This document is scheduled to be published in the
Federal Register on 10/20/2016 and available online at
https://federalregister.gov/d/2016-25344, and on **FDsys.gov**

8011-01
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79100; File No. SR-ISE-2016-25)

October 14, 2016

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 3, 2016, the International Securities Exchange, LLC ("ISE" 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 the Exchange. 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 Exchange proposes to amend the Schedule of Fees as described in more detail below.

The text of the proposed rule change is available on the Exchange's Website at 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 Exchange 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of

---

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

2 17 CFR 240.19b-4.

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 purpose of the proposed rule change is to amend the Exchange's Schedule of Fees to make changes to (1) the Market Maker Plus[3] program in SPY and QQQ, (2) Priority Customer[4] taker fees in Select Symbols,[5] and (3) the fee cap for strategy orders. Each of these changes is described below.

Market Maker Plus

In order to promote and encourage liquidity in Select Symbols, the Exchange offers Market Makers[6] that meet the quoting requirements for Market Maker Plus enhanced rebates for adding liquidity in those symbols. These Market Maker Plus rebates are provided on a per symbol basis in three tiers based on the time the Market Maker is quoting at the national best bid or offer ("NBBO"). Currently, the rebate is $0.10 per contract for Tier 1, $0.18 per contract for

---

3 A Market Maker Plus is a Market Maker who is on the National Best Bid or National Best Offer a specified percentage 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. The specified percentage is at least 80% but lower than 85% of the time for Tier 1, at least 85% but lower than 95% of the time for Tier 2, and at least 95% of the time for Tier 3. 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.

4 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).

5 "Select Symbols" are options overlying all symbols listed on the ISE that are in the Penny Pilot Program.

6 The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See ISE Rule 100(a)(25).

Tier 2, and $0.22 per contract for Tier 3.[7] The Exchange now proposes to introduce a special rebate program for Market Makers that achieve Market Maker Plus in SPY or QQQ.[8] Specifically, Market Makers that achieve Tier 2 or 3 of Market Maker Plus in either SPY or QQQ will receive the SPY or QQQ rebate based on the highest Market Maker Plus tier achieved in either product. For example, a Market Maker that achieves Tier 1 Market Maker Plus in QQQ but Tier 3 Market Maker Plus in SPY will receive a Tier 3 rebate in both SPY and QQQ. Instead of the current rebates, however, Market Maker Plus orders in SPY or QQQ would be entitled to a rebate of $0.16 per contract for Tier 2, and $0.20 per contract for Tier 3. The Exchange believes that allowing Market Makers to qualify for higher tiers of Market Maker Plus in SPY and QQQ based on quoting at the NBBO in either product will encourage Market Makers to continue to make tight markets in these very active symbols, even with the slightly lower proposed rebate amounts.

Priority Customer Taker Fees

The Exchange charges a taker fee for regular orders in Select Symbols. This fee is $0.44 per contract for Market Maker orders, and $0.45 per contract for Non-ISE Market Maker,[9] Firm

---

7 For all Market Maker Plus tiers, a $0.30 per contract fee applies when trading against Priority Customer complex orders that leg into the regular order book. No fee is charged or rebate provided when trading against non-Priority Customer complex orders that leg into the regular order book.

8 Market Makers will continue to receive the rebates described above for products other than SPY or QQQ.

9 A "Non-ISE Market Maker" is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

Proprietary[10] / Broker-Dealer,[11] and Professional Customer orders.[12] For Priority Customer orders this fee is $0.30 per contract, or $0.25 per contract for Members with a total affiliated Priority Customer average daily volume ("ADV") that equals or exceeds 200,000 contracts.[13] The Exchange now proposes to increase the taker fee for Priority Customer orders in Select Symbols to $0.31 per contract, or $0.26 per contract for Members that achieve the higher Priority Customer ADV tier.

