paid to ISP participants and those paid to other liquidity providers.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. These competitive forces help to ensure that NASDAQ's fees are reasonable, equitably allocated, and not unfairly discriminatory since market participants can largely avoid fees to which they object by changing their trading behavior.

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

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, NASDAQ believes that the change, which will generally result in an increase in the rebates paid to encourage market participants to use NASDAQ, reflects the high degree of competition in the cash equities markets and will further enhance that competition by lowering fees and possibly encouraging NASDAQ's competitors to make competitive responses. Moreover, the decreased ISP rebate contained in the proposed rule change will not burden competition because the market for order execution is extremely competitive and members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. Accordingly, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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.[17] 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.* Please include File Number SR–NASDAQ–2012–149 on the subject line.

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–NASDAQ–2012–149. 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 the 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–NASDAQ–2012–149 and should be submitted on or before February 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00869 Filed 1–16–13; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68627; File No. SR–ISE–2013–01]

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

January 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''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 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

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

[2] 17 CFR 240.19b–4.

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 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 a number of options classes (the ''Select Symbols'').[3] The Exchange's maker/taker fees and rebates are applicable to regular and complex orders executed in the Select Symbols. The Exchange also currently assesses maker/taker fees and rebates for complex orders in symbols that are in the Penny Pilot program but are not a Select Symbol (''Non-Select Penny Pilot Symbols'')[4] and for complex orders in all symbols that are not in the Penny Pilot Program (''Non-Penny Pilot Symbols'').[5]

The purpose of this proposed rule change is to 1) increase the rebate levels for complex orders in options on the Select Symbols, on SPY—a Select Symbol which has a distinct rebate amount, on the Non-Select Penny Pilot Symbols and on the Non-Penny Pilot Symbols, 2) increase the maker fee for complex orders that trade against Priority Customer complex orders in the Select Symbols, in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols, and 3) increase the taker fee for complex orders in the Select Symbols, in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols.

Complex Order Rebates

The Exchange currently provides volume-based tiered rebates for Priority Customer complex orders in the Select Symbols (excluding SPY), in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols when these orders trade with non-Priority Customer orders in the complex order book.

In the Select Symbols, the Exchange currently provides a base rebate of $0.34 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members can earn a higher rebate amount by achieving certain average daily volume (ADV) thresholds on a month-to-month basis. The current ADV threshold for the base tier is 0–39,999 Priority Customer complex contracts and the base rebate of $0.34 per contract applies to this tier. The Exchange is not proposing any change to the rebate for this tier. The current ADV threshold for the second tier is 40,000—74,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.36 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.37 per contract, per leg. The current ADV threshold for the third tier is 75,000–124,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.37 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.38 per contract, per leg. The current ADV threshold for the fourth tier is 125,000–224,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.38 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.39 per contract, per leg. Finally, the current ADV threshold for the fifth tier is 225,000 or more Priority Customer complex contracts. The rebate amount for this tier is currently $0.39 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.40 per contract, per leg. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month.

In SPY, the Exchange currently provides a base rebate of $0.36 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members can earn a higher rebate amount by achieving certain ADV thresholds on a month-to-month basis. The current ADV threshold for the base tier is 0–39,999 Priority Customer complex contracts and the base rebate of $0.36 per contract applies to this tier. The Exchange is not proposing any change to the rebate for this tier. The current ADV threshold for the second tier is 40,000—74,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.37 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.38 per contract, per leg. The current ADV threshold for the third tier is 75,000–124,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.38 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.39 per contract, per leg. The current ADV threshold for the fourth tier is 125,000–224,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.39 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.40 per contract, per leg. Finally, the current ADV threshold for the fifth tier is 225,000 or more Priority Customer complex contracts. The rebate amount for this tier is currently $0.40 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.41 per contract, per leg. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month.

In the Non-Select Penny Pilot Symbols, the Exchange currently provides a base rebate of $0.33 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members can earn a higher rebate amount by achieving certain ADV thresholds on a month-to-month basis. The current ADV threshold for the base tier is 0–39,999 Priority Customer complex contracts and the base rebate of $0.33 per contract applies to this tier. The Exchange is not proposing any change to the rebate for this tier. The current ADV threshold for

[3] Options classes subject to maker/taker fees and rebates are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] *See* Exchange Act Release Nos. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR–ISE–2011–72); and 66961 (May 10, 2012), 77 FR 28914 (May 16, 2012) (SR–ISE–2012–38).

