

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73276; File No. SR-ISE-2014-41]

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

October 1, 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 September 17, 2014, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 ISE is proposing to amend the Schedule of 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-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

On June 6, 2013 the ISE implemented a temporary Managed Data Access Service program that established a new pricing and distribution model for the

sale of a number of real-time market data products.<sup>3</sup> On December 20, 2013, the Exchange extended this program until May 30, 2014, and the program lapsed on that date.<sup>4</sup> The Exchange now proposes to institute another temporary Managed Data Access Service program on the same terms, for an additional one year period ending August 31, 2015, so that the Exchange can continue to provide this alternative delivery option for ISE data feeds.<sup>5</sup> Managed Data Access Service is a pricing and administrative option whereby the ISE assesses fees to Managed Data Access Distributors,<sup>6</sup> who redistribute market data to Managed Data Access Recipients.<sup>7</sup> Managed Data Access Distributors are required to monitor the delivery of the data retransmitted to their clients, and must agree to reformat, redisplay and/or alter the data feeds prior to retransmission without affecting the integrity of the data feeds and without rendering any of the feeds inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory.

The proposed fees for the Managed Data Access Service are as follows:

The Exchange proposes to charge a fee to each Managed Data Access Distributor of \$2,500 per month for the Depth Feed, \$1,500 for each of the Top Quote Feed and Spread Feed, and \$1,000 per month for the Order Feed. The Exchange also proposes to charge a fee for each IP address at Managed Data Access Recipients that receive market data redistributed by a Managed Data

Access Distributor, which is \$750 per month for the Depth Feed, \$500 per month for each of the Top Quote Feed and Spread Feed, and \$350 per month for the Order Feed.<sup>8</sup> In addition, the Exchange proposes to charge a controlled device fee for each controlled device permitted to access market data redistributed by a Managed Data Access Distributor to a Market Data Access Recipient that is a Professional user,<sup>9</sup> which is \$50 per month for the Depth Feed, \$20 per month for the Top Quote Feed, \$25 per month for the Spread Feed, and \$10 per month for the Order Feed.<sup>10</sup> Finally, the Exchange proposes to charge a controlled device fee of \$5 per month for each controlled device permitted to access information in the Depth Feed redistributed by a Managed Data Access Distributor to a Market Data Access Recipient that is a Non-Professional user.<sup>11</sup> For each of the above ISE data feeds, Market Data Access Distributors are subject to a minimum fee, which is \$5,000 per month for the Depth Feed, \$3,000 per month for each of the Top Quote Feed and Spread Feed, and \$2,000 per month for the Order Feed.

These fees are the same as fees previously charged under the lapsed the Managed Data Access Service program.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act,<sup>12</sup> and the rules and regulations thereunder that are applicable to a national securities exchange, including the requirements of Section 6(b) of the Act.<sup>13</sup> In particular,

<sup>8</sup> This fee is charged per IP address, which covers both primary and back-up IP addresses at a Managed Data Access Recipient.

<sup>9</sup> A “Professional user” is an authorized end-user of the ISE data feeds that has not qualified as a Non-Professional user.

<sup>10</sup> A controlled device is any device that a distributor of an ISE data feed permits to access the information in that data feed.

<sup>11</sup> There is no controlled device fee for Non-Professional users of the Top Quote Feed, Spread Feed, or Order Feed. A “Non-Professional user” is an authorized end-user of the ISE data feeds who is a natural person and who is neither: (a) Registered or qualified with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (b) engaged as an “investment advisor” as that term is defined Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that act); nor (c) employed by a bank or other organization exempt from registration under Federal and/or state securities laws to perform functions that would require him/her to be so registered or qualified if he/she were to perform such functions for an organization not so exempt.

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

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

<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. 69806 (June 20, 2013), 78 FR 38424 (June 26, 2013) (ISE-2013-39). The Exchange also offers a similar Managed Data Access Service program for its Implied Volatility and Greeks Feed. See Securities Exchange Act Release No. 65678 (November 3, 2011), 76 FR 70178 (November 10, 2011) (ISE-2011-67). This filing does not apply to the Managed Data Access Service program for the Implied Volatility and Greeks Feed, which is a permanent program.

