

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66790; File No. SR-ISE-2012-25]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Rebates

April 12, 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 April 4, 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 the threshold levels and rebate amounts for Qualified Contingent Cross ("QCC") orders and Solicitation 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 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 purpose of this proposed rule change is to amend the threshold levels and rebate amounts for QCC orders and

Solicitation orders to further encourage Members to submit greater numbers of QCC orders and Solicitation orders to the Exchange. The Exchange currently provides a rebate to Members who reach a certain volume threshold in QCC orders and/or Solicitation orders during a month.<sup>3</sup> Once a Member reaches the volume threshold, the Exchange provides a rebate to that Member for all of its QCC and Solicitation contracts traded for that month. The rebate is paid to the Member entering a qualifying order, i.e., a QCC order and/or a Solicitation order. The rebate applies to QCC orders and Solicitation orders in all symbols traded on the Exchange. Additionally, the threshold levels are based on the originating side so if, for example, a Member submits a Solicitation order for 1,000 contracts, all 1,000 contracts are counted to reach the established threshold even if the order is broken up and executed with multiple counter parties.

The current volume threshold and corresponding rebate per contract is:

Originating contract sides	Rebate per contract
0-199,999 .....	\$0.00
200,000-999,999 .....	0.05
1,000,000-1,599,999 .....	0.08
1,600,000+ .....	0.10

The Exchange now proposes to amend the current tiers by: (1) Adjusting the second tier (200,000-999,999 contracts) so that it becomes 200,000-499,999 contracts and increasing the rebate for this tier from \$0.05 per contract to \$0.07 per contract; (2) adopting a new tier for 500,000-699,999 contracts with a corresponding rebate of \$0.08 per contract; (3) adopting a new tier for 700,000-999,999 contracts with a corresponding rebate of \$0.09 per contract; and (4) adjusting the last tier (1,600,000+ contracts) so that it becomes 1,000,000+ contracts and increasing the rebate for this last tier from \$0.10 to \$0.11 per contract. With the proposed changes to the tiers, which reflect the recent decline in options trading volume, the Exchange is attempting to strike the right balance between the number of qualifying contracts and its corresponding rebate to ensure that the incentive program achieves its intended

purpose of attracting greater order flow from its Members.

With the proposed amended tiers, the volume threshold and corresponding rebate per contract will be as follows:

Originating contract sides	Rebate per contract
0-199,999 .....	\$0.00
200,000-499,999 .....	0.07
500,000-699,999 .....	0.08
700,000-999,999 .....	0.09
1,000,000+ .....	0.11

###### 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<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act<sup>5</sup> in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange Members. The Exchange believes that the proposed fee change will generally allow the Exchange and its Members to better compete for order flow and thus enhance competition. Specifically, the Exchange believes that its proposal, which among other things, lowers the threshold level for Members to qualify for the highest per contract rebate payable, is reasonable as it will encourage Members who direct their QCC and Solicitation orders to the Exchange to continue to do so instead of sending this order flow to a competing exchange. The Exchange believes that with the proposed amended tiers, which provides for additional volume thresholds, more Members are now likely to qualify for higher rebates for sending their QCC and Solicitation orders to the Exchange.

The Exchange notes that it currently has other incentive programs to promote and encourage growth in specific business areas. For example, the Exchange has lower fees (or no fees) for customer orders;<sup>6</sup> and tiered pricing that reduces rates for market makers based on the level of business they bring to the Exchange.<sup>7</sup> This proposed rule change targets a particular segment in which the Exchange seeks to attract

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> For example, the customer fee is \$0.00 per contract for products other than Singly Listed Indexes, Singly Listed ETFs and FX Options. For Singly Listed Options, Singly Listed ETFs and FX Options, the customer fee is \$0.18 per contract. The Exchange also currently has an incentive plan in place for certain specific FX Options which has its own pricing. See ISE Schedule of Fees.

<sup>7</sup> The Exchange currently has a sliding scale fee structure that ranges from \$0.01 per contract to \$0.18 per contract depending on the level of volume a Member trades on the Exchange in a month. See ISE Schedule of Fees.

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

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

<sup>3</sup> See Exchange Act Release Nos. 65087 (August 10, 2011), 76 FR 50783 (August 16, 2011) (SR-ISE-2011-47); 65583 (October 18, 2011), 76 FR 65555 (October 21, 2011) (SR-ISE-2011-68); 65705 (November 8, 2011), 76 FR 70789 (November 15, 2011) (SR-ISE-2011-70); 65898 (December 6, 2011), 76 FR 72729 (December 12, 2011) (SR-ISE-2011-78); and 66169 (January 17, 2012), 77 FR 3295 (January 23, 2012) (SR-ISE-2012-01).

greater order flow. The Exchange further believes that the rebate currently in place for QCC and Solicitation orders is reasonable because it is designed to give Members who trade a minimum of 200,000 qualifying contracts in QCC and Solicitation orders on the Exchange a benefit by way of a lower transaction fee. As noted above, once a Member reaches an established volume threshold, all of the trading activity in the specified order type by that Member will be subject to the corresponding rebate.

The Exchange also believes that its rebate program for QCC and Solicitation orders is equitable because it would uniformly apply to all Members engaged in QCC and Solicitation trading in all option classes traded on the Exchange. The Exchange further believes that its fees and credits remain competitive with fees charged by other exchanges and therefore are reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. The QCC and Solicitation rebate program employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers.

#### *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>8</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-2012-25 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-2012-25. 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-2012-25 and should be submitted on or before May 9, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66793; File No. SR-ISE-2012-27]

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend an Existing Fee Cap Program and Related Service Fee**

April 12, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that, on April 2, 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, II, and III 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 an existing fee cap program and a related service fee. 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

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).