[5] *See* Exchange Act Release Nos. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR–ISE–2011–84); 66392 (February 14, 2012), 77 FR 10016 (February 21, 2012) (SR–ISE–2012–06); 66961 (May 10, 2012), 77 FR 28914 (May 16, 2012) (SR–ISE–2012–38); and 67400 (July 11, 2012), 77 FR 42036 (July 17, 2012) (SR–ISE–2012–63).

the second tier is 40,000–74,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.34 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.35 per contract, per leg. The current ADV threshold for the third tier is 75,000–124,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.36 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.37 per contract, per leg. The current ADV threshold for the fourth tier is 125,000–224,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.37 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.38 per contract, per leg. Finally, the current ADV threshold for the fifth tier is 225,000 or more Priority Customer complex contracts. The rebate amount for this tier is currently $0.38 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.39 per contract, per leg. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month.

In the Non-Penny Pilot Symbols, the Exchange currently provides a base rebate of $0.66 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members can earn a higher rebate amount by achieving certain ADV thresholds on a month-to-month basis. The current ADV threshold for the base tier is 0–39,999 Priority Customer complex contracts and the base rebate of $0.66 per contract applies to this tier. The Exchange is not proposing any change to the rebate for this tier. The current ADV threshold for the second tier is 40,000–74,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.70 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.72 per contract, per leg. The current ADV threshold for the third tier is 75,000–124,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.74 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.75 per contract, per leg. The current ADV threshold for the fourth tier is 125,000–224,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.76 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.77 per contract, per leg. Finally, the current ADV threshold for the fifth tier is 225,000 or more Priority Customer complex contracts. The rebate amount for this tier is currently $0.77 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.78 per contract, per leg. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month.

Further, the Exchange currently provides a base rebate of $0.06 per contract, per leg, for Priority Customer complex orders in all symbols traded on the Exchange (excluding SPY) when these orders trade against quotes or orders in the regular orderbook. In order to enhance the Exchange's competitive position and to incentivize Members to increase the amount of Priority Customer complex orders that they send to the Exchange, the Exchange has volume-based tiers similar to the volume-based tiers currently in place for complex orders that trade with non-Priority Customer complex orders in the complex order book. The current ADV threshold for the base tier is 0–39,999 Priority Customer complex contracts and the base rebate of $0.06 per contract, per leg, applies to this tier. The Exchange is not proposing any change to the rebate for this tier. The current ADV threshold for the second tier is 40,000–74,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.07 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.08 per contract, per leg. The current ADV threshold for the third tier is 75,000–124,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.08 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.09 per contract, per leg. The current ADV threshold for the fourth tier is 125,000–224,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.09 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.10 per contract, per leg. Finally, the current ADV threshold for the fifth tier is 225,000 or more Priority Customer complex contracts. The rebate amount for this tier is currently $0.10 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.11 per contract, per leg. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex orders that trade against quotes or orders in the regular orderbook during such calendar month.

For SPY, the Exchange currently provides a base rebate of $0.07 per contract, per leg, for Priority Customer complex orders traded on the Exchange when these orders trade against quotes or orders in the regular orderbook. The current ADV threshold for the base tier is 0–39,999 Priority Customer complex contracts and the base rebate of $0.07 per contract, per leg, applies to this tier. The Exchange is not proposing any change to the rebate for this tier. The current ADV threshold for the second tier is 40,000–74,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.08 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.09 per contract, per leg. The current ADV threshold for the third tier is 75,000–124,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.09 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.10 per contract, per leg. The current ADV threshold for the fourth tier is 125,000–224,999 Priority Customer complex orders. The rebate amount for this tier is currently $0.10 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.11 per contract, per leg. Finally, the current ADV threshold for the fifth tier is 225,000 or more Priority Customer complex contracts. The rebate amount for this tier is currently $0.11 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.12 per contract, per leg. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex orders that trade against quotes or orders in the regular orderbook during such calendar month.

