

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

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Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73601; File No. SR-ISE-2014-51]

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

November 14, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 3, 2014, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 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 (1) eliminate special fees for Singly Listed Symbols, and (2) amend its rules for excluding days from its average daily volume ("ADV") calculations when the market is not open for the entire trading day. 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 proposes to (1) eliminate special fees for Singly Listed Symbols,<sup>3</sup> and (2) amend its rules for excluding days from its ADV calculations when the market is not open for the entire trading day. Each of the proposed changes is described in more detail below. The Exchange's Schedule of Fees has separate 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.

##### 1. Singly Listed Symbols

Other than applicable response fees, simple Priority Customer<sup>4</sup> orders in Non-Select symbols<sup>5</sup> executed on the Exchange are generally not charged a transaction fee or fee for Crossing Orders,<sup>6</sup> including a fee for Price Improvement Mechanism ("PIM") orders of fewer than 100 contracts. By contrast, the Exchange charges Priority Customer orders in a special group of Non-Select Symbols that trade solely on the ISE ("Singly Listed Symbols") a fee of \$0.20 per contract for regular and Crossing Orders, including PIM orders of 100 or fewer contracts. The Exchange now proposes to eliminate the special fees for these Singly Listed Symbols, which will now be subject to the same fees as other Priority Customer orders in Non-Select Symbols.

In connection with this change, the Exchange also proposes to remove other references to Singly Listed Symbols, including the definition of Singly Listed

<sup>3</sup> "Singly Listed Symbols" are options overlying FXO, QQEW, PLTM, SMDD and FIW.

<sup>4</sup> A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in ISE Rule 100(a)(37A).

<sup>5</sup> "Non-Select Symbols" are options overlying all symbols excluding Select Symbols.

<sup>6</sup> A "Crossing Order" is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (PIM) or submitted as a Qualified Contingent Cross order. For purposes of this Fee Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

Symbols in the Preface to the Schedule of Fees, and certain fee waivers that apply to Singly Listed Symbols as described below. The Exchange has a Payment for Order Flow ("PFOF") fee of \$0.70 per contract, which is paid by Market Makers<sup>7</sup> for each Priority Customer contract executed against the Market Maker in Non-Select Symbols other than Singly Listed Symbols and FX Option Symbols,<sup>8</sup> or for Flash Orders<sup>9</sup> and Complex Orders. In addition, Market Makers making or taking liquidity receive a discount of \$0.02 per contract in Standard Options only when trading against Priority Customer orders preferenced to them in the Complex order book in equity options that are able to be listed and traded on more than one options exchange. This discount similarly does not apply to Singly Listed Symbols and FX Options Symbols, or to option classes designated by the Exchange to receive a guaranteed allocation pursuant to ISE Rule 722(b)(3)(i)(B). As the Exchange is eliminating special fees for Singly Listed Symbols, the five symbols currently designated as Singly Listed Symbols will now be subject to the PFOF program and will be eligible for the Market Maker complex order discount described above.

##### 2. ADV Calculation

The Exchange provides a Market Maker Plus<sup>10</sup> rebate for adding liquidity of \$0.22 per contract instead of the regular \$0.20 per contract for Market Makers that meet the quoting requirements for Market Maker Plus and are affiliated with an Electronic Access Member that executes a total affiliated Priority Customer ADV of 200,000 contracts or more in a calendar month. Similarly, the Exchange charges a discounted Priority Customer taker fee of \$0.25 per contract instead of the

<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> "FX Option Symbols" are options overlying AUM, GBP, EUU and NDO.

<sup>9</sup> A "Flash Order" is an order that is exposed at the National Best Bid or Offer by the Exchange to all members for execution, as provided under Supplementary Material .02 to ISE Rule 1901.

<sup>10</sup> A Market Maker Plus is a Market Maker who is on the National Best Bid or National Best Offer at least 80% of the time for series trading between \$0.03 and \$3.00 (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 \$3.00 (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. A Market Maker's single best and single worst quoting days each month based on the front two expiration months, on a per symbol basis, will be excluded in calculating whether a Market Maker qualifies for this rebate, if doing so will qualify a Market Maker for the rebate.

<sup>12</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.

regular \$0.30 per contract for members with a total affiliated Priority Customer ADV that equals or exceeds 200,000 contracts. And for PIM orders of 100 or fewer contracts, the Exchange charges a discounted fee of \$0.03 per contract instead of the regular \$0.05 per contract

for non-Priority Customer orders executed by members that have an ADV of 20,000 or more Priority Customer contracts in a given month executed in the PIM.<sup>11</sup>

In addition, the Exchange provides tiered rebates for Priority Customer

complex orders when these orders trade with non-Priority Customer orders in the complex order book, or trade with quotes and orders on the regular order book, based on the member's ADV in Priority Customer complex contracts as shown in the table below.

