share (or more than twice as much as paid to ordinary members) when adding liquidity in shares of less active securities under certain specified circumstances.[26] The payment by CHX of a much smaller Clearing Submission Fee Credit to its Institutional Brokers would appear to be well within the scope of this precedent. The Exchange also notes that the entry of clearing submissions pursuant to Article 21, Rule 6(a), which gives rise to the Clearing Submission Fee, is limited to Institutional Brokers. Since only Institutional Brokers can engage in the activity which results in Clearing Submission Fees, there would be no purpose served in offering a financial incentive which is based upon the generation of those fees to non-Institutional Brokers. For these reasons, the Exchange believes that the proposed Clearing Submission Fee Credit represents a lawful payment which is distributed in a manner which is reasonable and not unfairly discriminatory.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that payment of a Clearing Submission Fee Credit to the Clearing Broker based on activity handled by it will incent Institutional Brokers to utilize the Exchange's systems and services in forwarding non-CHX trades to NSCC, rather than using alternative mechanisms such as correspondent clearing or Nasdaq's ACT system.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The proposed rule change is to take effect pursuant to Section 19(b)(3)(A)(ii) of the Act[27] and subparagraph (f)(2) of Rule 19b–4 thereunder[28] because it establishes or changes a due, fee or other charge applicable to the Exchange's members and non-members, which renders the proposed rule change effective upon filing.

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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–CHX–2012–05 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 No. SR–CHX–2012–05. 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 changes 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. 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 No. SR–CHX–2012–05 and should be submitted on or before March 13, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–3899 Filed 2–17–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66392; File No. SR–ISE–2012–06]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Certain Complex Orders Executed on the Exchange

February 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2012, 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 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 fees for certain complex orders executed on the Exchange. 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

[26] *Id.*, p.5.

[27] 15 U.S.C. 78s(b)(3)(A)(ii).

[28] 17 CFR 240.19b–4(f)(2).

[29] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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 purpose of this proposed rule change is to amend fees charged by the Exchange for complex orders in all symbols that are not in the Penny Pilot Program (''Non-Penny Pilot Symbols''). The fee change proposed herein is similar to fees the Exchange recently adopted for complex orders in two of the most actively-traded index option products, the NASDAQ 100 Index option (''NDX'') and the Russell 2000 Index option (''RUT'').[3] This fee change, however, differs from the NDX/RUT Fee Filing in that the fees proposed herein are lower than those adopted for complex orders in NDX and RUT. With this proposed rule change, the fees proposed below for Non-Penny Pilot Symbols shall now also apply to NDX and RUT as each of those symbols are Non-Penny Pilot Symbols.

For trading in Non-Penny Pilot Symbols, for both regular and complex orders, the Exchange currently charges $0.20 per contract for firm proprietary orders and Customer (Professional Orders),[4] and $0.45 per contract for Non-ISE Market Maker [5] orders. ISE market maker orders [6] in Non-Penny Pilot Symbols are subject to a sliding scale, ranging from $0.01 per contract to $0.18 per contract, depending on the amount of overall volume traded by a market maker during a month. Market makers also currently pay a payment for order flow (PFOF) fee of $0.65 per contract when trading against Priority Customers. Priority Customer orders are not charged for trading in Non-Penny Pilot Symbols.

The Exchange currently assesses a per contract transaction fee to market participants that add or remove liquidity in the Complex Order Book (''maker/taker fees'') in symbols that are in the Penny Pilot Program. Included therein is a subset of 101 symbols that are assessed a slightly higher taker fee (the ''Select Symbols'').[7] Additionally, pursuant to SEC approval which allows market makers to enter quotations for complex order strategies in the Complex Order Book,[8] the Exchange recently adopted maker/taker fees and rebates for orders in the following three symbols: XOP, XLB and EFA.[9] And, as noted above, the Exchange most recently adopted new fees for complex orders in NDX and RUT.[10]

The Exchange now proposes to extend its maker/taker pricing structure to complex orders in all Non-Penny Pilot Symbols. Specifically, for Customer (Professional Orders), firm proprietary and ISE market maker orders, ISE proposes to adopt a ''make'' fee of $0.10 per contract and a ''take'' fee of $0.60 per contract. For Non-ISE Market Maker orders, ISE proposes to adopt a ''make'' fee of $0.10 per contract and a ''take'' fee of $0.65 per contract. As Priority Customers are not charged for trading in Non-Penny Pilot Symbols, no fee will apply to Priority Customer complex orders.