<sup>4</sup> See Securities Exchange Act Release No. 71230 (January 2, 2014), 79 FR 1405 (January 8, 2014) (ISE-2013-74).

<sup>5</sup> The Managed Data Access Service program provides an alternative delivery option for the Real-time Depth of Market Raw Data Feed (“Depth Feed”), the Order Feed, the Top Quote Feed, and the Spread Feed.

<sup>6</sup> A Managed Data Access Distributor redistributes ISE data feeds and permits access to the information in those data feeds through a controlled device. A Managed Data Access Distributor can also redistribute a data feed solution to specific IP addresses, including an Application Programming Interface (“API”) or similar automated delivery solutions, with only limited entitlement controls (e.g., usernames and/or passwords) to a recipient of the information.

<sup>7</sup> A Managed Data Access Recipient is a subscriber to the Managed Data Access Distributor who receives a reformatted data feed in a controlled device or at a specific IP address. Market Data Access Recipients may be Professional or Non-Professional users.

the proposal is consistent with Section 6(b)(5) of the Act,<sup>14</sup> because is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule change is consistent with the provisions Section 6(b)(4) of the Act<sup>15</sup> 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 Exchange believes that the proposed program is consistent with the protection of investors and the public interest as the terms of the program are substantially similar to managed data programs offered by other options exchanges,<sup>16</sup> and will provide a competitive fee model for subscribers to ISE market data. The Exchange initially established a managed data program for a six month period, later extended to a year, in order gauge the level of interest in this new pricing and distribution model, and now wishes to institute another temporary program so that it may continue to offer an attractive pricing program that competes with programs offered by other options exchanges. The Managed Data Access Service promotes broader distribution of controlled data, while offering a pricing option that should result in lower fees for subscribers. The Exchange continues to believe that the fees for this program are fair and equitable as they are consistent with fees previously charged under this program, and as explained above are intended to offer a pricing model that should result in lower fees for ISE market data subscribers. The Exchange is constrained in pricing the Managed Data Access Service as these services are entirely optional, and firms may choose whether or not to purchase proprietary ISE market data products or to utilize any specific pricing alternative. Moreover, the program is not unfairly discriminatory because it provides an opportunity for all distributors and subscribers, both Professional and Non-Professional, to

access the ISE data feeds at a potentially lower cost.

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

In accordance with Section 6(b)(8) of the Act,<sup>17</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 rule change will promote competition as it allows the ISE to continue to offer a temporary program that provides an attractive alternative pricing model for ISE market data that is similar to pricing programs in place on other options exchanges. The vigor of competition for market data is significant and the Exchange believes that this proposal clearly evidences such competition. ISE proposes to offer this optional Managed Access Data Service pricing model in order to keep pace with changes in the industry and evolving customer needs.

#### *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**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</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. 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-2014-41 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-2014-41. 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 offices 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-

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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

<sup>16</sup> A number of other exchanges have adopted managed data access services to distribute their proprietary market data. See e.g. Securities Exchange Act Release Nos. 63276 (November 8, 2010), 75 FR 69717 (November 15, 2010) (SR-NASDAQ-2010-138); and 69182 (March 19, 2013), 78 FR 18378 (March 26, 2013) (SR-PHLX-2013-28). ISE also currently offers managed data access service on a permanent basis for the ISE Implied Volatility and Greeks Feed. See supra note 3.

<sup>17</sup> 15 U.S.C. 78f(b)(8).

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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 ISE has satisfied this requirement.

2014–41, and should be submitted on or before October 28, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73282; File No. SR–NYSEArca–2014–04]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend NYSE Arca, Inc.'s Rules by Revising the Order of Priority of Bids and Offers When Executing Orders in Open Outcry

October 1, 2014.