#### PRIORITY CUSTOMER COMPLEX ORDER REBATE

Priority customer complex ADV	Select symbols <sup>12</sup>	Non-select symbols
Tier 1; 0–29,999 .....	(\$0.30)	(\$0.63)
Tier 2; 30,000–74,999 .....	(\$0.35)	(\$0.71)
Tier 3; 75,000–124,999 .....	(\$0.39)	(\$0.75)
Tier 4; 125,000–224,999 .....	(\$0.41)	(\$0.80)
Tier 5; 225,000–299,999 .....	(\$0.43)	(\$0.82)
Tier 6; 300,000+ .....	(\$0.45)	(\$0.83)

Currently, for purposes of determining Priority Customer ADV<sup>13</sup> and Priority Customer Complex ADV, any day that the market is not open for the entire trading day may be excluded from such calculation. Although the regular and complex order books may function independently, the Exchange interprets this rule to require a general halt in trading before days can be excluded pursuant to this rule. This means, for instance, that if the regular market is open for trading but the complex order book is not accepting orders, the day could not be excluded from ADV calculations for complex order tiers, even though complex order volume on the ISE would be negatively impacted for that day. The Exchange now proposes to independently exclude days from its ADV calculations when the regular or complex order books are not open for the entire trading day. As proposed, days may be excluded from the Exchange's regular and complex order ADV calculations, if the corresponding order book is not open for the entire trading day.

Furthermore, the Exchange notes that some members may be inadvertently disadvantaged when the ISE removes a day from its ADV calculation if the member executes a large volume of contracts during that day. As this disadvantages members that continue to trade significant volume on days where the regular or complex order book is halted, the Exchange proposes to only exclude days for members that would have a lower ADV with the day included.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>14</sup> in general, and Section 6(b)(4) of the Act,<sup>15</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.

##### 1. Singly Listed Symbols

The Exchange believes that it is reasonable and equitable to eliminate special fees for Singly Listed Symbols as this will simplify the Schedule of Fees to the benefit of members and investors. The Singly Listed Symbols account for a negligible amount of volume traded and the Exchange believes that it is no longer necessary to distinguish between multiply- and singly-listed options in determining the applicable execution fees described above. Furthermore, the Exchange believes that this proposed change is not unfairly discriminatory as members will now pay the same fees regardless of whether a particular symbol is multiply- or singly-listed.

##### 2. ADV Calculation

The Exchange believes that it is reasonable and equitable to separately account for the regular and complex order books when determining whether a day may be excluded from its ADV calculations. Without this proposed change, aberrant low volume days would have to be counted for ADV purposes if an issue in one order book did not affect the entire market at ISE, resulting in an unintended cost increase

for members. The proposed change preserves the Exchange's intent behind adopting volume-based pricing by adjusting the ADV calculations to account for days where there is no general trading halt but one or the other order book is nevertheless unavailable to members. Similarly, the Exchange believes that it is reasonable and equitable to only exclude a day from its ADV calculations for members that would otherwise have a lower ADV for the month. Without this change, members that step up and trade significant volume on days where the regular or complex order book is unavailable for a portion of the trading day may be negatively impacted, resulting in an effective cost increase for those members. The Exchange further believes that the proposed changes to its ADV calculations are not unfairly discriminatory because they apply equally to all members and ADV calculations. As is the ISE's current practice, the Exchange will provide a notice, and post it on the Exchange's Web site, to inform members of any day that is to be excluded from its ADV calculations in connection with this proposed rule change.

The Exchange notes that it has determined to charge fees and provide rebates in Mini Options at a rate that is 1/10th the rate of fees and rebates the Exchange provides for trading in Standard Options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees and rebates to provide market participants an incentive to trade Mini Options on the Exchange. The

<sup>11</sup> This discounted fee is applied retroactively to all eligible PIM volume in that month once the threshold has been reached.

<sup>12</sup> "Select Symbols" are options overlying all symbols listed on the ISE that are in the Penny Pilot Program.

<sup>13</sup> The Exchange notes that this provision currently references "total affiliated" Priority Customer ADV and proposes to clarify that this encompasses all calculations that include Priority Customer ADV, such as Priority Customer PIM ADV

discussed above, which is a subset of total affiliated Priority Customer ADV.

<sup>14</sup> 15 U.S.C. 78f.

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

Exchange believes the proposed fees and rebates 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 and rebates for Mini Options 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>16</sup> the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that eliminating special fees for Singly Listed Symbols will reduce the complexity of the Schedule of Fees to the benefit of members and investors, and will not have any competitive impact. In addition, the Exchange believes that the proposed modifications to its ADV calculation are pro-competitive and will result in lower total costs to end users, a positive outcome of competitive markets. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>17</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>18</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-2014-51 on the subject line.

#### *Paper Comments*

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-ISE-2014-51. 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 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-2014-51, and should be submitted on or before December 11, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-73598; File No. SR-NYSEArca-2014-56]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Relating to Listing and Trading of Shares of the PIMCO Income Exchange-Traded Fund Under NYSE Arca Equities Rule 8.600**

November 14, 2014.

On May 1, 2014, NYSE Arca, Inc. filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares of the PIMCO Income Exchange-Traded Fund under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on May 21, 2014.<sup>3</sup> On June 24, 2014, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>4</sup> On August 19, 2014, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>5</sup> to determine whether to approve or disapprove the

<sup>19</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.

<sup>3</sup> See Securities Exchange Act Release No. 72170 (May 15, 2014), 79 FR 29231.

<sup>4</sup> See Securities Exchange Act Release No. 72458, 79 FR 36849 (Jun. 30, 2014). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission designated August 19, 2014 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>5</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>16</sup> 15 U.S.C. 78f(b)(8).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).