executed during a Limit State or Straddle State from certain aspects of Rule 1092. The Exchange believes the application of the current rule will be impracticable given the lack of a reliable NBBO in the options market during Limit States and Straddle States, and that the resulting actions (i.e., nullified trades or adjusted prices) may not be appropriate given market conditions. This change would ensure that limit orders that are filled during a Limit State or Straddle State would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system. Moreover, given that options prices during brief Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes giving market participants time to re-evaluate a transaction would create an unreasonable adverse selection opportunity that would discourage participants from providing liquidity during Limit States or Straddle States. In this respect, the Exchange notes that by rejecting market orders and stop orders, and cancelling pending market orders and stop orders, only those orders with a limit price will be executed during a Limit State or Straddle State. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions. Additionally, as discussed above, there are additional pre-trade protections in place both within and outside of Rule 1092 that will continue to safeguard customers.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the proposal does not impose an intra-market burden on competition, because it will apply to all members. Nor will the proposal impose a burden on competition among the options exchanges, because, in addition to the vigorous competition for order flow among the options exchanges, the proposal addresses a regulatory situation common to all options exchanges. To the extent that market participants disagree with the particular approach taken by the Exchange herein, market participants can easily and readily direct order flow to competing venues. The Exchange believes this proposal will not impose a burden on competition and will help provide certainty during periods of extraordinary volatility in an NMS stock.

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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*. Please include File Number SR–Phlx–2013–29 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–Phlx–2013–29. 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 will also 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–Phlx–2013–29 and should be submitted on or before April 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06392 Filed 3–19–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69139; File No. SR–ISE–2013–19]

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

March 15, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2013, 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

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 its Schedule of Fees. 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 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 229 options classes (the ''Select Symbols'').[3] The Exchange's maker/taker fees and rebates are applicable to regular and complex orders executed in the Select Symbols. The Exchange also currently assesses maker/taker fees and rebates for complex orders in symbols that are in the Penny Pilot program but are not a Select Symbol (''Non-Select Penny Pilot Symbols'')[4] and in all symbols that are not in the Penny Pilot Program (''Non-Penny Pilot Symbols'').[5]

The purpose of this proposed rule change is to make three changes to the Exchange's Schedule of Fees. First, the Exchange proposes to amend the list of Select Symbols. Second, the Exchange proposes to amend rebate tiers applicable to Priority Customer[6] complex orders in the Select Symbols that trade with non-Priority Customer complex orders in the complex order book. Third, the Exchange proposes to adopt a new rebate payable to incremental Priority Customer complex orders above the highest tier currently in place. This rebate is applicable to Priority Customer complex orders in the Select Symbols, in SPY and in the Non-Select Symbols that trade with non-Priority Customer complex orders in the complex order book.