For crossing complex orders in Non-Penny Pilot Symbols, i.e., orders executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism and Price Improvement Mechanism, and for Qualified Contingent Cross orders, the Exchange currently charges a fee of $0.20 per contract. The Exchange proposes to continue charging a fee of $0.20 per contract for crossing complex orders in the Non-Penny Pilot Symbols. The Exchange currently does not charge Priority Customers for crossing complex orders executed in the Non-Penny Pilot Symbols. The Exchange proposes to continue not charging Priority Customers for crossing complex orders executed in the Non-Penny Pilot Symbols. For responses to special complex orders,[11] ISE proposes to adopt a fee of $0.60 per contract for Customer (Professional Orders), firm proprietary and ISE market maker orders. For Non-ISE Market Maker orders, ISE proposes to adopt a fee of $0.65 per contract for responses to special complex orders in the Non-Penny Pilot Symbols. Priority Customers will not be assessed a fee when responding to special complex orders.

A number of Non-Penny Pilot Symbols are index options that are traded on the Exchange pursuant to license agreements for which the Exchange charges license surcharges. The Exchange charges the following license surcharges for all orders other than Priority Customer orders: $0.02 per contract for options on NXTQ; $0.05 per contract for options on FUM, HSX, POW, TNY and WMX; $0.10 per contract for options on BKX, MFX, MID, MSH, SML and UKX; $0.15 per contract for options on RMN, RUI, RUT and MVR; and $0.22 per contract for options on NDX and MNX. The license surcharge fees, which are charged by the Exchange to defray the licensing costs, are charged in addition to the transaction fees noted above. Because of competitive pressures in the industry, Priority Customer orders are not charged these surcharge fees, while Professional Orders are subject to the fee. For clarity, the Exchange is proposing to restate these surcharges in the notes applicable to complex orders in Non-Penny Pilot Symbols.

For Priority Customer complex orders in symbols that are in the Penny Pilot program, the Exchange currently provides a per contract rebate when these orders trade with non-Priority Customer orders in the Complex Order Book. The Exchange proposes to extend this rebate incentive for the Non-Penny Pilot Symbols. As such, the Exchange proposes to adopt a rebate of $0.50 per contract for Priority Customer complex orders in the Non-Penny Pilot Symbols when these orders trade with non-Priority Customer orders in the Complex Order Book.

Additionally, the Exchange currently provides ISE market makers with a two cent discount when trading against orders that are preferenced to them. The Exchange proposes to extend this discount for preferenced complex orders in the Non-Penny Pilot Symbols. Accordingly, ISE market makers who remove liquidity in the Non-Penny Pilot Symbols from the Complex Order Book will be charged $0.58 per contract when trading with orders that are preferenced to them.

With the proposed migration of the Non-Penny Pilot Symbols to the Exchange's complex order maker/taker pricing structure, the Exchange

[3] *See* Securities Exchange Act Release No. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR–ISE–2011–84) (''NDX/RUT Fee Filing'').

[4] The term ''Professional Order'' means an order that is for the account of a person or entity that is not a Priority Customer. *See* ISR [sic] Rule 100(a)(37C).

[5] The term ''Non-ISE Market Maker'' means a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934 (the ''Act'') registered in the same options class on another options exchange. *See* Schedule of Fees, page 4.

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

[7] The Select Symbols are identified by their ticker symbol on the Exchange's Schedule of Fees.

[8] *See* Securities Exchange Act Release No. 65548 (October 13, 2011), 76 FR 64980 (October 19, 2011) (SR–ISE–2011–39).

[9] *See* Securities Exchange Act Release No. 65958 (December 15, 2011), 76 FR 79236 (December 21, 2011) (SR–ISE–2011–81).

[10] *See* note 1 [sic].

