

Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing.<sup>9</sup> However, pursuant to Rule 19b-4(f)(6)(iii),<sup>10</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.<sup>11</sup> Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.<sup>12</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-BATS-2013-064 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-BATS-2013-064. 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-BATS-2013-064 and should be submitted on or before January 10, 2014.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71081; File No. SR-ISE-2013-65]

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

December 16, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on December 2, 2013, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its Schedule of Fees to adjust complex order fees and rebates. 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 is proposing to amend its Schedule of Fees to adjust complex order fees and rebates, including rebates

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> See Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR-NYSEArca-2009-44). See also *supra* note 3.

<sup>12</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

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

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

provided to Priority Customer<sup>3</sup> complex orders, maker/taker fees, and fees for responses to complex crossing orders. The fee changes discussed apply to both Standard Options and Mini Options traded on the Exchange. The Exchange's Schedule of Fees has separate tables for fees applicable to Standard Options and Mini Options. The Exchange notes that while the discussion below relates to fees for Standard Options, the fees for Mini Options, which are not discussed below, are and shall continue to be 1/10th of the fees for Standard Options.

The Exchange currently provides volume-based tiered rebates for Priority Customer complex orders when these orders trade with non-Priority Customer orders in the complex order book.<sup>4</sup>

These complex order rebates are provided to Members in six tiers based on the Member's average daily volume ("ADV") in Priority Customer complex contracts. For Select Symbols (excluding SPY) this rebate is \$0.33 per contract for Members with a Priority Customer Complex ADV of fewer than 40,000 contracts (*i.e.*, Tier 1), \$0.35 per contract for Members with a Priority Customer Complex ADV of 40,000–74,999 contracts (*i.e.*, Tier 2), \$0.37 per contract for Members with a Priority Customer Complex ADV of 75,000–124,999 contracts (*i.e.*, Tier 3), \$0.39 per contract for Members with a Priority Customer Complex ADV of 125,000–224,999 contracts (*i.e.*, Tier 4), \$0.40 per contract for Members with a Priority

Customer Complex ADV of 225,000–299,999 contracts (*i.e.*, Tier 5), and \$0.41 per contract for Members with a Priority Customer Complex ADV of 300,000 contracts or more (*i.e.*, Tier 6). For SPY the rebate is \$0.36 per contract for Tier 1, \$0.38 per contract for Tier 2, \$0.39 per contract for Tier 3, \$0.40 per contract for Tier 4, \$0.41 per contract for Tier 5, and \$0.42 for Tier 6. And for non-Select Symbols the rebate is \$0.66 per contract for Tier 1, \$0.72 per contract for Tier 2, \$0.75 per contract for Tier 3, \$0.77 per contract for Tier 4, \$0.78 per contract for Tier 5, and \$0.79 for Tier 6. The Exchange is now proposing to increase these rebates for Members that achieve Tier 2 or higher as shown in the table below.

PRIORITY CUSTOMER REBATE BY ADV

Priority customer complex ADV	Select symbols (excluding SPY)	Non-select symbols	SPY
Tier 1; 0–39,999 .....	(\$0.33)	(\$0.66)	(\$0.36)
Tier 2; 40,000–74,999 .....	(\$0.37)	(\$0.75)	(\$0.40)
Tier 3; 75,000–124,999 .....	(\$0.39)	(\$0.78)	(\$0.41)
Tier 4; 125,000–224,999 .....	(\$0.41)	(\$0.80)	(\$0.42)
Tier 5; 225,000–299,999 .....	(\$0.43)	(\$0.83)	(\$0.44)
Tier 6; 300,000+ .....	(\$0.44)	(\$0.84)	(\$0.45)

The Exchange also provides volume-based tiered rebates to Priority Customer Complex orders that trade with quotes and orders on the regular order book.<sup>5</sup> For all symbols (excluding SPY) this rebate is \$0.06 per contract for Tier 1, \$0.12 per contract for Tier 2, \$0.13 per contract for Tier 3, \$0.17 per contract for Tier 4, \$0.18 per contract for Tier 5, and

\$0.19 per contract for Tier 6. For SPY the rebate is \$0.07 per contract for Tier 1, \$0.13 per contract for Tier 2, \$0.14 per contract for Tier 3, \$0.18 per contract for Tier 4, \$0.19 per contract for Tier 5, and \$0.20 per contract for Tier 6. Like the rebates discussed above for Priority Customer complex orders that trade with non-Priority Customer orders

in the complex order book, the Exchange is also proposing to increase the rebate for Priority Customer Complex orders that trade with quotes and orders on the regular order book for Members that achieve Tier 2 or higher as shown in the table below.

