

*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 Act<sup>6</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>7</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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2013-31 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-2013-31. 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 such 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-2013-31, and should be submitted on or before May 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-69393; File No. SR-ISE-2013-32]**

**Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Market Maker Plus Rebate Program**

April 18, 2013.

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 April 10, 2013, 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 Market Maker Plus rebate program. 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 the Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The Exchange currently assesses per contract transaction fees and provides rebates to market participants that add or remove liquidity from the Exchange ("maker/taker fees and rebates") in all symbols that are in the Penny Pilot program (the "Select Symbols"). The fee change discussed below applies to both standard options and mini options traded on the Exchange. The Exchange's Schedule of Fees has separate tables for fees and rebates applicable to standard options and mini options. The Exchange notes that while the discussion below relates to fees and rebates for standard options, the fees and rebates for mini options, which are not discussed below, are and shall continue to be 1/10th of the fees and rebates for standard options.<sup>3</sup>

The Exchange's maker/taker fees and rebates apply to the following categories of market participants: (i) Market Maker;<sup>4</sup> (ii) Market Maker Plus; (iii)

<sup>3</sup> See SR-ISE-2013-28 (not yet published) [sic].

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</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.

Non-ISE Market Maker;<sup>5</sup> (iv) Firm Proprietary/Broker-Dealer; (v) Professional Customer;<sup>6</sup> and (vi) Priority Customer.<sup>7</sup> In order to promote and encourage liquidity in the Select Symbols, the Exchange currently offers a \$0.10 per contract rebate to Market Makers if the quotes they send to the Exchange qualify the Market Maker to become a Market Maker Plus. The purpose of this proposed rule change is to amend the Exchange's Market Maker Plus rebate incentive.

A Market Maker Plus is a Market Maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between \$0.03 and \$5.00 (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 \$5.00 (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 and 80% of the time for series trading between \$0.03 and \$5.00 (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 \$5.00 (for options whose underlying stock's previous trading day's last sale price was greater than \$100) in premium for all expiration months in that symbol during the current trading month. A Market Maker's single best and single worst overall quoting days each month, on a per symbol basis, is excluded in calculating whether a Market Maker qualifies for this rebate, if doing so will qualify a Market Maker for the rebate.<sup>8</sup>

The Exchange now proposes to amend the fees and rebates for Market Makers who attain Market Maker Plus status. Specifically, Market Makers qualifying for Market Maker Plus in the Select Symbols will pay no fee and receive no rebate when providing liquidity against a Priority Customer Complex order that legs into the regular orderbook.

The Exchange currently provides Market Makers a report on a daily basis with quoting statistics so that Market

Makers can determine whether or not they are meeting the Exchange's current stated criteria. The Exchange will continue to provide Market Makers a daily report so that Market Makers can track their quoting activity to determine whether or not they qualify for the Market Maker Plus rebate.

Since the rate changes to the Schedule of Fees pursuant to this proposal will be effective upon filing, for the transactions occurring in April 2013 prior to the effective date of this filing members will be assessed the rates in effect immediately prior to those proposed by this filing. For transactions occurring in April 2013 on and after the effective date of this filing, members will be assessed the rates proposed by this filing.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities and Exchange Act of 1934 (the "Act")<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</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 the Select Symbols and a Market Maker's ability to qualify for Market Maker Plus status.

The Exchange has determined to charge fees and provide rebates for regular orders in mini options at a rate that is 1/10th the rate of fees and rebates the Exchange currently provides for trading in standard options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees and rebates to provide market participants an incentive to trade mini options on the Exchange. The Exchange believes the proposed fees and rebates are reasonable and equitable in light of the fact that mini options have a smaller exercise and assignment value, specifically 1/10th that of a standard option contract, and, as such, levying fees that are 1/10th of what market participants pay today.

The Exchange believes the proposed rule change to not charge Market Makers who qualify for Market Maker Plus status a fee or provide a rebate when providing liquidity against a Priority Customer complex order that legs into

the regular orderbook is reasonable and equitable because the purpose of the Market Maker Plus rebate is to incent simple, non-complex order flow to the Exchange. The Exchange believes the proposed rule change is also reasonable and equitable because it will continue to differentiate Market Makers who meet higher quoting standards and thereby encourage them to continue to post narrow and liquid markets. The Exchange believes the proposed rule change will also encourage Market Makers to post tighter markets in the Select Symbols and thereby maintain liquidity and attract additional order flow to the Exchange. The Market Maker Plus rebate employed by the Exchange has proven to be an effective incentive for Market Makers to provide liquidity in the Select Symbols.

