

opportunity to make an oral presentation.<sup>35</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by April 13, 2017. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 27, 2017. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

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-CBOE-2016-082 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Numbers SR-CBOE-2016-082. 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 these

filings 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-CBOE-2016-082 and should be submitted on or before April 13, 2017. Rebuttal comments should be submitted by April 27, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-80267; File No. SR-ISE-2017-24]

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

March 17, 2017.

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> notice is hereby given that on March 10, 2017, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("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 Exchange proposes to amend its Schedule of Fees to allow members to opt in to MORP for specific sessions rather than on a member-wide basis, and to increase MORP rebates for members that participate in the program.

The text of the proposed rule change is available on the Exchange's Web site

at [www.ise.com](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 Exchange 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 Exchange 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**

On April 1, 2015, the Exchange launched the Member Order Routing Program ("MORP"),<sup>3</sup> which is a program that provides enhanced rebates to order routing firms that select the Exchange as the default routing destination for unsolicited Crossing Orders.<sup>4</sup> The purpose of the proposed rule change is to amend the Schedule of Fees to allow members to opt in to MORP for specific sessions rather than on a member-wide basis, and to increase MORP rebates for members that participate in the program. The Exchange believes that these changes will encourage members to participate in MORP.

##### **MORP Qualifications**

Currently, to be eligible to participate in MORP, an Electronic Access Member ("EAM") must: (1) Provide to its clients, systems that enable the electronic routing of option orders to all of the U.S. options exchanges, including ISE; (2) interface with ISE to access the Exchange's electronic options trading platform; (3) offer to its clients a customized interface and routing functionality such that ISE will be the default destination for all unsolicited

<sup>35</sup> Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>36</sup> 17 CFR 200.30-3(a)(57).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 74706 (April 10, 2016), 80 FR 20522 (April 16, 2016) (SR-ISE-2015-11).

<sup>4</sup> A "Crossing Order" is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism ("PIM") or submitted as a Qualified Contingent Cross ("QCC") order. For purposes of the fee schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

Crossing Orders entered by the EAM,<sup>5</sup> provided that market conditions allow the Crossing Order to be executed on ISE; (4) configure its own option order routing functionality such that ISE will be the default destination for all unsolicited Crossing Orders, provided that market conditions allow the Crossing Order to be executed on ISE, with respect to all option orders as to which the EAM has routing discretion; and (5) ensure that the default routing functionality permits users submitting option orders through such system to manually override the ISE as the default destination on an order-by-order basis.<sup>6</sup>

Importantly, today an EAM must opt in to MORP for all of its business, and cannot segment its business to be eligible for MORP for only specific portion of its order flow. This means that EAMs that would otherwise have a MORP qualifying business would be prohibited from participating in the program if certain segments of its business are not eligible for the program. The Exchange therefore proposes to increase the scope of MORP. In particular, the Exchange proposes to allow EAMs to opt in to MORP for specific sessions so that firms can appropriately segment their order flow such that sessions designated as MORP eligible can benefit from the program even though the firm may not qualify on a member-wide basis.<sup>7</sup> As proposed, a member may designate one or more sessions to be eligible for MORP. If a session is designated as eligible for MORP all requirements for the program must be met for that session. In addition, to be eligible to participate in MORP an EAM must designate, in writing, to the Exchange which sessions are MORP eligible according to the criteria discussed above. Only designated sessions that are opted in to MORP will receive the benefits provided under the program. The Exchange believes that this change will make it easier for firms to participate in the program, thereby increasing volume executed in the Exchange's crossing mechanisms.

<sup>5</sup> An unsolicited Crossing Order is a Crossing Order entered by a member that has not solicited the contra side of the trade.

<sup>6</sup> EAMs that wish to participate in the program must certify that they meet the above MORP requirements, in writing, on a monthly basis and in a form to be determined by the Exchange. The relevant notice must be provided by the last business day of the month for members to be eligible to participate in the MORP effective the first business day of the following month.

<sup>7</sup> A session is connection to the exchange over which a member submits orders. See Section V.C. of the Schedule of Fees.

#### Rebate for Unsolicited Crossing Orders

Currently, an EAM that is MORP eligible receives a rebate for all unsolicited Crossing Orders of \$0.05 per originating contract side, provided that the member executes a minimum average daily volume ("ADV") in unsolicited Crossing Orders of at least 30,000 originating contract sides. This rebate is increased to \$0.07 per originating contract side, provided that the member executes a higher ADV in unsolicited Crossing Orders of 100,000 originating contract sides.<sup>8</sup> The Exchange proposes to increase the MORP rebate for eligible members that execute from 30,000 to 99,999 originating contract sides to \$0.065 per originating contract side. The MORP rebate for eligible members that execute 100,000 or more originating contract sides will remain \$0.07 per originating contract side.

#### Facilitation and Solicitation Break-Up Rebate

In addition, any EAM that qualifies for the MORP rebate by executing an ADV of 30,000 originating contract sides or more is also eligible for increased Facilitation and Solicitation break-up rebates<sup>9</sup> for their Non-ISE Market Maker,<sup>10</sup> Firm Proprietary,<sup>11</sup> Broker-Dealer,<sup>12</sup> Professional Customer,<sup>13</sup> and Priority Customer orders.<sup>14</sup> Currently, MORP eligible members that execute a

<sup>8</sup> The rebate for the highest tier achieved is applied retroactively to all eligible contracts traded in a given month. For purposes of determining whether the member meets the above ADV thresholds, any day that the Exchange is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from such calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.

