SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66084; File No. SR-ISE-2011-84)

January 3, 2012

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act" or the "Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on December 20, 2011, 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 website (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

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

2 17 CFR 240.19b-4.

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 certain orders on two of the most actively-traded index option products, the NASDAQ 100 Index option ("NDX") and the Russell 2000 Index option ("RUT").

For trading in NDX and RUT, for both regular and complex orders, the Exchange currently charges $0.20 per contract for firm proprietary orders and Customer (Professional Orders) [3] , and $0.45 per contract for Non-ISE Market Maker[4] orders. ISE market maker orders[5] in these two 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 NDX and RUT. Options on NDX and RUT are traded on the Exchange pursuant to a license agreement entered into by the Exchange with index providers for NDX and RUT. In addition to the fees noted above, the Exchange currently charges ISE market maker orders, Non-ISE Market Maker orders and firm proprietary orders $0.22 per contract and $0.15 per contract for NDX and

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3 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 Rule 100(a)(37C).

4 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.

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

RUT, respectively, to defray the licensing costs. Because of competitive pressures in the industry, certain customer orders are not charged this surcharge fee. The Exchange's current fee schedule notes that Public Customer Orders are excluded from this surcharge fee. Historically, Public Customer orders were synonymous with retail customer orders. The Exchange now distinguishes retail customers from professional customers, the latter being professional traders who are not market makers or broker/dealers but behave the way that market makers and broker/dealers do. Orders from these customers are identified on the Exchange as Professional Orders. Orders from retail customers are identified on the Exchange as Priority Customer orders. Thus, for the sake of clarity, the Exchange proposes to replace the words "Public" with "Priority" for all the surcharge fees that appear on the Exchange's fee schedule. Thus, Priority Customer orders will remain exempt from this fee, while Professional Orders will be subject to the fee.

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 103 symbols that are assessed a slightly higher taker fee (the "Select Symbols").[6] Additionally, pursuant to SEC approval which allows market makers to enter quotations for complex order strategies in the Complex Order Book,[7] the Exchange recently adopted maker/taker fees and rebates for orders in the following three symbols: XOP, XLB and EFA.[8]

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

7 See Securities Exchange Act Release No. 65548 (October 13, 2011), 76 FR 64980 (October 19, 2011) (SR-ISE-2011-39).

8 See Securities Exchange Act Release No. 65958 (December 15, 2011) (SR-ISE-2011-81).

The Exchange now proposes to extend its maker/taker fees and rebates to complex orders in NDX and RUT. Specifically, for Customer (Professional Orders), firm proprietary and ISE market maker orders, ISE proposes to adopt a "make" fee of $0.25 per contract and a "take" fee of $0.70 per contract. For Non-ISE Market Maker orders, ISE proposes to adopt a "make" fee of $0.25 per contract and a "take" fee of $0.75 per contract. For crossing complex orders in NDX and RUT, 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 NDX and RUT. The Exchange currently does not charge Priority Customers for crossing orders executed in NDX and RUT. The Exchange proposes to continue not charging Priority Customers for crossing orders executed in NDX and RUT. For responses to special orders,[9] ISE proposes to adopt a fee of $0.70 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 $0.75 per contract for responses to special orders in NDX and RUT.

Further, 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-customer orders in the Complex Order Book. The Exchange proposes to extend this rebate incentive for NDX and RUT also. As such, the Exchange proposes to adopt a rebate of $0.50 per

[9] 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.

contract for Priority Customer complex orders in NDX and RUT when these orders trade with non-customer orders in the Complex Order Book.

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 NDX and RUT. Accordingly, ISE market makers who remove liquidity in NDX and RUT from the Complex Order Book will be charged $0.68 per contract when trading with orders that are preferenced to them.

With the proposed migration of NDX and RUT to the Exchange's complex order maker/taker pricing structure, the Exchange proposes to no longer charge a PFOF fee for complex orders in these two symbols. The cancellation fee, however, which only applies to Priority Customer orders, will continue to apply.

