

incentivizing NOM Participants to transact greater Customer volume on the Exchange benefits all market participants because of the increased liquidity to the market.

*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>22</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 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-NASDAQ-2012-114 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-NASDAQ-2012-114. 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-NASDAQ-2012-114 and should be submitted on or before November 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68024; File No. SR-NYSE-2012-51]

**Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 902.03 of the New York Stock Exchange LLC Listed Company Manual To Amend Annual Fees and Certain Other Listing Fees Included Therein and To Make Technical and Conforming Changes**

October 10, 2012.

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 September 28, 2012, New York Stock Exchange LLC ("NYSE" or the "Exchange") 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

<sup>23</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.

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 Section 902.03 of its Listed Company Manual to amend certain of the fees included therein and to make technical and conforming changes. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.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 those 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 parts 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 proposes to amend Section 902.03 of its Listed Company Manual to amend certain of the fees included therein and to make technical and conforming changes. The Exchange proposes to immediately reflect the proposed changes in the Listed Company Manual, but not to implement the proposed changes until January 1, 2013.<sup>3</sup>

The Exchange proposes to amend Section 902.03 of the Listed Company Manual, which currently provides, in part, for minimum Listing Fees for subsequent listing of additional equity securities. The Exchange proposes to increase the minimum Listing Fee from \$5,000 to \$7,500. Section 902.03 also currently provides, in part, for a fee for applications for changes that involve modifications to Exchange records (e.g., changes of name, par value, title of security or designation) and for applications relating to poison pills. The

<sup>3</sup> The Exchange has proposed changes to the Listed Company Manual, as reflected in the Exhibit 5 attached hereto, in a manner that would permit readers of the Listed Company Manual to identify the changes that would be implemented on January 1, 2013.

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

Exchange proposes to increase this fee from \$5,000 to \$7,500. Section 902.03 also currently provides, in part, for Annual Fees for listed equity securities. Currently, the Annual Fee for an issuer's primary class of common shares and, if no class of common shares is listed, preferred stock is the greater of \$38,000 or \$0.00093 per share. The Exchange proposes to increase the \$38,000 threshold to \$42,000.<sup>4</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>6</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that amending Section 902.03 of the Listed Company Manual to increase the minimum Listing Fee for subsequent listing of additional equity securities from \$5,000 to \$7,500 and to increase the fixed Annual Fee for shares of common stock and preferred stock from \$38,000 to \$42,000 is reasonable because the resulting fees would better reflect the Exchange's cost related to such listings and the resulting value that such listings provide to the issuers. In this regard, the Exchange notes that it has not recently increased these fees, but continually enhances and upgrades the level of service it provides in the listings area, including with respect to technology, compliance and other regulatory matters related to listings.<sup>7</sup> The Exchange believes that the proposed change is reasonable because the increased fees would be used by the Exchange to offset, in part, the cost the Exchange incurs to provide listing services. Listing service costs include, but are not limited to, rulemaking initiatives, listing administration processes, issuer services, and administration of other regulatory functions related to listing. The Exchange also believes that the proposed changes are equitable and not unfairly discriminatory because they

would apply equally to all issuers on the Exchange.

The Exchange believes that amending Section 902.03 of the Listed Company Manual to increase the fee for certain changes and for poison pills from \$5,000 to \$7,500 is reasonable because the Exchange has not increased such fees since 2005, while the salaries of the staff that are responsible for processing the applications for these certain changes and inputting the data in the Exchange's systems and disseminating relevant information to the marketplace have all increased, as have the costs associated with maintaining and updating the computer systems used in these processes.<sup>8</sup> The Exchange also believes that the proposed changes are equitable and not unfairly discriminatory because they would apply equally to all issuers on the Exchange.

The Exchange does not believe that the proposed fee changes would in any way negatively affect its ability to continue to adequately fund its regulatory program or the services the Exchange provides to issuers.

Additionally, the Exchange believes that the non-substantive changes that are proposed, which are technical and conforming changes, are reasonable because they will result in the removal of obsolete text from the Listed Company Manual. These changes are also equitable and not unfairly discriminatory because they will benefit all issuers and all other readers of the Listed Company Manual.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder, because it establishes a due,

fee, or other charge imposed by the NYSE.

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-NYSE-2012-51 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-NYSE-2012-51. 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 Section, 100 F Street NE., Washington, DC 20549-1090, on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). All comments received will be posted without change; the Commission does not edit personal

<sup>4</sup> The Exchange also proposes a non-substantive change to remove the related asterisk and accompanying text that currently provides that these fees are applicable as of January 1, 2006, all of which is obsolete text.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> See Securities Exchange Act Release No. 52696 (October 28, 2005), 70 FR 66881 (November 3, 2005) (SR-NYSE-2005-35). See also Securities Exchange Act Release No. 52463 (September 16, 2005), 70 FR 55933 (September 23, 2005) (SR-NYSE-2005-35), at 55934 [sic].

