Asset-based Distribution Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to the extent necessary to permit the Fund to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its shares through asset-based distribution fees.

For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' institution of asset-based distribution fees is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1, and, where applicable, 11a–3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the NASD Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–15059 Filed 6–19–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67201; File No. SR–ISE–2012–49]

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

June 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 June 1, 2012, the International Securities Exchange, LLC (the "ISE" or the "Exchange") filed with the Securities and Exchange Commission ("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 is proposing to amend fees for certain regular 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 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 certain regular orders in 25 securities traded on the Exchange ("Special Non-Select Penny Pilot Symbols").[3] For trading in the Special Non-Select Penny Pilot Symbols, the Exchange currently charges $0.20 per contract for Firm Proprietary orders and Customer (Professional)[4] orders, and $0.45 per contract for Non-ISE Market Maker[5] orders. ISE Market Maker orders[6] in these 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

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

[2] 17 CFR 240.19b–4.

[3] The Special Non-Select Penny Pilot Symbols are Peabody Energy Corp. ("BTU"), Cliffs Natural Resources Inc. ("CLF"), Salesforce.com Inc. ("CRM"), ChevronTexaco Corporation ("CVX"), Deere & Company ("DE"), eBay Inc. ("EBAY"), FedEx Corp. ("FDX"), Corning Incorporated ("GLW"), General Motors Co. ("GM"), Green Mountain Coffee Roasters Inc. ("GMCR"), The Goldman Sachs Group Inc. ("GS"), The Home Depot Inc. ("HD"), Lululemon Athletica Inc. ("LULU"), Molycorp Inc. ("MCP"), McMoRan Exploration Co. ("MMR"), Mosaic Company ("MOS"), Merck & Co. Inc. ("MRK"), Sears Holding Corporation ("SHLD"), Sina Corp. ("SINA"), Silver Wheaton Corp. ("SLW"), United Parcel Service Inc. ("UPS"), U.S. Bancorp ("USB"), Wynn Resorts Limited ("WYNN"), streetTracks Homebuilders Fund ("XHB") and Technology Select Sector SPDR Fund ("XLK"). The Special Non-Select Penny Pilot Symbols are identified by their ticker symbol on the Exchange's Schedule of Fees.

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

[5] 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, as amended ("Exchange Act"), registered in the same options class on another options exchange.

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

(''PFOF'') fee of $0.25 per contract when trading against Priority Customers.[7] Priority Customer orders are not charged for trading in the Special Non-Select Penny Pilot Symbols. The Exchange also currently charges the fees noted above for responses to special orders in the Special Non-Select Penny Pilot Symbols. The Exchange also currently charges the fees noted above for crossing orders, i.e., orders executed in the Exchange's Facilitation Mechanism,[8] Solicited Order Mechanism,[9] Block Order Mechanism and Price Improvement Mechanism,[10] and for Qualified Contingent Cross orders, in the Special Non-Select Penny Pilot Symbols, except for Non-ISE Market Maker orders, for which the Exchange currently charges $0.20 per contract.

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'').[11] 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'')[12] and for complex orders in all symbols that are not in the Penny Pilot Program (''Non-Penny Pilot Symbols'').[13] As noted above, maker/taker fees and rebates applicable on the above symbols are assessed on the following order-type categories: ISE Market Maker, Market Maker Plus,[14] Firm Proprietary, Customer (Professional), Non-ISE Market Maker, and Priority Customer.

The Exchange now proposes to adopt maker/taker fees and rebates to regular orders in the Special Non-Select Penny Pilot Symbols. Specifically, the Exchange proposes to adopt the following fees and rebates for orders that trade against Non-Priority Customer orders:

- For Market Maker orders, a maker fee of $0.35 per contract and a taker fee of $0.20 per contract;
- For Non-ISE Market Maker orders, a maker fee of $0.40 per contract and a taker fee of $0.35 per contract;
- For Firm Proprietary and Customer (Professional) orders, a maker fee of $0.35 per contract and a taker fee of $0.25 per contract;
- For Priority Customer orders, a maker rebate of $0.25 per contract and a taker rebate of $0.32 per contract.

Additionally, the Exchange proposes to adopt the following fees and rebates for orders that trade against Priority Customer orders:

- For Market Maker orders, a maker fee of $0.35 per contract and a taker fee of $0.30 per contract;
- For Non-ISE Market Maker orders, a maker and taker fee of $0.40 per contract;
- For Firm Proprietary and Customer (Professional) orders, a maker fee of $0.35 per contract and a taker fee of $0.30 per contract;
- For Priority Customer orders, a maker rebate of $0.25 per contract and a taker fee of $0.00 per contract.

