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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69393; File No. SR-ISE-2013-32)

April 18, 2013

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Market Maker Plus Rebate Program

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 April 10, 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 the Market Maker Plus rebate program. 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 the 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 all symbols that are in the Penny Pilot program (the “Select Symbols”). The fee change discussed below applies to both standard options and mini options traded on the Exchange. The Exchange’s Schedule of Fees has separate tables for fees and rebates applicable to standard options and mini options. The Exchange notes that while the discussion below relates to fees and rebates for standard options, the fees and rebates for mini options, which are not discussed below, are and shall continue to be 1/10<sup>th</sup> of the fees and rebates for standard options.<sup>3</sup>

The Exchange’s maker/taker fees and rebates apply to the following categories of market participants: (i) Market Maker;<sup>4</sup> (ii) Market Maker Plus; (iii) Non-ISE Market Maker;<sup>5</sup> (iv) Firm Proprietary / Broker-Dealer; (v) Professional Customer;<sup>6</sup> and (vi)

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<sup>3</sup> See SR-ISE-2013-28 (not yet published) [sic].

<sup>4</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See ISE Rule 100(a)(25).

<sup>5</sup> 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.

<sup>6</sup> A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

Priority Customer.<sup>7</sup> 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 send to the Exchange qualify the Market Maker to become a Market Maker Plus. The purpose of this proposed rule change is to amend the Exchange's Market Maker Plus rebate incentive.

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.<sup>8</sup>

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<sup>7</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>8</sup> See Securities Exchange Act Release Nos. 62507 (July 15, 2010), 75 FR 42802 (July 22, 2010) (SR-ISE-2010-68); and 67039 (May 22, 2012), 77 FR 31680 (May 29, 2013) (SR-ISE-2012-39).

The Exchange now proposes to amend the fees and rebates for Market Makers who attain Market Maker Plus status. Specifically, Market Makers qualifying for Market Maker Plus in the Select Symbols will pay no fee and receive no rebate when providing liquidity against a Priority Customer Complex order that legs into the regular orderbook.

The Exchange currently provides Market Makers a report on a daily basis with quoting statistics so that Market Makers can determine whether or not they are meeting the Exchange's current stated criteria. The Exchange will continue to provide Market Makers a daily report so that Market Makers can track their quoting activity to determine whether or not they qualify for the Market Maker Plus rebate.

Since the rate changes to the Schedule of Fees pursuant to this proposal will be effective upon filing, for the transactions occurring in April 2013 prior to the effective date of this filing members will be assessed the rates in effect immediately prior to those proposed by this filing. For transactions occurring in April 2013 on and after the effective date of this filing, members will be assessed the rates proposed by this filing.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities and Exchange Act of 1934 (the "Act")<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

important of which will be its propensity to add or remove liquidity in the Select Symbols and a Market Maker's ability to qualify for Market Maker Plus status.

The Exchange has determined to charge fees and provide rebates for regular orders in mini options at a rate that is 1/10th the rate of fees and rebates the Exchange currently 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 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, levying fees that are 1/10th of what market participants pay today.

The Exchange believes the proposed rule change to not charge Market Makers who qualify for Market Maker Plus status a fee or provide a rebate when providing liquidity against a Priority Customer complex order that legs into the regular orderbook is reasonable and equitable because the purpose of the Market Maker Plus rebate is to incent simple, non-complex order flow to the Exchange. The Exchange believes the proposed rule change is also reasonable and equitable because it will continue to differentiate Market Makers who meet higher quoting standards and thereby encourage them to continue to post narrow and liquid markets. The Exchange believes the proposed rule change will also encourage Market Makers to post tighter markets in the Select Symbols and thereby maintain liquidity and attract additional order flow to the Exchange. The Market Maker Plus rebate employed by the Exchange has proven to be an effective incentive for Market Makers to provide liquidity in the Select Symbols.

The Exchange believes the proposed rule change is not unfairly discriminatory because it will uniformly apply to all Market Makers on the Exchange. The Exchange further believes that the Exchange's Market Maker Plus rebate is not unfairly discriminatory because this rebate program is consistent with rebates that exist today at other options exchanges. The Exchange believes that the Market Maker Plus rebate is a competitive rebate and equivalent to incentives provided by other exchanges and is therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem rebate levels at a particular exchange to be low.

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

ISE believes that the proposed rule change, which will maintain fees and rebates that are competitive and are within the range of fees and rebates charged by other exchanges for similar orders, will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, as noted above, the Exchange believes that the proposed change will promote competition among Market Makers, as it is designed to allow Market Makers to post tighter markets and 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<sup>11</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>12</sup> because it establishes a due, fee, or other charge imposed by ISE.

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. 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2013-32 on the subject line.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

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-2013-32. 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 website

(<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 website 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-2013-32, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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