1. Select Symbols

The Exchange proposes to amend the list of Select Symbols. All Select Symbols that are currently subject to the Exchange's maker/taker fees and rebates are in the Penny Pilot Program. With this proposed rule change, the Exchange proposes to add the following 125 symbols listed on ISE that are in the Penny Pilot Program but are not currently Select Symbols to the list of Select Symbols: Agilent Technologies, Inc. (''A''), Abbott Labs (''ABT''), Archer Daniels Midland Co. (''ADM''), Autodesk, Inc. (''ADSK''), Agnico Eagle Mines Ltd. (''AEM''), Aflac, Inc. (''AFL''), Assured Guaranty LTD. (''AGO''), Allstate Corporation (''ALL''), Amedisys, Inc. (''AMED''), Abercrombie & Fitch Co. (''ANF''), Apollo Group, Inc. (''APOL''), Activision Blizzard, Inc. (''ATVI''), Bed bath [sic] & Beyond, Inc. (''BBBY''), Banco Bradesco (''BBD''), BB&T Corp. (''BBT''), Biocryst Pharmaceuticals, Inc. (''BCRX''), Baker Hughes, Inc. (''BHI''), BHP Billition Ltd. (''BHP''), Bank of New York Mellon Corp. (''BK''), Popular, Inc. (''BPOP''), Berkshire Hathaway, Class B (''BRKB''), Blackstone Group L.P. (''BX''), Chubb Corp. (''CB''), Century Aluminum Co. (''CENX''), Cigna Corp. (''CI''), Ciena Corporation (''CIEN''), CIT Group, Inc. (''CIT''), Colgate Palmolive Co. (''CL''), Comerica, Inc. (''CMA''), Consol Energy, Inc. (''CNX''), Capital One Financial Corp. (''COF''), CVS Caremark Corporation (''CVS''), CEMEX S.A.B. de C.V. (''CX''), DR Horton, Inc. (''DHI''), Diamond Offshore Drilling (''DO''), Dryships, Inc. (''DRYS''), DIRECTV (''DTV''), Devon Energy Corp. (''DVN''), EMC Corp. (''EMC''), EOG Resources, Inc. (''EOG''), ITT Educational Services, Inc. (''ESI''), E*Trade Financial Corp. (''ETFC''), iShares MSCI Mexico Investable Market (''EWW''), F5 Networks, Inc. (''FFIV''), Flextronics International Ltd. (''FLEX''), Foster Wheeler AG (''FWLT''), Currency Shares Euro (''FXE''), Proshares Ultrashort FTSE China 25 (''FXP''), Gold Fields Ltd. (''GFI''), General Growth Properties, Inc. (''GGP''), Gilead Science, Inc. (''GILD''), Gamestop Corp. (''GME''), HSBC Holdings PLC (''HBC''), Hess Corporation (''HES''), Hartford Financial Services Group, Inc. (''HIG''), Hecla Mining Company (''HL''), Harley—Davidson, Inc. (''HOG''), ICICI Bank Ltd. (''IBN''), international [sic] Paper Co. (''IP''), Intermune, Inc. (''ITMN''), Johnson and Johnson (''JNJ''), Nordstrom, Inc. (''JWN''), Kinder Morgan, Inc. (''KMI''), Kinder Morgan Energy LP (''KMP''), SPDR S&P Regional Banking ETF (''KRE''), LDK Solar Co., Ltd. (''LDK''), Leap Wireless International, Inc. (''LEAP''), Lincoln National Corporation (''LNC''), Lorillard, Inc. (''LO''), Moody's Corporation (''MCO''), Mondelez International (''MDLZ''), Medivation, Inc. (''MDVN''), Mead Johnson Nutrition Co. (''MJN''), 3M Company (''MMM''), Mannkind Corporation (''MNKD''), Mini Nasdaq 100 Index (''MNX''), Marvell Technology Group Ltd. (''MRVL''), ArcelorMittal (''MT''), MGIC Investment Corporation (''MTG''), Myland, Inc. (''MYL''), National Oilwell varco [sic], Inc. (''NOV''), NetApp, Inc. (''NTAP''), Nucor Corp. (''NUE''), NYSE Euronext (''NYX''), Plum Creek Timber Co., Inc. REIT (''PCL''), PNC Financial Services, Inc. (''PNC''), Prudential Financial, Inc. (''PRU''), Royal Caribbean Cruises Ltd. (''RCL''), Raytheon Company (''RTN''), Riverbed Technology (''RVBD''), Origin Agritech Ltd. (''SEED''), Proshares Ultrashort Financials (''SKF''), SLM Corp. (''SLM''), Southern Company (''SO''), Simon Property Group, Inc. (''SPG''), Sunpower Corporation (''SPWR''), Sequenom, Inc. (''SQNM''), Proshares Ultrashort Real Estate (''SRS''), STEC Inc. (''STEC''), Suntrust Banks, Inc. (''STI''), State Street Corp.

[3] Select Symbols are identified by their ticker symbol on the Exchange's Schedule of Fees. With this proposed rule change, the Exchange will no longer identify Select Symbols by their ticker symbol and will, instead, identify Select Symbols as options overlying all symbols listed on ISE that are in the Penny Pilot Program. The Exchange will also provide a link to ISE's public Web site where a current list of ISE-listed symbols that are in the Penny Pilot Program is made available.

[4] *See* Exchange Act Release Nos. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR–ISE–2011–72); 66597 (March 14, 2012), 77 FR 16295 (March 20, 2012) (SR–ISE–2012–17); 66961 (May 10, 2012), 77 FR 28914 (May 16, 2012) (SR–ISE–2012–38); 67628 (August 9, 2012), 77 FR 49049 (August 15, 2012) (SR–ISE–2012–71); 68034 (October 11, 2012), 77 FR 63911 (October 17, 2012) (SR–ISE–2012–85); and 68627 (January 11, 2013) 78 FR 3934 (January 17, 2013) (SR–ISE–2013–01).