<sup>9</sup> Break-up rebates are provided for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order except when those contracts trade against pre-existing orders and quotes on the Exchange's orderbooks. The applicable fee for Crossing Orders is applied to any contracts for which a rebate is provided.

<sup>10</sup> A "Non-ISE Market Maker" is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

<sup>11</sup> A "Firm Proprietary" order is an order submitted by a member for its own proprietary account.

<sup>12</sup> A "Broker-Dealer" order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

<sup>13</sup> A "Professional Customer" is a person or entity that is not a broker/dealer and is not a Priority Customer.

<sup>14</sup> A "Priority Customer" is 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), as defined in ISE Rule 100(a)(37A).

qualifying ADV in unsolicited Crossing Orders of at least 30,000 originating contract sides, receive a Facilitation and Solicitation break-up rebate that is \$0.35 per contract for regular and complex orders in Select Symbols,<sup>15</sup> \$0.15 per contract for regular orders in Non-Select Symbols,<sup>16</sup> \$0.80 per contract for complex orders in Non-Select Symbols, and \$0.15 per contract for regular and complex orders in foreign exchange option classes ("FX Options"). The Exchange proposes to increase these Facilitation and Solicitation break-up rebates for MORP-eligible members to \$0.42 per contract for regular and complex orders in Select Symbols, \$0.20 per contract for regular orders in Non-Select Symbols, \$1.08 per contract for complex orders in Non-Select Symbols. Regular and complex orders in FX Options will continue to receive a Facilitation and Solicitation break-up rebate of \$0.15 per contract.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>17</sup> in general, and Section 6(b)(4) of the Act,<sup>18</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 the proposed change to the MORP qualifications is reasonable and equitable because it is designed to make it easier for EAMs to participate in the program. Currently, an EAM that wishes to participate in MORP must be eligible to participate across the entire firm. Thus, firms that have business segments that are not MORP-eligible cannot participate with respect to those business segments that are. The Exchange believes that the proposed rule change will allow firms to participate in the program if they meet the requirements with respect to any segment of their order flow. This will encourage order routing firms to execute additional unsolicited Crossing Order volume on the Exchange, and will benefit all market participants on ISE by creating additional liquidity and increased opportunity to trade. In addition, the Exchange believes that the proposed change is not unfairly discriminatory as it would make it easier for firms to participate in the program, thus potentially sharing the

<sup>15</sup> "Select Symbols" are options overlying all symbols listed on the ISE that are in the Penny Pilot Program.

<sup>16</sup> "Non-Select Symbols" are options overlying all symbols excluding Select Symbols.

<sup>17</sup> 15 U.S.C. 78f.

<sup>18</sup> 15 U.S.C. 78f(b)(4).

rewards of the program with additional EAMs that may not otherwise qualify. With the proposed changes, any qualifying EAM with designated sessions that meet the requirements of the program by offering appropriate market access and connectivity to the Exchange will be able to participate in MORP on an equal and non-discriminatory basis.

The Exchange believes the proposed increases to MORP rebates, including the rebate for unsolicited Crossing Orders, and the Facilitation and Solicitation break-up rebate, are reasonable and equitable because these changes are designed to incentivize additional participation in the program. Under MORP the Exchange currently provides enhanced rebates to EAMs that connect directly to the Exchange and provide their clients with order routing functionality that includes all U.S. options exchanges, including ISE. The Exchange proposes to increase the rebates to incentivize additional firms to participate in the program, and to encourage firms to send additional order flow to the Exchange in order to benefit from the increased rebates. The Exchange believes that the proposed rebates will be attractive to members to opt in to MORP, and are competitive with rebates provided on other options exchanges. In addition, the Exchange believes that the proposed rebates are not unfairly discriminatory as they apply to all EAMs that meet the program requirements and opt in to the program. Any EAM that participates in the program will be provided the increased rebates on an equal and non-discriminatory basis based on the order flow executed on the Exchange. While MORP is targeted towards unsolicited Crossing Order flow, the Exchange offers other incentive programs to promote and encourage growth in other business areas. For example, solicited Crossing Orders benefit from the QCC and Solicitation Rebate, which applies to all QCC and/or other solicited Crossing Orders, including solicited orders executed in the Solicitation, Facilitation or Price Improvement Mechanisms. The Exchange believes that MORP is appropriately tailored to the order flow that the Exchange is seeking to attract, and will benefit all market participants that trade on ISE by encouraging additional liquidity.

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

In accordance with Section 6(b)(8) of the Act,<sup>19</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. The proposed rule change is designed to make it easier for firms to participate in MORP and increases incentives for doing so, in order to remain competitive with other options exchanges. 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*

No written comments were either solicited or received.

### **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>20</sup> 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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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-2017-24 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2017-24. 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-2017-24 and should be submitted on or before April 13, 2017.

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

**Eduardo A. Aleman,**

*Assistant Secretary.*

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<sup>19</sup> 15 U.S.C. 78f(b)(8).

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

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