PRIORITY CUSTOMER REBATE BY ADV

[For Orders that Trade with Quotes and Orders on the Regular Orderbook]

Priority customer complex ADV	All symbols (excluding SPY)	SPY
Tier 1; 0–39,999 .....	(\$0.06)	(\$0.07)
Tier 2; 40,000–74,999 .....	(\$0.14)	(\$0.15)
Tier 3; 75,000–124,999 .....	(\$0.15)	(\$0.16)
Tier 4; 125,000–224,999 .....	(\$0.19)	(\$0.20)
Tier 5; 225,000–299,999 .....	(\$0.21)	(\$0.22)
Tier 6; 300,000+ .....	(\$0.22)	(\$0.23)

The Exchange also charges fees for adding liquidity, *i.e.*, maker fees, to non-Priority Customers complex orders when trading against Priority Customer

complex orders,<sup>6</sup> and fees for removing liquidity, *i.e.*, taker fees, regardless of the counterparty. In particular, the Exchange charges Market Maker<sup>7</sup> orders

a fee of \$0.39 per contract in Select Symbols (excluding SPY) and SPY, and a fee of \$0.82 per contract in non-Select Symbols. For Non-ISE Market Maker,<sup>8</sup>

<sup>3</sup> A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

<sup>4</sup> The Exchange offers a rebate in Standard and Mini Options for Priority Customer complex orders in (i) Select Symbols (excluding SPY), (ii) SPY, and

(iii) Non-Select Symbols, when these orders trade with non-Priority Customer orders in the complex order book.

<sup>5</sup> The Exchange offers a rebate in Standard and Mini Options for Priority Customer complex orders that trade with quotes and orders on the regular order book in (i) SPY, and (ii) other symbols excluding SPY.

<sup>6</sup> The Exchange separately charges maker fees for non-Priority Customer complex orders that do not trade against Priority Customer complex orders. These fees are not discussed in this filing.

<sup>7</sup> The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See ISE Rule 100(a)(25).

<sup>8</sup> A Non-ISE Market Maker, or Far Away Market Maker ("FarMM"), is a market maker as defined in

Firm Proprietary/Broker Dealer,<sup>9</sup> and Professional Customer<sup>10</sup> orders the Exchange charges a fee of \$0.40 per contract for Select Symbols (excluding SPY), \$0.41 per contract for SPY, and \$0.84 per contract in non-Select Symbols. The Exchange is now proposing to increase the fees for market participants that remove liquidity or provide liquidity to a Priority Customer complex order as follows. The Exchange is proposing to increase the fee for Market Maker orders to \$0.42 per contract in Select Symbols (excluding SPY),<sup>11</sup> \$0.43 per contract in SPY, and \$0.85 per contract in non-Select Symbols. For Non-ISE Market Maker, Firm Proprietary/Broker Dealer, and Professional Customer orders the Exchange proposes to increase the fee to \$0.44 per contract in Select Symbols (excluding SPY), \$0.45 per contract in SPY, and \$0.87 per contract in non-Select Symbols. The Exchange is not proposing to change the maker fees for market participants that do not trade against Priority Customer complex orders.

Finally, the Exchange charges a fee for responses to complex crossing orders, which are similar to the Exchange's taker rates described above. The Exchange is proposing to increase the fees for responses to complex crossing orders to keep them at levels generally in line with the proposed taker fees. In Select Symbols the fee for responses to complex crossing orders is \$0.40 per contract for all market participants, including Priority Customers. The Exchange proposes to increase this fee to \$0.44 per contract. In non-Select Symbols the fee for responses to complex crossing orders is \$0.82 per contract for Market Maker orders, and \$0.84 per contract for Non-ISE Market Maker, Firm Proprietary/Broker Dealer, and Professional Customer orders. The Exchange proposes to increase this fee to \$0.87 per contract for all non-Priority Customer orders. The Exchange will continue to not charge a fee to Priority Customers for responses to complex crossing orders in non-Select Symbols.

Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

<sup>9</sup> A Firm Proprietary order is an order submitted by a Member for its own proprietary account. A Broker-Dealer order is an order submitted by a Member for a non-Member broker-dealer account.