[5] *See* Exchange Act Release Nos. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR–ISE–2011–84); 66392 (February 14, 2012), 77 FR 10016 (February 21, 2012) (SR–ISE–2012–06); 66962 (May 10, 2012), 77 FR 28917 (May 16, 2012) (SR–ISE–2012–35); 67400 (July 11, 2012), 77 FR 42036 (July 17, 2012) (SR–ISE–2012–63); 67628 (August 9, 2012), 77 FR 49049 (August 15, 2012) (SR–ISE–2012–71); 68034 (October 11, 2012), 77 FR 63911 (October 17, 2012) (SR–ISE–2012–85); and 68627 (January 11, 2013) 78 FR 3934 (January 17, 2013) (SR–ISE–2013–01).

[6] 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).

(''STT''), Suncor Energy, Inc. (''SU''), Southwestern Energy Co. (''SWN''), Symantec Corp. (''SYMC''), Target Corp. (''TGT''), Tiffany & Co. (''TIF''), Toyota Motor Corp. (''TM''), Time Warner, Inc. (''TWX''), Textron, Inc. (''TXT''), Tyco International Ltd. (''TYC''), UnitedHealth Group, Inc. (''UNH''), Proshares Ultra Real Estate (''URE''), Proshares Ultra Financials (''UYG''), Verisign, Inc. (''VRSN''), Whole Foods Market, Inc. (''WFM''), Windstream Corp. (''WIN''), Wellpoint, Inc. (''WLP''), Williams Cos., Inc. (''WMB''), Walmart Stores, Inc. (''WMT''), XL Group PLC (''XL''), Xilinx, Inc. (''XLNX''), Consumer Staples Select Sectro SPDR (''XLP''), SPDR S&P Oil & Gas Exploration and Production (''XOP''), Yum Brands, Inc. (''YUM'') and Zions Bancorp. (''ZION'') (''Additional Select Symbols'').

With the addition of the Additional Select Symbols to [sic] Select Symbols, the fees currently applicable to regular and complex orders in the Select Symbols will now be applied to regular and complex orders in the Additional Select Symbols.

A. Regular Order Fees and Rebates

The Exchange currently applies transaction fees to regular orders in the Additional Select Symbols, as follows: [7]

- For Market Maker [8] orders, a fee of $0.18 per contract; [9]
- For Market Maker (for orders sent by Electronic Access Members), Firm Proprietary/Broker-Dealer and Professional Customer [10] orders, a fee of $0.20 per contract;
- For Non-ISE Market Maker [11] orders, a fee of $0.45 per contract;
- For Priority Customer orders, a fee of $0.00 per contract.

The Exchange currently charges a fee of $0.20 per contract to all market participants (except for Market Makers, this fee is currently $0.18 per contract,[12] and for Priority Customers, this fee is $0.00 per contract) for regular Crossing Orders in the Non-Select Symbols (this fee currently applies to the Additional Select Symbols as they are a subset of Non-Select Symbols). The Exchange also currently charges a fee of $0.20 per contract to all market participants (except for Non-ISE Market Makers, this fee is currently $0.45 per contract, and for Market Makers, this fee is $0.18 per contract [13]) for regular Responses to Crossing Orders in the Non-Select Symbols (this fee currently applies to the Additional Select Symbols as they are a subset of Non-Select Symbols).

With this proposed rule change, the Additional Select Symbols will now be subject to the maker/taker fees and rebates applicable to regular orders in the Select Symbols.[14] The Exchange currently charges the following maker fees and rebates for Select Symbols: (i) For Market Maker, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders, $0.10 per contract; (ii) for Priority Customer orders, $0.00 per contract; and (iii) for Market Maker Plus [15] orders, a rebate of $0.10 per contract. The Exchange also currently charges the following taker fees for Select Symbols: (i) for Market Maker and Market Maker Plus orders, $0.32 per contract; (ii) for Non-ISE Market Maker orders, $0.36 per contract; (iii) for Firm Proprietary/Broker-Dealer and Professional Customer orders, $0.33 per contract; and (iv) for Priority Customer orders, $0.25 per contract.