The Exchange believes the proposed rule change is not unfairly discriminatory because it will uniformly apply to all Market Makers on the Exchange. The Exchange further believes that the Exchange's Market Maker Plus rebate is not unfairly discriminatory because this rebate program is consistent with rebates that exist today at other options exchanges. The Exchange believes that the Market Maker Plus rebate is a competitive rebate and equivalent to incentives provided by other exchanges and is therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem rebate levels at a particular exchange to be low.

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

ISE believes that the proposed rule change, which will maintain fees and rebates that are competitive and are within the range of fees and rebates charged by other exchanges for similar orders, will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, as noted above, the Exchange believes that the proposed change will promote competition among Market Makers, as it is designed to allow Market Makers to post tighter markets and compete for order flow and improve the Exchange's competitive position.

<sup>5</sup> A Non-ISE Market Maker, or Far Away Market Maker ("FARM"), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934 registered in the same options class on another options exchange.

<sup>6</sup> A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

<sup>7</sup> 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).

<sup>8</sup> See Securities Exchange Act Release Nos. 62507 (July 15, 2010), 75 FR 42802 (July 22, 2010) (SR-ISE-2010-68); and 67039 (May 22, 2012), 77 FR 31680 (May 29, 2013) (SR-ISE-2012-39).

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

<sup>10</sup> 15 U.S.C. 78f(b)(4).

*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 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 the 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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2013-32 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-2013-32. 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 such 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-2013-32, and should be submitted on or before May 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-09653 Filed 4-23-13; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-69396; File No. SR-ISE-2013-18]**

**Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of Proposed Rule Change To Address Order Handling Under the Options Order Protection and Locked/Crossed Market Plan, the Authority of the Exchange To Cancel Orders When a Technical or Systems Issue Occurs, and To Describe the Operation of Linkage Handler Error Accounts**

April 18, 2013.

**I. Introduction**

On March 7, 2013, the International Securities Exchange, LLC ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to address: (i) Order handling under the Options Order Protection and Locked/Crossed Market Plan; (ii) the authority of the Exchange to cancel orders (or release routing-related orders) when a technical or systems issue occurs; and (iii) describe the operation of Linkage Handler (defined below) error account(s), which may be used to liquidate unmatched executions that may occur in the provision of the Exchange's routing service. The proposed rule change was published for comment in the **Federal Register** on March 18, 2013.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

**II. Description of the Proposal**

*New Supplementary Material .02 to ISE Rule 1901 (Order Protection) and New ISE Rule 1903 (Order Routing to Other Exchanges)*

In its proposal, the Exchange states that, under the Options Order Protection and Locked/Crossed Market Plan ("Plan"),<sup>4</sup> it cannot execute orders at a price that is inferior to the national best bid or offer ("NBBO"), nor can ISE place an order on its book that would cause the Exchange best bid or offer to lock or cross another exchange's quote.<sup>5</sup> The Exchange states that, in compliance with this requirement, incoming orders are not automatically executed at a price inferior to another exchange's protected bid or protected offer, nor placed on the limit order book if they would lock or cross an away market. "Non-Customer Orders" (orders for the account of a broker or dealer)<sup>6</sup> are rejected in these

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

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

<sup>3</sup> Securities Exchange Act Release No. 69114 (March 12, 2013), 78 FR 16733 (March 18, 2013) (SR-ISE-2013-18) ("Notice").

<sup>4</sup> The Commission notes that the Plan is a national market system plan proposed by the options exchanges and approved by the Commission. See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4-546). ISE is a participant in the Plan. Among other things, the Plan requires each participant in the Plan to adopt rules that are reasonably designed to prevent trade-throughs and establish, maintain and enforce written rules that require its members to reasonably avoid displaying locked and crossed markets. See Sections 5 and 6 of the Plan.

<sup>5</sup> See Notice, 78 FR at 16733; see also, ISE Rules 1901 and 1902. The Commission notes that ISE Rules 1901 and 1902 were designed to implement certain of the Plan's requirements with respect to trade-throughs and locked and crossed markets. See Securities Exchange Act Release No. 60559 (August 21, 2009), 74 FR 44425 (August 28, 2009) (SR-ISE-2009-27).

<sup>6</sup> ISE Rule 100(a)(28).

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

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

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