[11] A response to a special order is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism and Price Improvement Mechanism. This fee applies to Market Maker, Non-ISE Market Maker, Firm Proprietary and Customer (Professional) interest.

proposes to no longer charge a PFOF fee for complex orders in these symbols. The cancellation fee, however, which only applies to Priority Customer orders, will continue to apply.

The Exchange also notes that:

• Fees for orders in Non-Penny Pilot Symbols executed in the Exchange's Facilitation, Solicited Order, Price Improvement and Block Order Mechanisms are applied to contracts that are part of the originating or contra order.

• Complex orders in Non-Penny Pilot Symbols executed in the Facilitation and Solicited Order Mechanisms are charged fees only for the leg of the trade consisting of the most contracts.

• As noted above, the PFOF fees will not be collected for complex orders in the Non-Penny Pilot Symbols.

• As noted above, the cancellation fee, which only applies to Priority Customer orders, will continue to apply to the Non-Penny Pilot Symbols.

• The Exchange currently has a fee cap, with certain exclusions, applicable to transactions executed in a member's proprietary account. The cap also applies to crossing transactions for the account of entities affiliated with a member. The Exchange also has a service fee applicable to all QCC and non-QCC transactions that are eligible for the fee cap.[12] This fee cap will continue to apply to executions of complex orders in the Non-Penny Pilot Symbols.

• The Exchange currently has tiered rebates to encourage members to submit greater number of QCC orders and Solicitation orders to the Exchange. Once a member reaches a certain volume threshold in QCC orders and/or Solicitation orders during a month, the Exchange provides a rebate to that member for all of its QCC and Solicitation traded contracts for that month.[13] These tiered rebates will continue to apply.

• The license surcharge noted above will continue to apply to all orders except for Priority Customer orders in the Non-Penny Pilot Symbols.

With this proposed rule change, all non-customer orders will be assessed similar fees, thus eliminating the gap that currently exists between market makers and non-market makers when trading complex orders today. The proposed fees are consistent with the fees and rates of payment for order flow commonly applied to symbols that are not part of the Penny Pilot program. At the proposed levels, ISE market makers will in fact see their fees lowered compared to current levels, which include a transaction fee and a $0.65 per contract PFOF fee, while at the same time equitably distributing the costs of attracting complex orders. The Exchange's maker/taker fees and rebates for complex orders in Penny Pilot Symbols has proven to be an effective method of attracting order flow to the Exchange. The Exchange believes that extending its maker/taker fees and rebates for complex orders to the Non-Penny Pilot Symbols will assist the Exchange in increasing its market share in these symbols. The Exchange believes this proposed rule change will also serve to enhance the Exchange's competitive position and enable it to attract additional complex order volume in these symbols.

The Exchange also proposes to make a non-substantive, clarifying change in footnote 3 on page 18 of the Schedule of Fees, footnote 11 on page 19 of the Schedule of Fees and footnote 2 on page 21 of the Schedule of Fees by replacing the word 'non-customer' with 'non-Priority Customer' to accurately reflect that the rebate referenced in these three footnotes are payable when Priority Customer complex orders trade with non-Priority Customer orders in the Complex Order Book.

The Exchange proposes to make these fee changes operative on February 1, 2012.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act[14] in general, and furthers the objectives of Section 6(b)(4) of the Act[15] 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 the Non-Penny Pilot Symbols in the Complex Order Book. Further, with this proposed rule change, and in an effort to standardize fees for complex orders, the Exchange is adopting fees that are lower than those previously adopted for two other Non-Penny Pilot Symbols, i.e., NDX and RUT. Approval of this proposed rule change will result in complex orders in the Non-Penny Pilot Symbols, including NDX and RUT, being charged the same fees.