The Exchange currently charges Market Maker, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customers a fee of $0.20 per contract ($0.00 per contract for Priority Customers) for regular Crossing Orders in the Select Symbols, and a fee of $0.40 per contract to all market participants for regular Responses to Crossing Orders in the Select Symbols. With this proposed rule change, the fee for regular Crossing Orders in the Additional Select Symbols will remain at $0.20 per contract for most market participants. For Priority Customers, this fee will remain at $0.00 per contract, and for Market Makers, this fee will increase, from $0.18 per contract [16] to $0.20 per contract. With this proposed rule change, the fee for regular Responses to Crossing Orders will increase for most market participants, from $0.20 per contract to $0.40 per contract (for Market Makers, this fee will increase from $0.18 per contract to $0.40 per contract), with the exception of Non-ISE Market Makers who will now pay a lower fee of $0.40 per contract as opposed to $0.45 per contract.

The Exchange also currently provides a rebate of $0.25 per contract for contracts that are submitted to the Price Improvement Mechanism that do not trade with their contra order in the Select Symbols, and a rebate of $0.15 per contract for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order in the Select Symbols except when those contracts trade against pre-existing orders and quotes on the Exchange's orderbook. With this proposed rule change, market participants trading in the Additional Select Symbols will now be eligible for rebates that were not previously available for this group of symbols. Specifically, market participants will now receive a rebate of $0.25 per contract for contracts that are submitted to the Price Improvement Mechanism that do not trade with their contra order in the Additional Select Symbols. Further, market participants will now also receive a rebate of $0.15 per contract for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order in the Additional Select Symbols except when those contracts trade against pre-existing orders and quotes on the Exchange's orderbook.

Further, the Exchange currently charges Primary Market Makers (PMMs) a transaction fee of $0.18 per contract [17]

[7] Additional Select Symbols are currently subject to the standard transaction fee listed in the table titled Non-Select Symbols. *See* Schedule of Fees, Section I, Regular Order Fees and Rebates.

[8] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' [sic] collectively. *See* ISE Rule 100(a)(25).

[9] The Exchange provides a volume-based discount to fees to ISE Market Maker contracts for regular orders in Non-Select Symbols. *See* Schedule of Fees, Section IV, C. ISE Market Maker Discount Tiers.

[10] A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

[11] A Non-ISE Market Maker, or Far Away Market Maker (''FARMM''), 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.

[12] The volume-based discount to fees to ISE Market Maker contracts also applies to regular Crossing Orders. *See supra,* note 7 [sic].

[13] The volume-based discount to fees to ISE Market Maker contracts also applies to regular Responses to Crossing Orders. *See supra,* note 7 [sic].

[14] *See* Schedule of Fees, Section I, Regular Order Fees and Rebates.

[15] 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 sent to the Exchange qualify the Market Maker to become a Market Maker Plus. 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.

[16] The volume-based discount to fees to ISE Market Maker contracts also applies. *See supra,* note 7.

[17] The volume-based discount to fees to ISE Market Maker contracts also applies. *See supra,* note 7.

in the Additional Select Symbols when they trade report a Priority Customer or Professional Customer order in accordance with their obligation to provide away market price protection. PMMs in Select Symbols do not receive a maker rebate nor pay a taker fee when trade reporting.[18] With this proposed rule change, PMMs in the Additional Select Symbols will also not receive a maker rebate nor pay a taker fee when trade reporting.

The Exchange also currently provides a $0.20 per contract fee credit to PMMs for execution of Priority Customer orders in the Non-Select Symbols—for classes in which it serves as a PMM—that send an Intermarket Sweep Order to other exchanges. This credit is applied regardless of the transaction fee charged by a destination market. For PMMs in the Select Symbols, this credit is equal to the fee charged by the destination market. With this proposed rule change, PMMs in the Additional Select Symbols will now be provided with a credit that is equal to the fee charged by the destination market.

Additionally, the Exchange currently provides a $0.20 per contract credit for responses to flash orders in the Non-Select Symbols when trading against Professional Customers. For Select Symbols, the per contract fee credit for responses to flash orders is (i) $0.10 per contract when trading against Priority Customers; (ii) $0.12 per contract when trading against Preferenced Priority Customers; and (iii) $0.10 per contract when trading against Professional Customers. Market participants trading in the Additional Select Symbols will now be provided the rebate at levels that are currently in place for Select Symbols, as described above.

