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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68384; File No. SR-ISE-2012-94)

December 7, 2012

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Payment for Order Flow Fees

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 29, 2012, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The ISE proposes to amend its payment for order flow 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-

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

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

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 has a payment for order flow (“PFOF”) program that helps its market makers establish PFOF arrangements with an Electronic Access Member (“EAM”) in exchange for that EAM routing some or all of its order flow to that market maker. This program is funded through a fee paid by Exchange market makers for each Priority Customer contract they execute in the symbols that are subject to the PFOF fee.<sup>3</sup> Specifically, ISE currently charges a PFOF fee of \$0.65 per contract for options classes that are not in the penny pilot program. For penny pilot classes that are not subject to the Exchange’s maker/taker fees, the Exchange currently charges a PFOF fee of \$0.25 per contract.

The Exchange now proposes to increase the PFOF fee applicable to classes that are not in the penny pilot program from \$0.65 per contract to \$0.70 per contract. The Exchange is not proposing any change to the PFOF fee charged to penny pilot classes that are not subject to the Exchange’s maker/taker fees. With this proposed rule change, ISE’s PFOF fee in classes that are not in the penny pilot program will be more competitive with the PFOF fee charged by at least one other options exchange in these

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<sup>3</sup> PFOF fees do not apply to market makers for each Regular Priority Customer contract executed in Select Symbols. PFOF fees are waived for Singly Listed Symbols, FX Options, Flash Orders and for Complex Orders in all symbols. See Schedule of Fees, Section IV, D.

options classes.<sup>4</sup> This proposed rule change will also allow ISE market makers to compete better for order flow in these options classes.

As noted above, the PFOF fee is collected by the Exchange for each Priority Customer contract executed in the symbols where PFOF fees are collected. For the sake of clarity, the Exchange proposes to add rule text to its Schedule of Fees to note that the PFOF fee applies to market makers for each Priority Customer contract executed. Aside from adding the proposed clarifying text to its Schedule of Fees, the Exchange is not amending its PFOF program in any other respect.

The Exchange has designated this proposal to be operative on December 3, 2012.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (“Act”),<sup>5</sup> in general, and with Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The proposed rule change will allow the Exchange and its market makers to better compete for order flow since the Exchange will now collect the same amount of fee as PHLX in options classes that are subject to the PFOF fee. The Exchange believes that with this proposed rule change, market makers will have greater incentive to trade on ISE in the symbols that are subject to the PFOF fee and thus enhance competition.

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<sup>4</sup> NASDAQ OMX PHLX LLC (“PHLX”) currently charges a payment for order flow fee of \$0.70 per contract for options classes that are not in the penny pilot program. See PHLX Pricing Schedule, Section II, Payment for Order Flow Fees.

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

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

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

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

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

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>7</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>8</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:

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

Electronic comments:

- Use the Commission's Internet comment form <http://www.sec.gov/rules/sro.shtml>; or
- Send an E-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-ISE-2012-94 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISE-2012-94. This file number should be included on the subject line if e-mail 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. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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-2012-94 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).