pilot Symbols,[10] ISE currently charges $0.70 per contract for ISE Market Maker, Firm Proprietary and Customer (Professional) orders. For Non-ISE Market Maker orders, this fee is currently $0.75 per contract. The Exchange now proposes to increase the fee for responses to special orders in the Non-Penny Pilot Symbols to $0.73 per contract for ISE Market Maker, Firm Proprietary and Customer (Professional) orders, and to $0.78 per contract for Non-ISE Market Maker orders.

Further, the Exchange currently provides volume-based tiered rebates for Priority Customer complex orders in the Non-Penny Pilot Symbols when these orders trade with non-Priority Customer orders in the complex order book. Specifically, the Exchange currently provides a rebate of $0.52 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members who achieve certain average daily volume (ADV) of Priority Customer complex order contracts across all symbols executed during a calendar month are provided a rebate of $0.54 per contract per leg, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts, and $0.56 per contract per leg, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month.

In order to enhance the Exchange's competitive position and to incentivize Members to increase the amount of Priority Customer complex orders that

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] *See* Exchange Act Release No. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR–ISE–2011–72).

[5] *See* Exchange Act Release Nos. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR–ISE–2011–84); and 66392 (February 14, 2012), 77 FR 10016 (February 21, 2012) (SR–ISE–2012–06).

[6] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[7] A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

[8] A Non-ISE Market Maker, or Far Away Market Maker (''FARMM''), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended (''Exchange Act''), registered in the same options class on another options exchange.

[9] A Priority Customer is defined in ISE Rule 100(a)(37A) as 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).

[10] A response to a special order is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism and Price Improvement Mechanism. This fee applies to ISE Market Maker, Non-ISE Market Maker, Firm Proprietary, Customer (Professional) and Priority Customer interest.

they send to the Exchange, the Exchange now proposes to increase the base amount of the rebate to $0.57 per contract. Additionally, the Exchange proposes to increase the amount of that rebate even further, on a month-by-month and Member-by-Member basis, if such Member achieves an ADV of Priority Customer complex order contracts across all symbols executed during the calendar month, as follows: if the Member achieves an ADV of 75,000 Priority Customer complex order contracts, the rebate amount shall be $0.59 per contract per leg; if the Member achieves an ADV of 125,000 Priority Customer complex order contracts, the rebate amount shall be $0.61 per contract per leg.

Additionally, ISE Market Makers who remove liquidity in the Non-Penny Pilot Symbols from the complex order book by trading with orders that are preferenced to them are currently charged $0.68 per contract. With the proposed increase to the ''taker'' fees for complex orders in the Non-Penny Pilot Symbols noted above, the Exchange also proposes to increase the fee charged to ISE Market Makers who remove liquidity in these symbols to $0.71 per contract when trading with orders that are preferenced to them in the Non-Penny Pilot Symbols.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Exchange Act [11] in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act [12] 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 interact with and respond to certain types of orders.

The Exchange believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade with Non-Priority Customer complex orders in the complex order book 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 already provides these types of rebates, and is now merely proposing to increase those rebate amounts. 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 it is reasonable and equitable to charge ISE Market Maker, Firm Proprietary and Customer (Professional) orders a ''taker'' fee of $0.73 per contract ($0.78 per contract for Non-ISE Market Maker orders) for complex orders in the Non-Penny Pilot Symbols because the Exchange is seeking to recoup the cost associated with paying increased rebates for Priority Customer complex orders. The Exchange further believes it is reasonable and equitable to charge ISE Market Maker, Firm Proprietary and Customer (Professional) orders a fee of $0.73 per contract ($0.78 per contract for Non-ISE Market Maker orders) when such members are responding to special orders because a response to a special order is akin to taking liquidity, thus the Exchange is proposing an identical fee for taking liquidity in the Non-Penny Pilot Symbols. The Exchange believes the proposed fees are also reasonable and equitably allocated because they are within the range of fees assessed by other exchanges employing similar pricing schemes. In addition, the Exchange believes that charging Non-ISE Market Maker orders a higher rate than the fee charged to ISE Market Maker, Firm Proprietary and Customer (Professional) orders is appropriate and not unfairly discriminatory because Non-ISE Market Makers are not subject to many of the non-transaction based fees that these other categories of membership are subject to, *e.g.,* membership fees, access fees, API/Session fees, market data fees, *etc.* Therefore, it is appropriate and not unfairly discriminatory to assess a higher transaction fee on Non-ISE Market Makers because the Exchange incurs costs associated with these types of orders that are not recovered by non-transaction based fees paid by members.

The Exchange believes that it is reasonable and equitable to provide a two cent discount to ISE Market Makers on preferenced orders as an incentive for them to quote in the complex order book. The Exchange notes that PHLX currently provides a similar discount, albeit the differential at that exchange is five cents. Accordingly, ISE Market Makers who remove liquidity in the Non-Penny Pilot Symbols from the complex order book will be charged $0.71 per contract when trading with orders that are preferenced to them. The Exchange notes that with this proposed fee change, the Exchange, while increasing this fee, will continue to maintain a two cent differential that was previously in place.