#### I. Introduction

On January 15, 2014, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) 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 revise the order of priority of bids and offers when executing orders in open outcry. The proposed rule change was published for comment in the **Federal Register** on February 3, 2014. <sup>3</sup> On March 18, 2014, the Commission extended the time period for Commission action on the proposal to May 2, 2014. <sup>4</sup> The Commission received ten comment letters from seven commenters regarding the proposal, <sup>5</sup> as

well as a response to the comment letters from NYSE Arca. <sup>6</sup> On April 29, 2014, the Exchange filed Amendment No. 1 to the proposed rule change. <sup>7</sup> On May 2, 2014, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act <sup>8</sup> to determine whether to approve or disapprove the proposed rule change. <sup>9</sup> The Order Instituting Proceedings was published for comment in the **Federal Register** on May 8, 2014. <sup>10</sup> The Commission received an additional response letter and data submission from NYSE Arca. <sup>11</sup> This order approves the proposed rule change, as modified by Amendment No. 1.

#### II. Description of the Proposal

NYSE Arca proposed to amend its rules governing the priority of bids and offers on its Consolidated Book by revising the order of priority in open outcry to afford priority to bids and offers represented by Market Makers <sup>12</sup> and Floor Brokers <sup>13</sup> (collectively, “Crowd Participants”) <sup>14</sup> over certain

<sup>6</sup> See Letter from Martha Redding, Chief Counsel, NYSE Euronext, dated April 4, 2014 (“NYSE Arca Response I”).

<sup>7</sup> In Amendment No. 1, the Exchange revised the rule text for proposed Rule 6.47: (1) To clarify that Floor Brokers, when crossing two orders in open outcry, may not trade through any non-Customer bids or offers on the Consolidated Book that are priced better than the proposed execution price; and (2) to conform the term “bids and offers” to “bids or offers” in paragraphs (a) and (c) thereunder. Amendment No. 1 has been placed in the public comment file for SR–NYSEArca–2014–04 at <http://www.sec.gov/comments/sr-nysearca-2014-04/nysearca201404.shtml> (see letter from Martha Redding, Chief Counsel, NYSE Euronext, to Kevin M. O'Neill, Deputy Secretary, Commission, dated April 30, 2014) and also is available on the Exchange's Web site at [http://www.nyse.com/nyse-notices/nysearca/rule-filings/pdf.action?jsessionid=FACF4F6772B1316D973F5D4E2D258ACE?file\\_no=SR-NYSEArca-2014-04&seqnum=2](http://www.nyse.com/nyse-notices/nysearca/rule-filings/pdf.action?jsessionid=FACF4F6772B1316D973F5D4E2D258ACE?file_no=SR-NYSEArca-2014-04&seqnum=2).

<sup>8</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>9</sup> See Securities Exchange Act Release No. 72081 (May 2, 2014), 79 FR 26474 (“Order Instituting Proceedings”).

<sup>10</sup> See Order Instituting Proceedings at 79 FR 26474. The comment period closed on May 29, 2014, and the rebuttal period closed on June 12, 2014. On July 29, 2014, the Commission extended the time period for the proceedings for the Commission to determine whether to approve or disapprove the proposed rule change to October 1, 2014. See Securities Exchange Act Release No. 72703 (July 29, 2014), 79 FR 45535 (August 5, 2014).

<sup>11</sup> See Letter from Martha Redding, Chief Counsel, New York Stock Exchange, dated September 11, 2014 (“NYSE Arca Response II”). The response letter included summary data concerning participation and competition in non-Customer-to-Customer open outcry crossing transactions on NYSE Arca and NYSE Amex Options and is available at <http://www.sec.gov/comments/sr-nysearca-2014-04/nysearca201404.shtml>.

<sup>12</sup> See Rule 6.32 (Market Maker Defined).

<sup>13</sup> See Rule 6.43 (Options Floor Broker Defined).