Strategy Caps

In November 2015, the Exchange introduced a strategy fee cap program that provides a cap on Market Maker, Non-ISE Market Maker, Firm Proprietary / Broker-Dealer, and Professional Customer fees charged for six types of strategy trades: reversals, conversions, jelly rolls, mergers, short stock interest, and box spreads.[14] In particular, the Exchange caps transaction fees associated with strategy executions at $750 per trade for orders executed on the same day in the same option class. In addition, strategy trades are subject to a monthly cap of

---

10 A "Firm Proprietary" order is an order submitted by a member for its own proprietary account.

11 A "Broker-Dealer" order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

12 A "Professional Customer" is a person or entity that is not a broker/dealer and is not a Priority Customer.

13 Priority Customer ADV includes all volume in all symbols and order types. All eligible volume from affiliated Members will be aggregated in determining total affiliated Priority Customer ADV, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A. For purposes of determining Priority Customer ADV, any day that the regular order book is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from such calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.

14 See Securities Exchange Act Release No. 76451 (November 17, 2015), 80 FR 73034 (November 23, 2015) (SR-ISE-2015-37).

$25,000 per member for all strategy executions.[15] If a member submits an order that qualifies for the per trade or per month fee cap for strategy orders, only the amount actually paid for those trades (i.e., the capped amounts) are counted towards the Crossing Fee Cap, if applicable.[16] The Exchange now proposes to eliminate these strategy caps, which have not attracted a significant volume of strategy executions to the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[17] in general, and Section 6(b)(4) of the Act,[18] 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.

Market Maker Plus

The Exchange believes that it is reasonable and equitable to offer special rebates for Market Makers that achieve Market Maker Plus in SPY or QQQ. As proposed, Market Makers would receive a slightly lower Market Maker Plus rebate in these two symbols, but would be able to receive higher tiers of rebates in both of these symbols by meeting the requirements of Market Maker Plus in either symbol. The Market Maker Plus program was designed by the Exchange to reward members based on maintaining tight markets in options that they quote on ISE. The proposed changes will continue to provide these incentives to Market Makers, to the

---

15 All eligible volume from affiliated members will be aggregated for purposes of the fee cap, provided there is at least 75% common ownership between the members as reflected on each member's Form BD, Schedule A.

16 For example, if a member submits a strategy order that would normally incur a fee of $2,000 but is capped at $750 per trade, only the $750 that is actually paid by the member is counted towards the Crossing Fee Cap, if applicable.

17 15 U.S.C. 78f.

18 15 U.S.C. 78f(b)(4).

benefit of all market participants that trade on the Exchange. Furthermore, the Exchange does not believe that the proposed fee change is unfairly discriminatory as all Market Makers will qualify for the same rebates based on achieving the appropriate tier of Market Maker Plus status in these products. Finally, the Exchange continues to believe that it is not unfairly discriminatory to offer these rebates only to Market Makers as Market Makers, and, in particular, those Market Makers that achieve Market Maker Plus status, are subject to additional requirements and obligations (such as quoting requirements) that other market participants are not.

Priority Customer Taker Fees

The Exchange believes that the increased Priority Customer taker fees are reasonable and equitable because the proposed fees are only one cent above their current levels, and remain significantly lower than the fees charged to other market participants that remove liquidity on the Exchange. In addition, the Exchange believes that it is equitable and not unfairly discriminatory to continue to provide lower fees for Priority Customer orders. 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 whose behavior is substantially similar to that of market professionals, including Professional Customers, who will generally submit a higher number of orders than Priority Customers.

Strategy Caps

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to eliminate its fee cap for strategy orders as the fee cap has not been successful in attracting that order flow to the Exchange. In removing the fee cap, strategy trades will no longer be singled out for special incentives on the Exchange, consistent with treatment of these trades prior to the

introduction of the fee cap in November 2015.

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

In accordance with Section 6(b)(8) of the Act,[19] 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 the proposed fees and rebates remain competitive with those on other options markets, and will continue to attract order flow to the Exchange. 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

No written comments were either solicited or received.

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,[20] and subparagraph (f)(2) of Rule 19b-4 thereunder,[21] 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

---

19 15 U.S.C. 78f(b)(8).

20 15 U.S.C. 78s(b)(3)(A)(ii).

21 17 CFR 240.19b-4(f)(2).

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. Please include File Number SR-ISE-2016-25 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-2016-25. 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-2016-25, 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.[22]

Robert W. Errett
Deputy Secretary

[22] 17 CFR 200.30-3(a)(12).

[FR Doc. 2016-25344 Filed: 10/19/2016 8:45 am; Publication Date: 10/20/2016]