Further, to incentivize members to trade in the Exchange's various auction mechanisms, the Exchange currently provides a per contract rebate to those contracts that do not trade with the contra order in the Exchange's Facilitation Mechanism and Solicited Order Mechanism, except when they trade against pre-existing orders and quotes, and to those contracts that do not trade with the contra order in the Price Improvement Mechanism. For the Facilitation and Solicited Order Mechanisms, the rebate is currently $0.15 per contract. For the Price

Improvement Mechanism, the rebate is currently $0.25 per contract. These rebates will continue to apply.

The Exchange believes this proposed change will enhance the Exchange's competitive position and incentivize Members to increase the amount of Priority Customer complex orders that they send to the Exchange.

Complex Order Maker Fees

The purpose of this proposed rule change is also to amend the complex order maker fees charged by the Exchange for certain complex orders executed on the Exchange. Specifically, the Exchange proposes to amend the complex order maker fees for orders that trade against Priority Customer [6] complex orders in the Select Symbols (excluding SPY), in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols.

For complex orders that trade against Priority Customer orders in the Select Symbols (excluding SPY), the Exchange currently charges a maker fee of:

- $0.37 per contract for Market Maker [7] orders;
- $0.39 per contract for Firm Proprietary/Broker-Dealer, Professional Customer [8] and Non-ISE Market Maker [9] orders;
- $0.00 per contract for Priority Customer orders.

For complex orders that trade against Priority Customer complex orders in SPY, the Exchange currently charges a maker fee of:

- $0.38 per contract for Market Maker orders;
- $0.40 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders;
- $0.00 per contract for Priority Customer orders.

For complex orders that trade against Priority Customer complex orders in the Non-Select Penny Pilot Symbols, the Exchange currently charges a maker fee of:

- $0.37 per contract for Market Maker orders;
- $0.39 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders;
- $0.00 per contract for Priority Customer orders.

For orders that trade against Priority Customer complex orders in the Non-Penny Pilot Symbols, the Exchange currently charges a maker fee of:

- $0.80 per contract for Market Maker orders;
- $0.83 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders;
- $0.00 per contract for Priority Customer orders.

The Exchange now proposes to increase the complex order maker fees for orders that trade against Priority Customer complex orders in the Select Symbols (excluding SPY), in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols, as follows:

For complex orders that trade against Priority Customer orders in the Select Symbols (excluding SPY), the Exchange proposes to increase the maker fee to:

- $0.39 per contract for Market Maker orders;
- $0.40 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders.

The Exchange is not proposing any change to the complex order maker fee for Priority Customer orders that trade against other Priority Customer orders in the Select Symbols (excluding SPY).

For complex orders that trade against Priority Customer complex orders in SPY, the Exchange proposes to increase the maker fee to:

- $0.39 per contract for Market Maker orders;
- $0.41 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders.

The Exchange is not proposing any change to the complex order maker fee for Priority Customer orders that trade against other Priority Customer orders in SPY.

For complex orders that trade against Priority Customer complex orders in the Non-Select Penny Pilot Symbols, the Exchange proposes to increase the maker fee to:

- $0.39 per contract for Market Maker orders;
- $0.40 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders.

The Exchange is not proposing any change to the complex order maker fee for Priority Customer orders that trade against other Priority Customer orders in the Non-Select Penny Pilot Symbols.

For orders that trade against Priority Customer complex orders in the Non-Penny Pilot Symbols, the Exchange proposes to increase the maker fee to:

- $0.82 per contract for Market Maker orders;
- $0.84 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders.

The Exchange is not proposing any change to the complex order maker fee for Priority Customer orders that trade against other Priority Customer orders in the Non-Penny Pilot Symbols.

Additionally, the Exchange provides Market Makers with a two cent discount when trading against Priority Customer complex orders that are preferenced to them. This discount is currently applicable when Market Makers add or remove liquidity in the Select Symbols, in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols from the complex order book. Accordingly, Market Makers that add liquidity from the complex order book by trading against Priority Customer orders that are preferenced to them will be charged: (i) $0.37 per contract in the Select Symbols, in SPY, and in the Non-Select Penny Pilot Symbols; and (ii) $0.80 per contract in the Non-Penny Pilot Symbols.