As the Exchange is proposing to adopt a new table for this proposed fee change, the Exchange notes that:

- Fees for orders in NDX and RUT executed in the Exchange's Facilitation, Solicited Order, Price Improvement and Block Order Mechanisms are for contracts that are part of the originating or contra order.
- Complex orders in NDX and RUT 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 NDX and RUT.
- As noted above, the cancellation fee, which only applies to Priority Customer orders, will continue to apply to NDX and RUT.

- 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.[10] This fee cap will continue to apply to executions of complex orders in NDX and RUT.
- The Exchange currently has tiered rebates to encourage members to submit greater number [sic] 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.[11] These tiered rebates will continue to apply.
- As noted above, the Exchange currently charges a license surcharge fee of $0.22 per contract and $0.15 per contract for trading in options on NDX and RUT, respectively. This license surcharge will continue to apply to all orders except for Priority Customer orders.

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

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10 See Securities Exchange Act Release No. 64270 (April 8, 2011), 76 FR 20754 (April 13, 2011) (SR-ISE-2011-13).

11 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); and 65898 (December 6, 2011), 76 FR 77279 (December 12, 2011) (SR-ISE-2011-78).

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 NDX and RUT, which are two of the most actively-traded index option products, will assist the Exchange in recovering lost market share in these two products. 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 two symbols because both NDX and RUT are high-priced index options and a very substantial portion of the volume traded in high-priced index options occurs in complex orders.

The Exchange also proposes to make a non-substantive, clarifying change in two footnotes on the Exchange's Schedule of Fees. Specifically, the Exchange recently adopted language in footnotes 7 and 12 on pages 19 and 20 of the Exchange's current Schedule of Fees, respectively, related to rebates and fees for certain complex orders executed on the Exchange.[12] The Exchange now proposes to add the words 'Priority Customer' in front of 'orders' to clarify that ISE market makers will receive a discounted rate when they trade against Priority Customer orders that are preferenced to them.

The Exchange proposes to make these fee changes operative on January 3, 2012.

2. Statutory Basis

[12] See Securities Exchange Act Release No. 65958 (December 15, 2011) (SR-ISE-2011-81).

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act[13] in general, and furthers the objectives of Section 6(b)(4) of the Act[14] 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 NDX and RUT in the Complex Order Book.

The Exchange believes it is reasonable and equitable to charge all market participants (except Priority Customers) trading in complex orders in NDX and RUT a standardized 'make' fee of $0.25 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.[15] The Exchange further believes it is reasonable and equitable to charge ISE market maker, firm proprietary and Customer (Professional) orders a 'take' fee of $0.70 per contract ($0.75 per contract for Non-ISE Market Maker orders) for complex orders in NDX and RUT because the Exchange is seeking to recoup the cost associated with paying an increased rebate of $0.50 per contract to these market participants. The Exchange believes it is reasonable and equitable to charge ISE market maker, firm proprietary and Customer (Professional) orders a fee of $0.70 per contract ($0.75 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 two symbols. The Exchange has historically maintained a differential in the fees it charges ISE

13 15 U.S.C. 78f(b).

14 15 U.S.C. 78f(b)(4).

15 See Securities Exchange Act Release No. 65958 (December 15, 2011) (SR-ISE-2011-81).

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 NDX and RUT 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 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 $0.70 per contract complex order 'take' fee in NDX and RUT proposed by the Exchange for market maker, firm proprietary and Customer (Professional) orders remains 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.[16]

The Exchange believes that it is reasonable and equitable to provide a rebate for Priority Customer complex orders when these orders trade with non-customer orders in the Complex Order Book because paying a rebate would continue to attract additional order flow to the

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16 See BOX Fee Schedule, Sections 4 and 7.

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 increase the rebate for NDX and RUT, which the Exchange believes will attract greater order flow of complex orders in these two 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 NDX and RUT will attract additional complex order business in these two 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.[17] 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 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

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

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2011-84 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-2011-84. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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-2011-84 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Kevin M. O'Neill
Deputy Secretary

[18] 17 CFR 200.30-3(a)(12).