Finally, the Exchange currently charges a payment for order flow (PFOF) fee of $0.25 per contract, applicable to Market Makers when trading against Priority Customer orders in the Additional Select Symbols. The Exchange does not charge a PFOF fee for trading in the Select Symbols. Therefore, with this proposed rule change, the Exchange will no longer charge a PFOF fee for trading in the Additional Select Symbols.

B. Complex Order Fees and Rebates

With this proposed rule change, the maker fee for complex orders in the Additional Select Symbols will remain unchanged because the Exchange currently charges the same maker fee for complex orders in the Select Symbols, in the Penny Pilot Symbols and in the Non-Penny Pilot Symbols.[19] Specifically, for Select Symbols, Penny Pilot Symbols and Non-Penny Pilot Symbols, the Exchange currently charges a complex order maker fee of: (i) $0.10 per contract for Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; (ii) $0.20 per contract for Non-ISE Market Maker orders; and (iii) $0.00 per contract for Priority Customer orders.

With this proposed rule change, the maker fee for complex orders in the Additional Select Symbols when trading against Priority Customers will remain unchanged because the Exchange currently charges the same maker fee for complex orders in the Select Symbols (excluding SPY) when trading against Priority Customers and in the Non-Select Penny Pilot Symbols when trading against Priority Customers.[20] Specifically, for complex orders in the Select Symbols (excluding SPY) when trading against Priority Customer and for complex orders in the Non-Select Penny Pilot Symbols when trading against Priority Customers, the Exchange currently charges a maker fee of: (i) $0.39 per contract for Market Maker orders; (ii) $0.40 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and (iii) $0.00 per contract for Priority Customer orders.

Since the Exchange is proposing to move all the ISE-listed Penny Pilot Program symbols to its list of Select Symbols, there is no longer a need to separately identify these two groups of symbols on the Schedule of Fees. Therefore, the Exchange proposes to rename certain columns applicable to Maker Fees in Section II (Complex Order Fees and Rebates). Specifically, the Exchange proposes to rename the column titled 'Maker Fee for Select Symbols and Penny Pilot Symbols' as 'Maker Fee for Select Symbols.' The Exchange also proposes to rename the column titled 'Maker Fee for Non-Penny Pilot Symbols' to 'Maker Fee for Non-Select Symbols.' And finally, the Exchange proposes to rename the column titled 'Maker Fee for non-Penny Pilot Symbols when trading against Priority Customer' to 'Maker Fee for Non-Select Symbols when trading against Priority Customer.' The Exchange also proposes to delete the column titled 'Maker Fee for Non-Select Penny Pilot Symbols when trading against Priority Customer' because these symbols are now represented in the column for maker fees for Select Symbols.

With this proposed rule change, the taker fee for complex orders in the Additional Select Symbols will remain unchanged because the Exchange currently charges the same taker fee for complex orders in the Select Symbols (excluding SPY) and in the Non-Select Penny Pilot Symbols.[21] Specifically, for complex orders in the Select Symbols (excluding SPY) and in the Non-Select Penny Pilot Symbols, the Exchange currently charges a taker fee of: (i) $0.39 per contract for Market Maker orders; (ii) $0.40 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and (iii) $0.00 per contract for Priority Customer orders.

With this proposed rule change, the Fee for Crossing Orders when trading complex orders in the Additional Select Symbols will remain unchanged because the Exchange currently charges $0.20 per contract (for largest leg only) for complex Crossing Orders in all symbols, except for Priority Customers who are currently charged $0.00 per contract.

With this proposed rule change, the Fee for Responses to Crossing Orders when trading complex orders in the Additional Select Symbols will remain unchanged because the Exchange currently charges $0.40 per contract for Responses to Crossing Orders when trading complex orders in the Select Symbols and in the Penny Pilot Symbols.[22]

Additionally, the Exchange currently provides Market Makers with a discount when trading against Priority Customer orders that are preferenced to them. This discount is applicable when Market Makers add or remove liquidity in the Select Symbols, in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols. The Additional Select Symbols are currently a part of the Non-Select Penny Pilot Symbols and therefore this discount will continue to apply to the Additional

[18] *See* Schedule of Fees, Section I, Regular Order Fees and Rebates, footnote 9.

[19] The Additional Select Symbols are currently subject to the fee listed in the column titled Maker Fee for Select Symbols and Penny Pilot Symbols. *See* Schedule of Fees, Section II, Complex Order Fees and Rebates.