<sup>14</sup> The term “Crowd Participants” means the Market Makers appointed to an option issue under

equal-priced bids and offers of non-Customers <sup>15</sup> on the Consolidated Book <sup>16</sup> during the execution of an order in open outcry on the Floor <sup>17</sup> of the Exchange. <sup>18</sup>

Current Rule 6.75(a) provides that any bids displayed on the Consolidated Book have priority over same-priced bids represented in open outcry. Such priority also is described in current Rule 6.47, which governs crossing orders in open outcry. Floor Broker crossing transactions, as described in Rule 6.47(a)(3), may not trade ahead of bids or offers on the Consolidated Book that are priced equal to or better than the proposed crossing price. The Exchange stated that, because of this priority afforded to the Consolidated Book, Crowd Participants who have negotiated a large transaction ultimately might not be able to participate in its execution. <sup>19</sup>

The Exchange proposed to restructure its priority rules so that bids and offers of Crowd Participants would have priority over equal-priced bids and offers of non-Customers on the Consolidated Book that are ranked in time priority behind any equal-priced Customer bids and offers on the Consolidated Book. Equal-priced Customer <sup>20</sup> interest would continue to be afforded priority over Crowd Participants in the execution of an open outcry transaction. In addition, consistent with the existing price/time priority presently applicable to bids and offers on the Consolidated Book, equal-priced non-Customer bids and offers ranked in time priority ahead of Customer interest also would be

Rule 6.35, and any Floor Brokers actively representing orders at the best bid or offer on the Exchange for a particular option series. See Rule 6.1(b)(38).

<sup>15</sup> A non-Customer is a market participant who does not meet the definition of Customer as defined in paragraph (c)(6) of Rule 15c3–1 under the Securities Exchange Act of 1934, 17 CFR 240.15c3–1. See Rule 6.1(b)(29).

<sup>16</sup> The term “Consolidated Book” means the Exchange's electronic book of limit orders for the accounts of Public Customers and broker-dealers, and Quotes with Size. See Rule 6.1(b)(37).

<sup>17</sup> See Rule 1.1(i).

<sup>18</sup> The Exchange also proposed to make non-substantive changes to existing rule text contained in Rules 6.47 and 6.75. See Notice, 79 FR at 6260 for a description of these non-substantive changes.

<sup>19</sup> See Notice, 79 FR at 6258. The Exchange stated that Crowd Participants could negotiate a transaction with an understanding of the make-up of bids and offers on the Consolidated Book at the beginning of open outcry. However, as the trade is executed, the Consolidated Book could update with newly-arriving electronically-entered bids and offers that have priority under current Rule 6.75(a). The Exchange noted that, given the speed at which quotes can flicker in the Consolidated Book, Crowd Participants who have agreed to a transaction in open outcry do not know if they will actually participate on the trade until after execution. *Id.* at 6258–59.

<sup>20</sup> See *supra* note 15.

<sup>20</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. 71425 (January 28, 2014), 79 FR 6258 (“Notice”).

<sup>4</sup> See Securities Exchange Act Release No. 71733 (March 18, 2014), 79 FR 16072 (March 24, 2014).

<sup>5</sup> See Letter from Darren Story, dated January 29, 2014 (“Story Letter I”); Letter from Abraham Kohen, AK FE Consultants LLC, dated January 31, 2014 (“Kohen Letter I”); Letter from David Spack, Chief Compliance Officer, Casey Securities, LLC, dated February 3, 2014 (“Casey Letter”); Letter from Abraham Kohen, AK FE Consultants LLC, dated February 4, 2014 (“Kohen Letter II”); Letter from Angel Alvira, dated February 12, 2014 (“Alvira Letter”); Letter from Donald Hart, dated February 12, 2014 (“Hart Letter I”); Letter from Doug Patterson, Chief Compliance Officer, Cutler Group, LP, dated February 13, 2014 (“Cutler Letter”); Letter from Donald Hart, dated February 18, 2014 (“Hart Letter II”); Letter from Gerald D. O’Connell, Chief Regulatory Officer, Susquehanna International Group, LLP (“SIG”), dated March 14, 2014 (“SIG Letter”); and Letter from Darren Story, dated March 21, 2014 (“Story Letter II”).