<sup>8</sup> *Id.*

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

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

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2012–51 and should be submitted on or before November 6, 2012.

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. 34–68032; File No. SR–ISE–2012–83]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Route Out Fees for Priority Customers

October 10, 2012.

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 October 1, 2012, 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 the Substance of the Proposed Rule Change

The ISE is proposing to adopt a fee related to the execution of Priority Customer orders subject to linkage handling. 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 adopt a fee related to the execution of Priority Customer<sup>3</sup> orders subject to linkage handling (“Linkage Fee”) in symbols that are not currently subject to a Linkage Fee.

On August 31, 2009, the Exchange implemented the new Options Order Protection and Locked/Crossed Market Plan (“Distributive Linkage”) and the use of Intermarket Sweep Orders (“ISOs”). Consistent with Distributive Linkage and pursuant to ISE rules, the Exchange’s Primary Market Makers (“PMMs”) have an obligation to address customer<sup>4</sup> orders when there is a better market displayed on another exchange. ISE’s PMMs meet this obligation via the use of ISOs. In meeting their obligations, PMMs may incur fees when they send ISOs, especially when sending ISOs to exchanges that charge “taker” fees. To minimize the PMM’s financial burden and help offset such fees, the ISE adopted a rebate for the PMM of \$0.20 per contract on all ISO orders sent to an away exchange (regardless of the fee charged by the exchange where the ISO order sent away was executed).<sup>5</sup> The rebate for PMMs for Priority Customer orders in the Select Symbols is equal to the fee charged by the away exchange.<sup>6</sup>

With the costs associated with servicing Priority Customer orders that must be executed at another exchange coupled with the cost of funding the existing fee credit, the Exchange recently adopted a Linkage Fee for executions that result from the PMM routing ISOs to another exchange in a

limited number of symbols.<sup>7</sup> The Linkage Fee is currently \$0.35 per contract<sup>8</sup> and is only charged for Priority Customer orders that are routed to an away exchange in symbols that are subject to the Exchange’s modified maker/taker pricing model. These symbols, which currently number 93, are identified on the Exchange’s Schedule of Fees as Select Symbols. Priority Customer orders that are routed out to another exchange are charged the Linkage Fee at the current rate instead of the standard taker fee applicable to the Select Symbols. The purpose of this proposed rule change is to extend the current Linkage Fee to Priority Customer orders that are routed to an away exchange in all symbols traded on the Exchange.

The Linkage Fee allows the Exchange to equitably assess reasonable fees incurred for processing such orders, and permits the Exchange to recoup administrative and other costs.

However, because the fees assessed by other exchanges vary considerably, the Exchange has determined to simply rebate to PMMs the actual transaction fee assessed by the exchange to which the order is routed, while requiring the PMM to make every effort, all things being equal, to route the order to the lowest cost away market.<sup>9</sup>

The Exchange notes that it currently has a similar fee and credit for Professional Customer orders. Specifically, the Exchange currently charges Professional Customers a fee of \$0.45 per contract for executions of orders that are routed to one or more exchanges in connection with Distributive Linkage, and also provides PMMs with a credit equal to the fee charged by the destination exchange for such Professional Customer orders, but not more than \$0.45 per contract.<sup>10</sup> This routing fee and credit applies to all the symbols that are traded on the Exchange.

##### 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the “Exchange Act”) for this proposed rule change is the requirement under Section 6(b)(4)<sup>11</sup> of the Exchange Act that an exchange have an equitable allocation of

<sup>3</sup> Pursuant to ISE Rule 100(37A), a Priority Customer is a person or entity that is not a broker or 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.

<sup>4</sup> Pursuant to ISE Rule 1900(f) of the Distributive Linkage rules, a customer is an individual or organization that is not a broker-dealer.

<sup>5</sup> See Securities and Exchange Act Release No. 60791 (October 5, 2009), 74 FR 52521 (October 13, 2009) (SR–ISE–2009–74).

<sup>6</sup> See Securities and Exchange Act Release No. 66746 (April 5, 2012), 77 FR 21833 (April 11, 2012) (SR–ISE–2012–28).

<sup>7</sup> See Securities and Exchange Act Release No. 66589 (March 14, 2012), 77 FR 16311 (March 20, 2012) (SR–ISE–2012–13).

<sup>8</sup> See Securities and Exchange Act Release No. 66746 (April 5, 2012), 77 FR 21833 (April 11, 2012) (SR–ISE–2012–28).

<sup>9</sup> See ISE Schedule of Fees, Section E. PMM Linkage Credit.

<sup>10</sup> See Securities and Exchange Act Release No. 61855 (April 6, 2010), 75 FR 19441 (April 14, 2010) (SR–ISE–2010–26).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<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.