[20] The Additional Select Symbols are currently subject to the fee listed in the column titled Maker Fee for Non-Select Penny Pilot Symbols when trading against Priority Customer. *See* Schedule of Fees, Section II, Complex Order Fees and Rebates.

[21] The Additional Select Symbols are currently subject to the fee listed in the column titled Taker Fee for Non-Select Penny Pilot Symbols. *See* Schedule of Fees, Section II, Complex Order Fees and Rebates.

[22] The Additional Select Symbols are currently subject to the fee listed in the column titled Fee for Responses to Crossing Orders for Select Symbols and Penny Pilot Symbols. *See* Schedule of Fees, Section II, Complex Order Fees and Rebates.

Select Symbols when they become Select Symbols.

Since the Exchange is proposing to move all the ISE-listed Penny Pilot Program symbols to its list of Select Symbols, there is no longer a need to separately identify these two groups of symbols on the Schedule of Fees. Therefore, the Exchange proposes to rename certain columns applicable to Taker Fees in Section II (Complex Order Fees and Rebates). Specifically, the Exchange proposes to rename the column titled 'Taker Fee for non-Penny Pilot Symbols' as 'Taker Fee for Non-Select Symbols.' The Exchange also proposes to rename the column titled 'Fee for Responses to Crossing Orders for Select Symbols and Penny Pilot Symbols' to 'Fee for Responses to Crossing Orders for Select Symbols.' And finally, the Exchange proposes to rename the column titled 'Fee for Responses to Crossing Orders for non-Penny Pilot Symbols' to 'Fee for Responses to Crossing Orders for Non-Select Symbols.' The Exchange also proposes to delete the column titled 'Taker Fee for Non-Select Penny Pilot Symbols' because these symbols are now represented in the column for taker fees for Select Symbols.

Further, the Exchange proposes to re-define Select Symbols in the Preface of the Schedule of Fees as options overlying all symbols listed on the ISE that are in the Penny Pilot Program and providing a link to a page on the Exchange's Web site where a current list of ISE-listed symbols that are in the Penny Pilot Program is made available. Additionally, with this proposed rule change, all ISE-listed symbols that are in the Penny Pilot Program will now be subject to the Exchange's maker/taker fees and rebates and the PFOF fee will no longer apply to these symbols. The Exchange, therefore, proposes to amend the PFOF fee for Penny Pilot Symbols in Section IV. D. by removing that fee from the Schedule of Fees altogether.

2. Rebates for Priority Customer Complex Orders

The Exchange currently provides volume-based tiered rebates for Priority Customer complex orders in the Select Symbols (excluding SPY), in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols when these orders trade with non-Priority Customer orders in the complex order book.

For the Additional Select Symbols,[23] the Exchange currently provides a base rebate of $0.33 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members who achieve a certain level of average daily volume (ADV) of executed Priority Customer complex order contracts across all symbols during a calendar month are provided a rebate of $0.35 per contract, per leg, in these symbols, if a Member achieves an ADV of 40,000 Priority Customer complex order contracts; $0.37 per contract, per leg, in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.38 per contract, per leg, in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and $0.39 per contract, per leg, in these symbols, if a Member achieves an ADV of 225,000 Priority Customer complex order contracts. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month.

For Select Symbols (excluding SPY), the Exchange currently provides a base rebate of $0.34 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members who achieve a certain level of average daily volume (ADV) of executed Priority Customer complex order contracts across all symbols during a calendar month are provided a rebate of $0.37 per contract, per leg, in these symbols, if a Member achieves an ADV of 40,000 Priority Customer complex order contracts; $0.38 per contract, per leg, in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.39 per contract, per leg, in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and $0.40 per contract, per leg, in these symbols, if a Member achieves an ADV of 225,000 Priority Customer complex order contracts. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month.

The Exchange now proposes to lower the rebate payable for the first three tiers for Select Symbols (excluding SPY). Specifically, the Exchange proposes to lower the base rebate from $0.34 per contract to $0.33 per contract; lower the rebate payable for reaching an ADV of 40,000 Priority Customer complex order contracts from $0.37 per contract to $0.35 per contract; and lower the rebate payable for reaching an ADV of 75,000 Priority Customer complex order contracts from $0.38 per contract to $0.37 per contract. The Exchange is not proposing any change to the remaining tiers. With this proposed rule change, the Exchange seeks to standardize the rebate payable for Priority Customer complex orders that trade with non-Priority Customer complex orders in the complex order book in the Select Symbols and in the Additional Select Symbols.