Complex Order Taker and Other Fees

The purpose of this proposed rule change is also to amend the complex order taker fees charged by the Exchange for certain complex orders executed on the Exchange. Specifically, the Exchange proposes to amend the complex order taker fees for orders in the Select Symbols (excluding SPY), in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols.

For complex orders in the Select Symbols (excluding SPY), the Exchange currently charges a taker fee of:

- $0.37 per contract for Market Maker orders;
- $0.39 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders;
- $0.00 per contract for Priority Customer orders.

For complex orders in SPY, the Exchange currently charges a taker fee of:

- $0.38 per contract for Market Maker orders;
- $0.40 per contract for Firm Proprietary/Broker-Dealer, Professional

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[6] 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).

[7] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[8] A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

[9] 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.

Customer and Non-ISE Market Maker orders;

• $0.00 per contract for Priority Customer orders.

For complex orders in the Non-Select Penny Pilot Symbols, the Exchange currently charges a taker fee of:

• $0.37 per contract for Market Maker orders;

• $0.39 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders;

• $0.00 per contract for Priority Customer orders.

For complex orders in the Non-Penny Pilot Symbols, the Exchange currently charges a taker fee of:

• $0.80 per contract for Market Maker orders;

• $0.83 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders;

• $0.00 per contract for Priority Customer orders.

The Exchange now proposes to increase the complex order taker fees for orders in the Select Symbols (excluding SPY), in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols, as follows:

For complex orders in the Select Symbols (excluding SPY), the Exchange proposes to increase the taker fee to:

• $0.39 per contract for Market Maker orders;

• $0.40 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders.

The Exchange is not proposing any change to the complex order taker fee for Priority Customer orders in the Select Symbols (excluding SPY).

For complex orders in SPY, the Exchange proposes to increase the taker fee to:

• $0.39 per contract for Market Maker orders;

• $0.41 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders.

The Exchange is not proposing any change to the complex order taker fee for Priority Customer orders in SPY.

For complex orders in the Non-Select Penny Pilot Symbols, the Exchange proposes to increase the taker fee to:

• $0.39 per contract for Market Maker orders;

• $0.40 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders.

The Exchange is not proposing any change to the complex order taker fee for Priority Customer orders in the Non-Select Penny Pilot Symbols.

For complex orders in the Non-Penny Pilot Symbols, the Exchange proposes to increase the taker fee to:

• $0.82 per contract for Market Maker orders;

• $0.84 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders.

The Exchange is not proposing any change to the complex order taker fee for Priority Customer orders in the Non-Penny Pilot Symbols.

Additionally, the Exchange provides Market Makers with a two cent discount when trading against Priority Customer orders that are preferenced to them. This discount is applicable when Market Makers add or remove liquidity in the Select Symbols, in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols from the complex order book. Accordingly, Market Makers that remove liquidity from the complex order book by trading against Priority Customer orders that are preferenced to them will be charged: (i) $0.37 per contract in the Select Symbols, in SPY and in the Non-Select Penny Pilot Symbols; and (ii) $0.80 per contract in the Non-Penny Pilot Symbols Select Symbols.

Finally, for Responses to Crossing Orders [10] in the Non-Penny Pilot Symbols, ISE currently charges a fee of $0.80 per contract for Market Maker complex orders and $0.83 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker complex orders. The Exchange now proposes to increase the fee for Responses to Crossing Orders for Non-Penny Pilot Symbols to $0.82 per contract for Market Maker complex orders, and to $0.84 per contract to Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker complex orders.

The Exchange is not proposing any other changes in 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'') [11] in general, and furthers the objectives of Section 6(b)(4) of the Act [12] 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 important of which will be its propensity to add or remove liquidity in options overlying the Select Symbols, SPY, the Non-Select Penny Pilot Symbols and the Non-Penny Pilot Symbols.

