

### Market Depth Tier 1

The Exchange believes that its proposal amendments to the Market Depth Tier would increase intermarket competition because the increased volume requirements would incentivize Members to send higher volume to the Exchange. The Exchange believes that its proposal would neither increase nor decrease intramarket competition because the rate for the Market Depth Tier would continue to be available all Members equally and the ability of Members to meet the tier would benefit other Members by contributing to increased price discovery and better market quality at the Exchange.

### 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) of the Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder. 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.

### 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-EDGX-2013-44 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-EDGX-2013-44. 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-EDGX-2013-44 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Kevin M. O'Neill,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71053; File No. SR-ISE-2013-63]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

December 12, 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 November 27, 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 exclude from its ADV calculations any trading day on which the Exchange is closed early for holiday observance. 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 proposes to exclude from its average daily volume ("ADV") calculations any trading day on which the Exchange is closed early for holiday observance. The Exchange provides volume-based tiered rebates for Priority Customer complex orders when these orders trade with non-Priority Customer orders in the complex order book, or trade with quotes and orders on the regular order book. These complex order rebates are provided to members in six tiers in both Standard and Mini Options based on the member's ADV in Priority Customer complex contracts. On September 30, 2013 the Exchange filed with the Commission an immediately

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</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.

effective rule filing that, among other things, amended its Schedule of Fees to permit the Exchange to exclude from its ADV calculation, when determining Priority Customer complex order tiers, any day that the market is not open for the entire trading day.<sup>3</sup> On November 1, 2013 the Exchange further amended its Schedule of Fees to increase its Market Maker Plus rebate in Standard Options and Mini Options for Market Makers that meet the quoting requirements for Market Maker Plus and are affiliated with an Electronic Access Member that executes a total affiliated Priority Customer ADV of 200,000 contracts in a calendar month.<sup>4</sup> When introducing this new Market Maker Plus rebate the Exchange also included language indicating that, for purposes of determining total affiliated Priority Customer ADV, any day that the market is not open for the entire trading day may be excluded from such calculation. Currently, each of these provisions allows the Exchange to exclude days where the Exchange declares a trading halt in all securities or honors a market-wide trading halt declared by another market. In these filings, however, the Exchange noted that, in contrast to the NASDAQ OMX PHLX, LLC ("PHLX") and NASDAQ Options Market ("NOM") filings on which this language was based,<sup>5</sup> it would not exclude days on which the Exchange is closed early for holiday observance. The Exchange has since determined that it would be more equitable to exclude these days as well. While members are aware in advance of days subject to an early scheduled close—for example, the Friday after Thanksgiving—these are still low volume days, and including these days in the ADV calculation would have the detrimental effect of lowering members' daily and monthly ADV and thereby qualifying members for lower rebates. The Exchange believes that this effective cost increase during months where the Exchange has scheduled early market closes is undesirable to the Exchange and its members, and is therefore proposing to interpret this provision in the same manner as NOM and PHLX.<sup>6</sup> The Exchange notes that it will not be making any textual changes to its fees as this proposed change brings its

interpretation in line with that of other markets with substantially similar language to that already included in the Schedule Fees [sic].<sup>7</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and Section 6(b)(4) of the Act,<sup>9</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that it is equitable and reasonable to eliminate days subject to an early scheduled closed [sic] from its ADV calculation because it preserves the Exchange's intent behind adopting volume-based pricing, and conforms the rules of the Exchange with those of other markets. The Exchange further believes that the proposed change is non-discriminatory because it applies equally to all members and to all volume tiers.

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

In accordance with Section 6(b)(8) of the Act,<sup>10</sup> 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. To the contrary, the Exchange believes that the proposed modification to its ADV calculation is pro-competitive and will result in lower total costs to end users, a positive outcome of competitive markets. Moreover, this proposed rule change conforms the rules of the Exchange with those of other markets that have adopted substantially similar rules for excluding certain days from their ADV calculations. 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

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 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-2013-63 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-2013-63. 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

<sup>3</sup> See Securities Exchange Act Release No. 70657 (October 10, 2013), 78 FR 62899 (October 22, 2013) (ISE-2013-51).