With the proposed change noted in the preceding paragraph, the rebate levels payable for Priority Customer complex orders in the Additional Select Symbols will, in some cases, remain the same (i.e., the base rebate, the rebate level for reaching an ADV of 40,000 Priority Customer complex order contracts and the rebate level for reaching an ADV of 75,000 Priority Customer complex order contracts). The rebate levels payable for Priority Customer complex orders in the Additional Select Symbols for the highest two tiers will, however, increase (i.e., the rebate level for reaching an ADV of 125,000 Priority Customer complex order contracts will increase from $0.38 per contract to $0.39 per contract and the rebate level for reaching an ADV of 225,000 Priority Customer complex order contracts will increase from $0.39 per contract to $0.40 per contract) because the rebate levels payable for Priority Customer complex orders in the Select Symbols for those two tiers are higher than the rebate levels currently payable for Priority Customer complex orders in Non-Select Penny Pilot Symbols.

Again, as noted above, the Exchange is proposing to move all the ISE-listed Penny Pilot Program symbols to its list of Select Symbols. As a result, there is no longer a need to separately identify these two groups of symbols on the Schedule of Fees. Therefore, the Exchange proposes to rename certain columns applicable to Rebates in Section II (Complex Order Fees and Rebates). Specifically, the Exchange proposes to rename the column titled 'Rebate for non-Select non-Penny Pilot Symbols' as 'Rebate for Non-Select Symbols.' The Exchange also proposes to rename the column titled 'PIM Break-

[23] The Additional Select Symbols are currently subject to the rebate listed in the column titled Rebate for non-Select Penny Pilot Symbols. *See* Schedule of Fees, Section II, Complex Order Fees and Rebates.

up Rebate for Select Symbols and Penny Pilot Symbols' as 'PIM Break-up Rebate for Select Symbols.' And finally, the Exchange proposes to rename the column titled 'Facilitation and Solicitation Break-up Rebate for Select Symbols and Penny Pilot Symbols' as 'Facilitation and Solicitation Break-up Rebate for Select Symbols.' The Exchange also proposes to delete the column titled 'Rebate for non-Select Penny Pilot Symbols' because these symbols are now represented in the column for rebates for Select Symbols.

3. New Rebate for Incremental Priority Customer Complex Orders

As noted above, the Exchange currently provides volume-based tiered rebates for Priority Customer complex orders in the Select Symbols (excluding SPY), in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols when these orders trade with non-Priority Customer orders in the complex order book. In order to enhance the Exchange's competitive position and to incentivize Members to increase the amount of Priority Customer complex orders in these symbols that they send to the Exchange, the Exchange now proposes to adopt an additional rebate of $0.01 per contract payable for incremental Priority Customer complex order volume above the highest tier. In other words, if Member ABCD achieves an ADV of 230,000 Priority Customer complex order contracts during March, then in addition to receiving the highest rebate level of $0.40 per contract because Member ABCD met the highest tier volume threshold, Member ABCD will also receive an additional $0.01 per contract for the additional eligible ADV of 5,000 Priority Customer complex order contracts it traded above the highest threshold of 225,000 Priority Customer complex order contracts. This proposed new incremental rebate of $0.01 per contract will apply to Priority Customer complex orders in the Select Symbols, in SPY and in the Non-Select Symbols when these orders trade with non-Priority Customer orders in the complex order book.

With this proposed rule change, the Exchange expects to attract additional order flow of regular and complex orders in the Additional Select Symbols. The Exchange's maker/taker fees and rebates are competitively priced and have been effective in attracting order flow of regular and complex orders in the Select Symbols.

With this proposed rule change, the taker fees and Response to Crossing Order fees charged to all market participants for regular orders in the Additional Select Symbols will increase, except for Non-ISE Market Makers whose fee [sic] will decrease, while the maker fees for regular orders in the Additional Select Symbols will decrease, except for Priority Customer maker fees, which will remain the same at $0.00 per contract. Market Makers will now also be eligible for the Market Maker Plus rebate, which was previously not applicable to the Additional Select Symbols. This proposed rule change does not proposed [sic] any change to the maker and taker fees for complex orders in the Additional Select Symbols as those fees remain unchanged. And as noted above, the base rebate level and the rebate levels for tiers 1 and 2 will remain unchanged for Priority Customer complex order [sic] in the Additional Select Symbols while the rebate levels payable for Priority Customer complex orders in the Additional Select Symbols for the two highest tiers will increase compared to the current rebate levels for this group of symbols.

2. Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act [24] in general, and furthers the objectives of Section 6(b)(4) of the Act [25] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable to add the Additional Select Symbols to the current list of Select Symbols. The Exchange believes that applying the fees and rebates applicable to Select Symbols to the Additional Select Symbols will attract additional order flow to the Exchange. Select Symbol pricing has proven beneficial for the Exchange and its participants and the Exchange believes that moving the Additional Select Symbols to Select Symbols pricing would enhance liquidity and participation in those symbols.

The Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to add the Additional Select Symbols because the fees and rebates for Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade options in the Select Symbols would be uniformly subject to the fees and rebates applicable to those symbols.

The Exchange believes the proposed rule change is reasonable and equitable because it generally lowers the maker fees applicable to market participants and believes that the lower maker fees will attract additional maker liquidity and size to the Exchange in the Additional Select Symbols. Additionally, while this proposed rule change proposes to increase the taker fees applicable to market participants, the Exchange believes the benefits of better market quality will outweigh the taker fee increases based on the Exchange's experience with trading in the Select Symbols. Further, the Exchange believes this proposed rule change is reasonable and equitable because it will result in market participants receiving higher rebates when they achieve the volume threshold for the two highest tiers of Priority Customer complex orders ADV for orders [sic] trade with non-Priority Customer complex orders in the complex order book as the current rebate payable for these orders in Select Symbols is higher than the current rebate payable for these orders in Additional Select Symbols.

The Exchange believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade with Non-Priority Customer complex orders in the complex order book because paying a rebate would continue to attract additional order flow to the Exchange and create liquidity in the symbols that are subject to the rebate, which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange already provides these rebates, and is now proposing to adopt a unique rebate for incremental volume to encourage Members who trade a lot on ISE to trade more. With this proposed rule change, Market Makers will also now be eligible to receive the Market Maker Plus rebate which was not previously applicable to the Additional Select Symbols. The Exchange believes that the proposed rebates are competitive with rebates provided by other exchanges and are therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange.

The Exchange believes that it is reasonable and equitable to provide a discount to Market Makers on preferenced orders as an incentive for them to quote in the complex order book. ISE notes that with this proposed rule change, the Exchange will continue to maintain the differential that was previously in place for the Additional Select Symbols.

The Exchange believes that the proposed changes are non-

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(4).

discriminatory because the proposal simply moves the Additional Select Symbols from one category of fees into another category thereby applying fees currently in effect. Further, the Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to add the Additional Select Symbols to the Select Symbols because the fees applicable to the Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols would be uniformly subject to the fees and rebates applicable to those symbols.

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

ISE 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. This rule change, which proposes to move a group of symbols to an existing category of symbols, does not impose any burden on competition. With this proposed rule change, the Additional Select Symbols will be subject to fees and rebates that are already in place on the Exchange and therefore, do not impose any additional burden on competition that is not necessary or appropriate in furthering the purposes of the Act. The Exchange believes that the proposed changes promote competition, as they are designed to allow the Exchange to better compete for order flow and improve the Exchange's competitive position.

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 [26] and subparagraph (f)(2) of Rule 19b-4 thereunder,[27] 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.* Please include File Number SR–ISE–2013–19 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–2013–19. 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–2013–19 and should be submitted on or before April 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–06394 Filed 3–19–13; 8:45 am]

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[26] 15 U.S.C. 78s(b)(3)(A)(ii).

[27] 17 CFR 240.19b–4(f)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69133; File No. SR–NASDAQ–2013–042]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rules 7014 and 7018

March 14, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on March 1, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') 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 NASDAQ. 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

NASDAQ is proposing changes to its schedule of fees and rebates for execution of orders for securities priced at $1 or more under Rule 7018, as well as a minor change to its Routable Order Program under Rule 7014. The changes pursuant to this proposal are effective upon filing, and the Exchange will implement the proposed rule changes on March 1, 2013.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.