The Exchange believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade with Non-Priority Customer complex orders in the complex order book because paying a rebate would continue to attract additional order flow to the Exchange and create liquidity in the symbols that are subject to the rebate, which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange has already established a volume-based incentive program, and is now merely proposing to increase the rebate amounts in that program. The Exchange believes that the proposed rebates are competitive with rebates provided by other exchanges and are therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange.

The Exchange also believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade against quotes or orders in the regular orderbook. Again, the Exchange has already established a volume-based incentive program, and is now merely proposing to increase the rebate amounts in that program. The Exchange believes paying these rebates would also attract additional order flow to the Exchange.

The Exchange believes that the proposed fee change will generally allow the Exchange and its Members to better compete for order flow and thus enhance competition. Specifically, the Exchange believes that its proposal, which, among other things, increases rebate amounts, so Members can qualify for larger rebates, is reasonable as it will encourage Members to increase the amount of Priority Customer complex orders that they send to the Exchange instead of sending this order flow to a

[10] A Response to a Crossing Order (other than Regular Orders in Non-Select Symbols) is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM. A Response to a Crossing Order (for Regular Orders in Non-Select Symbols) is any response message entered with respect to a specific auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM. *See* ISE Schedule of Fees, Preface. *See also* Securities Exchange Act Release No. 67973 (October 3, 2012), 77 FR 61645 (October 10, 2012) (SR–ISE–2012–73).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

competing exchange. The Exchange believes that with the proposed rebate levels, Members are now likely to qualify for larger rebates.

The Exchange believes it is reasonable and equitable to charge a maker fee of $0.39 per contract for Market Maker complex orders that trade against Priority Customer interest in the Select Symbols and in the Non-Select Penny Pilot Symbols and $0.40 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer, and Professional Customer complex orders that trade against Priority Customer interest in the Select Symbols and in the Non-Select Penny Pilot Symbols. The Exchange believes it is reasonable and equitable to charge a maker fee of $0.39 per contract for Market Maker complex orders that trade against Priority Customer interest in SPY and $0.41 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer complex orders that trade against Priority Customer interest in SPY. The Exchange believes it is reasonable and equitable to charge a maker fee of $0.82 per contract for Market Maker complex orders that trade against Priority Customer interest in the Non-Penny Pilot Symbols and $0.84 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer, and Professional Customer complex orders that trade against Priority Customer interest in the Non-Penny Pilot Symbols. The Exchange believes the proposed fees are reasonable and equitably allocated because the Exchange is seeking to recoup the cost associated with paying a higher per contract rebate to Priority Customers. The proposed fees are also within the range of fees assessed by other exchanges employing similar pricing schemes. For example, the Chicago Board Options Exchange, Inc. (''CBOE'') currently charges $0.25 per contract plus a payment for order flow fee (PFOF) of $0.25 per contract (applicable to customer orders), as well as a $0.10 per contract surcharge, when trading against Priority Customer orders for a total of $0.60 per contract for executing market maker complex orders in SPY and charges $0.45 per contract, as well as the $0.10 per contract surcharge, when trading against Priority Customer orders, for a total of $0.55 per contract for executing Broker-Dealer and non-CBOE market maker complex orders in SPY.[13] Therefore, while ISE is proposing a fee increase for Market Maker, Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker complex orders, in SPY, for example, the resulting fee will remain lower than the fee currently charged by CBOE for similar orders in that symbol.

The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes that charging distinct maker fees for orders that trade against Priority Customer orders in the Select Symbols, in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols will continue to attract additional business to the Exchange. Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges. The Exchange believes it remains an attractive venue for market participants to trade complex orders despite its proposed fee change as its fees remain competitive with those charged by other exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive.