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 increasing its complex order rebates will attract additional complex order business. The Exchange further believes that the Exchange's complex order rebates and its maker/taker fees are not unfairly discriminatory because these fee structures are consistent with fee structures that exist today at other options exchanges. Additionally, the Exchange believes that the proposed fees and rebates are fair, equitable and not unfairly discriminatory because the proposed fees and rebates are consistent with price differentiation that exists today at other option exchanges. 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. With this proposed rebate change, the Exchange believes it remains an attractive venue for market participants to trade complex orders.

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.[13] 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

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

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.* Please include File Number SR–ISE–2012–35 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–2012–35. 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 10:00 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–2012–35 and should be submitted on or before June 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–11796 Filed 5–15–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66963; File No. SR–NYSEArca–2012–22]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To Amend NYSE Arca Equities Rule 7.45 To Address the Authority of NYSE Arca or Archipelago Securities LLC To Cancel Orders When a Technical or Systems Issue Occurs and Describe the Operation of an Error Account for Archipelago Securities

May 10, 2012.

I. Introduction

On March 15, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Equities Rule 7.45 to address the authority of NYSE Arca or Archipelago Securities LLC (''Arca Securities'') to cancel orders when a technical or systems issue occurs at NYSE Arca, Arca Securities, or a routing destination, and to describe the operation of an error account for Arca Securities. The proposed rule change was published for comment in the **Federal Register** on March 30, 2012.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

Arca Securities is a broker-dealer that is a facility, and an affiliate, of the Exchange that provides outbound routing services from the Exchange to other market centers pursuant to Exchange rules.[4] In its proposal, the Exchange states that a technical or systems issue may occur at NYSE Arca, Arca Securities, or a routing destination that causes NYSE Arca or Arca Securities to cancel orders, if the Exchange or Arca Securities determines that such action is necessary to maintain a fair and orderly market.[5] The Exchange also states that a technical or systems issue that occurs at NYSE Arca, Arca Securities, a routing destination, or a non-affiliate third-party Routing Broker[6] may result in Arca Securities acquiring an error position that it must resolve.[7]

New paragraph (d) to NYSE Arca Equities Rule 7.45 provides NYSE Arca and Arca Securities with general authority to cancel orders to maintain fair and orderly markets when a technical or systems issue occurs at NYSE Arca, Arca Securities, or a routing destination. It also provides authority for Arca Securities to maintain an error account for the purpose of addressing, and sets forth the procedures for resolving, error positions. Specifically, paragraph (d)(1) of NYSE Arca Equities Rule 7.45 authorizes NYSE Arca or Arca Securities to cancel orders as either deems necessary to maintain fair and orderly markets if a technical or systems issue occurs at NYSE Arca, Arca Securities, or a routing destination. NYSE Arca and Arca Securities will be required to provide notice of the cancellation to all Electronic Trading Permit Holders (''ETP Holders'') as soon as practicable.[8]

Paragraph (d)(2) of NYSE Arca Equities Rule 7.45 will allow Arca Securities to maintain an error account

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 66656 (March 26, 2012), 77 FR 19401 (March 30, 2012) (SR–NYSEArca–2012–22) (''Notice'').

[4] *See* Notice, 77 FR at 19402, n.4 and accompanying text, and text accompanying n.5. *See also* NYSE Arca Equities Rule 7.45; and Securities Exchange Act Release No. 65455 (September 30, 2011) 76 FR 62119 (October 6, 2011) (SR–NYSEArca–2011–61) at n.4.

The Exchange also receives equities orders routed inbound to the Exchange by Arca Securities from the New York Stock Exchange LLC and NYSE Amex LLC. *See* Notice, 77 FR at 19402, n.5. *See also* NYSE Arca Equities Rule 7.45(c).

[5] *See* Notice, 77 FR at 19402. For examples of some of the circumstances in which NYSE Arca or Arca Securities may decide to cancel orders, see *id.*

[6] The Exchange states that, from time to time, it also uses non-affiliate third-party broker-dealers to provide outbound routing services. *See* Notice, 77 FR at 19402, n.4. *See also* NYSE Arca Equities Rule 7.45(a) (defining ''Routing Broker'' to include Arca Securities and any other non-affiliate third-party broker-dealer that acts as a facility of NYSE Arca routing orders from the Exchange to other market centers).

[7] *See* Notice, 77 FR at 19402. Specifically, the proposed rule defines ''error positions'' as ''positions that result from a technical or systems issue at Arca Securities, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders.'' *See* proposed Rule 7.45(d)(2).

For examples of some of the circumstances that may lead to error positions, see Notice, 77 FR at 19402–03.

[8] *See* NYSE Arca Equities Rule 7.45(d)(1).