<sup>10</sup> A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

<sup>11</sup> The Exchange notes that complex order quoting is currently permitted in the following symbols: AA, ABX, EFA, GLD, MSFT, MU, NVDA, VXX, VZ, WFC, XLB and XOP ("Complex Quoting Symbols"). This proposed rate change also applies to Market Maker quotations in Complex Quoting Symbols when trading against Priority Customer complex orders.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>12</sup> in general, and Section 6(b)(4) of the Act,<sup>13</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 complex order pricing employed by the Exchange has proven to be an effective pricing mechanism, and attractive to Members. The Exchange believes that this proposed rule change will continue to attract additional complex order business to the ISE.

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to increase the rebate paid to Priority Customer complex orders that trade with non-Priority Customer orders in the complex order book, or trade with quotes and orders on the regular order book, because paying these increased rebates will continue to attract additional order flow to the ISE and create liquidity which will ultimately benefit all market participants who trade on the Exchange. The Exchange believes that providing higher rebates to Priority Customer complex orders, and in particular Priority Customer orders from Members that have achieved specified volume thresholds, will encourage Members to route additional Priority Customer complex orders to the Exchange in order to qualify for the new rebates, and thereby help the Exchange remain competitive with other options exchanges in attracting this order flow.

The Exchange further believes that it is reasonable, equitable, and not unfairly discriminatory to increase its maker/taker and response fees as the Exchange is seeking to recoup the cost associated with the proposed Priority Customer rebates. In order to maintain these fees at similar levels the Exchange is proposing to move the maker/taker and response fees in tandem. As stated above, the Exchange believes that the increased Priority Customer rebates being supported by these maker/taker and response fees will attract Priority Customer order flow to the Exchange to the benefit of all market participants. The Exchange notes that the proposed maker/taker and response fees are consistent with fee structures and price differentials that exist today at other options exchanges, and does not believe that it is unfairly discriminatory to continue to provide a rebate to Priority

Customer orders while charging a fee to non-Priority Customer orders as discussed in this filing. A Priority Customer is by definition 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(s). This limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including Professional Customers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers.

The Exchange notes that it has determined to charge fees in Mini Options at a rate that is 1/10th the rate of fees the Exchange provides for trading in Standard Options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees to provide market participants an incentive to trade Mini Options on the Exchange. The Exchange believes the proposed fees are reasonable and equitable in light of the fact that Mini Options have a smaller exercise and assignment value, specifically 1/10th that of a standard option contract, and, as such, is providing fees that are 1/10th of those applicable to Standard Options.

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

In accordance with Section 6(b)(8) of the Act,<sup>14</sup> the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed changes will promote competition as they are designed to allow the ISE to better compete for order flow and improve the Exchange's competitive position by offering higher rebates to Members that execute a large volume of Priority Customer complex orders. While the Exchange is increasing the maker/taker and response fees the Exchange does not believe that this will impose a burden on competition because the new fees are consistent with the Exchange's current fee structure and with the fee structures of 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

<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 15 U.S.C. 78f(b)(8).

the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>15</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>16</sup> because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2013-65 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-2013-65. 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-2013-65 and should be submitted on or before January 10, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-71083; File No. SR-OCC-2013-807]**

**Self-Regulatory Organizations; The Options Clearing Corporation; Advance Notice Concerning the Governance Committee Charter**

December 16, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4(n)(1)(i),<sup>2</sup> notice is hereby given that on September 14, 2012, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the advance notice described in Items I and

II below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

**I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice**

This advance notice concerns the charter of the Governance Committee ("GC Charter") of OCC's Board of Directors ("Board").

**II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice**

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A) and (B) below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice*

This advance notice concerns the GC Charter. The Board authorized formation of the Governance Committee ("GC") at its May 21, 2013, meeting and approved the GC Charter at its September 24, 2013, meeting. As set forth in the GC Charter, the purpose of the GC is to review the overall corporate governance of OCC and recommend improvements to OCC's Board. The GC Charter describes the role the GC plays in assisting the Board in fulfilling its responsibilities, as described in OCC's By-Laws and Rules, as well as specifying the policies and procedures governing the membership and organization, scope of authority, and specific functions and responsibilities of the GC. In addition, the guidelines for the composition of the GC as well as the policies regarding its meeting schedule, quorum rules, minute-keeping and reporting requirements are set forth in the GC Charter and conform to applicable requirements specified in OCC's By-Laws and Rules.

The GC is composed of not fewer than five Directors with at least one Public Director, one Exchange Director and one Member Director. Management Directors will not be members of the GC. The Board will designate a GC Chair and if the Chair is not present at a meeting, the members who are present will designate a member to serve as the Acting Chair. The GC will meet at least four times a year and a majority of the GC members

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

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

<sup>17</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(n)(1)(i).