The Exchange believes that its proposal to assess a $0.39 per contract taker fee for Market Maker complex orders in the Select Symbols (including SPY) and in the Non-Select Penny Pilot Symbols, and $0.40 per contract ($0.41 per contract in SPY) for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker complex orders in the Select Symbols and in the Non-Select Penny Pilot Symbols is reasonable and equitably allocated because the Exchange is seeking to recoup the cost associated with paying increased rebates for Priority Customer complex orders. The Exchange believes the proposed fees are also reasonable and equitably allocated because they are within the range of fees assessed by other exchanges employing similar pricing schemes and in some cases, is lower that the fees assessed by other exchanges. For example, NASDAQ OMX PHLX, Inc. (''PHLX'') currently charges $0.25 per contract plus a payment for order flow fee of $0.25 per contract (applicable to customer orders), for a total rate of $0.50 per contract for removing liquidity in complex orders in SPY for Specialist and Market Maker orders and charges $0.50 per contract for Firm, Broker-Dealer and Professional orders.[14] Therefore, while ISE is proposing a fee increase for Market Maker, Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders, the resulting fee will remain lower than the fee currently charged by PHLX for similar orders.

The Exchange believes its proposal to increase the taker fee to $0.82 per contract for Market Maker complex orders and $0.84 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker complex orders in the Non-Penny Pilot Symbols is reasonable and equitably allocated because the proposed fees are within the range of fees assessed by other exchanges employing similar pricing schemes. For example, the fee for similar orders at CBOE is between $0.60 per contract and $1.00 per contract for Market Makers and other non-Priority Customer orders when considering surcharges and PFOF rates of $0.65 applicable to Market Makers on top of regular transaction fees. Further, the Exchange is seeking to recoup the cost associated with paying a higher per contract rebate to Priority Customer orders.

The Exchange believes that the price differentiation between the various market participants is justified because Market Makers have obligations to the market that the other market participants do not. The Exchange believes that, in this instance, it is equitable to assess a higher fee to market participants that do not have the quoting requirements that Exchange Market Makers have. Therefore, the Exchange believes it is appropriate and not unfairly discriminatory to assess a higher transaction fee on these other market participants because the Exchange incurs costs associated with these types of orders that are not recovered by non-transaction based fees paid by members. [sic]

While ISE is proposing fee increases for Market Maker, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders in the Select Symbols, in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols, the resulting fees generally remain lower than the fees currently charged by CBOE and PHLX for similar orders.

The Exchange believes it is reasonable and equitable to charge a fee of $0.82 per contract for Market Maker orders ($0.84 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer

[13] *See* CBOE Fee Schedule at *http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf.*

[14] *See* PHLX Pricing Schedule at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLXTools/PlatformViewer.asp?selectednode=chp_1_4&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx-rulesbrd%2F.*

and Professional Customer orders) when such members are responding to crossing orders because a response to a crossing order is akin to taking liquidity, thus the Exchange is proposing to adopt an identical fee for Responses to Crossing Orders in the Non-Penny Pilot Symbols as the Exchange currently charges for taking liquidity in these symbols.

The Exchange believes that it is reasonable and equitable to provide a two cent discount to Market Makers on preferenced orders as an incentive for them to quote in the complex order book. Accordingly, Market Makers who add or remove liquidity in the Select Symbols, the Non-Select Penny Pilot Symbols, the Non-Penny Pilot Symbols and SPY from the complex order book will be charged $0.02 less per contract when trading with Priority Customer orders that are preferenced to them. ISE notes that with this proposed fee change, the Exchange will continue to maintain a two cent differential that was previously in place.

The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes that this proposed rule change will continue to attract additional complex order business in the symbols that are subject of this proposed rule change.

Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges. Additionally, the Exchange believes it remains an attractive venue for market participants to direct their order flow in the symbols that are subject to this proposed rule change as its fees are competitive with those charged by other exchanges for similar trading strategies. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

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

ISE believes that the proposed rule change, which will maintain fees that are competitive and are within the range of fees 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, the Exchange believes that the proposed changes will promote competition, as they are designed to allow ISE to better 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 [15] and subparagraph (f)(2) of Rule 19b–4 thereunder,[16] 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.* Please include File Number SR–ISE–2013–01 on the subject line.

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–2013–01. 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 the 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–2013–01 and should be submitted on or before February 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

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

[16] 17 CFR 240.19b–4(f)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68636; File No. SR–NASDAQ–2013–009]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify an Optional Historical Research and Administrative Report Fee and Related NASDAQ Rule 7022 Revisions

January 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2]

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

[2] 17 CFR 240.19b–4.