The Exchange believes it is reasonable and equitable to charge all market participants (except Priority Customers) trading in complex orders in Non-Penny Pilot Symbols a standardized 'make' fee of $0.10 per contract. The Exchange currently charges a standardized 'make' fee of $0.32 per contract for complex orders in certain symbols when these orders trade against Priority Customer orders.[16] The Exchange further believes it is reasonable and equitable to charge ISE market maker, firm proprietary and Customer (Professional) orders a 'take' fee of $0.60 per contract ($0.65 per contract for Non-ISE Market Maker orders) for complex orders in Non-Penny Pilot Symbols in order to equitably distribute the cost of attracting order flow (similar to PFOF). The Exchange believes it is reasonable and equitable to charge ISE market maker, firm proprietary and Customer (Professional) orders a fee of $0.60 per contract ($0.65 per contract for Non-ISE Market Maker orders) when such members are responding to special orders because a response to a special order is akin to taking liquidity, thus the Exchange is proposing to adopt an identical fee for taking liquidity in these symbols. The Exchange has historically maintained a differential in the fees it charges ISE market makers from those it charges to Non-ISE Market Makers. The Exchange believes it is reasonable and equitable to treat these two groups of market participants differently because each has different commitments and obligations to the Exchange. ISE market makers, in particular, have quoting obligations and pay the Exchange non-transaction fees. Non-ISE Market Makers do not have any such obligations or financial commitments.

The Exchange further believes it is reasonable and equitable for the Exchange to charge a fee of $0.20 per contract for complex orders in the Non-Penny Pilot Symbols executed in the Exchange's various auctions and for Qualified Contingent Cross orders because these fees are identical to the fees the Exchange currently charges for similar orders in the symbols that are subject to the Exchange's maker/taker fees.

Additionally, the Exchange believes its proposed fees remain competitive with fees charged by other exchanges

[12] *See* Securities Exchange Act Release No. 64270 (April 8, 2011), 76 FR 20754 (April 13, 2011) (SR–ISE–2011–13).

[13] *See* Securities Exchange Act Release Nos. 65087 (August 10, 2011), 76 FR 50783 (August 16, 2011) (SR–ISE–2011–47); 65583 (October 18, 2011), 76 FR 65555 (October 21, 2011) (SR–ISE–2011–68); 65705 (November 8, 2011), 76 FR 70789 (November 15, 2011) (SR–ISE–2011–70); 65898 (December 6, 2011), 76 FR 77279 (December 12, 2011) (SR–ISE–2011–78); and 66169 (January 17, 2012), 77 FR 3295 (January 23, 2012) (SR–ISE–2012–01).

[14] 15 U.S.C. 78f(b).

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

[16] *See* note 7.

and are therefore reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. For example, the $0.60 per contract complex order 'take' fee in Non-Penny Pilot Symbols proposed by the Exchange for market maker, firm proprietary and Customer (Professional) orders remains considerably lower than that charged by the Boston Options Exchange (''BOX''). For a similar order, BOX charges both a transaction fee, which ranges anywhere from $0.13 per contract to $0.25 per contract, and a fee for adding liquidity in non-Penny Pilot classes of $0.65 per contract, for an 'all-in' rate of $0.90 or more per contract.[17]

The Exchange believes that it is reasonable and equitable to provide a rebate for Priority Customer complex orders when these orders trade with non-Priority Customer 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 already provides this rebate and is now proposing to extend the rebate for the Non-Penny Pilot Symbols, which the Exchange believes will attract greater order flow of complex orders in these symbols.

The Exchange also believes that it is reasonable and equitable to provide a two cent discount to ISE market makers on preferenced orders because this will provide an incentive for market makers to quote in the Complex Order Book.

The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to members and their customers. The Exchange believes that adopting maker/taker fees and rebates for complex orders in the Non-Penny Pilot Symbols will attract additional complex order business in these symbols. The Exchange further believes that the proposed fees are not unfairly discriminatory because the fee structure is consistent with fee structures that exist today at other options exchanges. Additionally, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because they are consistent with price differentiation that exists today at other option exchanges. The Exchange believes it remains an attractive venue for market participants to trade complex orders as its fees remain 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. With this proposed fee change, the Exchange believes it remains an attractive venue for market participants to trade complex orders.

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

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

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act.[18] 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 Exchange 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 Exchange 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–2012–06 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–2012–06. 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 a.m. and 3 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–2012–06 and should be submitted on or before March 13, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

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[17] *See* BOX Fee Schedule, Sections 4 and 7.

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 200.30–3(a)(12).