<sup>4</sup> See Securities Exchange Act Release No. 70872 (November 14, 2013), 78 FR 69718 (November 20, 2013) (ISE-2013-57).

<sup>5</sup> See Securities Exchange Act Release Nos. 70472 (September 23, 2013), 78 FR 59738 (September 27, 2013) (PHLX-2013-93); 70470 (September 23, 2013), 78 FR 59740 (September 27, 2013) (NASDAQ-2013-117).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78f(b)(8).

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

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

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-2013-63 and should be submitted on or before January 7, 2014.

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. 2013-29960 Filed 12-16-13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71042; File No. SR-FINRA-2013-052]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to Alternative Display Facility New Entrant

December 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "SEA")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on December 2, 2013, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to add a new entrant to the Alternative Display Facility ("ADF").

The new ADF entrant, LavaFlow ("FLOW") has prepared a summary of its policies and procedures regarding access to its quotations in an NMS stock displayed on the ADF, and a summary of its proposed fees for such access, which was filed as Exhibit 3.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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 ADF is a quotation collection and trade reporting facility that provides ADF Market Participants (*i.e.*, ADF-registered market makers or electronic communications networks ("ECNs"))<sup>3</sup> the ability to post quotations, display orders and report transactions in NMS stocks<sup>4</sup> for submission to the Securities Information Processors for consolidation and dissemination to vendors and other market participants. In addition, the ADF delivers real-time data to FINRA for regulatory purposes, including enforcement of requirements imposed by SEC Regulation NMS.<sup>5</sup>

The ADF was initially approved by the Commission on July 24, 2002, in connection with the SEC's approval of SuperMontage and Nasdaq's registration as a national securities exchange.<sup>6</sup> At

that time, the ADF was approved for Nasdaq-listed securities for a nine-month pilot period to provide FINRA members with an alternative to the Nasdaq systems for reporting quotations and transactions in Nasdaq UTP Plan securities.

In 2005, the Commission adopted Regulation NMS, which included the Order Protection Rule.<sup>7</sup> With the adoption of the Order Protection Rule, Regulation NMS established trade-through protection for all NMS stocks.<sup>8</sup> Since the ADF is a display-only facility, a market participant would have to access the actual ADF participant that posted the protected quotation on the ADF in order to comply with the Order Protection Rule.<sup>9</sup> In the NMS Adopting Release, the Commission noted that market participants could potentially access an ADF participant either through direct access or through a private network.<sup>10</sup>

Given that market participants could be required to access multiple ADF participants to comply with the Order Protection Rule, the Commission formulated Rule 610 under SEC Regulation NMS to ensure that market participants would be afforded "fair and efficient access" to such trading centers.<sup>11</sup> Accordingly, Rule 610 requires that a trading center displaying quotations in an NMS stock through an SRO display-only facility (such as the ADF) "provide a level and cost of access to such quotations that is substantially equivalent to the level and cost of access to quotations displayed by SRO trading facilities in that stock."<sup>12</sup> Rule 610 also requires that a trading center displaying quotations in an NMS stock through an SRO display-only facility not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access to such quotations through a member, subscriber, or customer of the trading center.<sup>13</sup>

In articulating this standard, the Commission noted that the level and cost of access would "encompass both

Approving File No. SR-NASD-2002-97); *see also* Notice to Members 02-45 (August 2002).

<sup>7</sup> The Order Protection Rule provides that a trading center "shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks" that do not fall within one of the exceptions set forth in the rule. *See* 17 CFR 242.611.

<sup>8</sup> *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37501 (June 29, 2005) ("NMS Adopting Release").

<sup>9</sup> NMS Adopting Release, 70 FR at 37541.

<sup>10</sup> NMS Adopting Release, 70 FR at 37543.

<sup>11</sup> NMS Adopting Release, 70 FR at 37549.

<sup>12</sup> 17 CFR 242.610(b)(1).

<sup>13</sup> 17 CFR 242.610(b)(2).

<sup>3</sup> *See* FINRA Rule 6220(a)(3).

<sup>4</sup> *See* 17 CFR 242.600.

<sup>5</sup> *See* 17 CFR 242.600.

<sup>6</sup> *See* Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002) (Order

<sup>13</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.