For crossing regular orders in the Special Non-Select Penny Pilot Symbols, the Exchange proposes to continue charging a fee of $0.20 per contract. The Exchange currently does not charge Priority Customers for crossing orders executed in the Special Non-Select Penny Pilot Symbols and proposes to continue not charging Priority Customers for crossing orders executed in the Special Non-Select Penny Pilot Symbols.

For responses to special orders in the Special Non-Select Penny Pilot Symbols,[15] the Exchange proposes to adopt a fee of $0.40 per contract for Market Maker, Non-ISE Market Maker, Firm Proprietary and Customer (Professional) and Priority Customer orders.

The Exchange currently provides ISE Market Makers with a two cent discount when trading against Priority Customer orders that are preferenced to them in the complex order book.[16] The Exchange proposes to extend this discount for preferenced regular orders in the Special Non-Select Penny Pilot Symbols. Accordingly, ISE Market Makers who take liquidity when trading against Priority Customer orders that are preferenced to them in the Special Non-Select Penny Pilot Symbols will be charged $0.28 per contract and ISE Market Makers who make liquidity when trading against Priority Customer orders that are preferenced to them in the Special Non-Select Penny Pilot Symbols will be charged $0.33 per contract.

Additionally, 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. The

[7] 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).

[8] *See* Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR–ISE–2010–25).

[9] *See* Exchange Act Release No. 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR–ISE–2010–106).

[10] *See* Exchange Act Release No. 62048 (May 6, 2010), 75 FR 26830 (May 12, 2010) (SR–ISE–2010–43). The Exchange subsequently increased this rebate to $0.25 per contract. *See* Exchange Act Release No. 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR–ISE–2010–106).

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

[12] *See* Exchange Act Release No. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR–ISE–2011–72).

[13] *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); and 66961 (May 10, 2012), 77 FR 28914 (May 16, 2012) (SR–ISE–2012–38).

[14] A Market Maker Plus is an ISE Market Maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months and 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium across all expiration months in order to receive the rebate. The Exchange determines whether a Market Maker qualifies as a Market Maker Plus at the end of each month by looking back at each Market Maker's quoting statistics during that month. A Market Maker's single best and single worst overall quoting days each month, on a per symbol basis, are excluded in calculating whether a Market Maker qualifies for this rebate, if doing so qualifies a Market Maker for the rebate. If at the end of the month, a Market Maker meets the Exchange's stated criteria, the Exchange rebates $0.10 per contract for transactions executed by that Market Maker during that month. The Exchange provides Market Makers a report on a daily basis with quoting statistics so that Market Makers can determine whether or not they are meeting the Exchange's stated criteria.

[15] 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.

[16] Pursuant to SR–ISE–2011–81, the Exchange provides this fee discount when ISE Market Makers add or remove liquidity. *See* Exchange Act Release No. 65958 (December 15, 2011) 76 FR 79236 (December 21, 2011) (SR–ISE–2011–81).

Exchange proposes to extend this rebate incentive for regular orders in the Special Non-Select Penny Pilot Symbols by adopting a per contract rebate at the current levels to those contracts in the Special Non-Select Penny Pilot Symbols 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 in the Price Improvement Mechanism.

Currently, Primary Market Makers (PMMs) are required to provide away market price protection for marketable public customer orders when the ISE market is not at the NBBO in accordance with their obligations under ISE rules and the Intermarket Linkage Plan.[17] Accordingly, when PMMs are performing this intermarket price protection function, the Exchange currently charges PMMs a fee ranging from $0.01 per contract to $0.18 per contract for PMM trade reports. Since the PMM is performing its linkage obligations when it executes (i.e., ''trade reports'') such public customer orders, it is neither a taker nor maker of liquidity as those terms are used within the framework of the ISE's maker/taker pricing model. Accordingly, the Exchange proposes to not charge any fees or provide any rebates for PMM trade reports for executions in the Special Non-Select Penny Pilot Symbols. The Exchange currently does not charge a trade report fee to PMMs in symbols that are subject to maker/taker fees and rebates.

With the proposed migration of regular orders in the Special Non-Select Penny Pilot Symbols to maker/taker and rebate pricing, the Exchange proposes to no longer charge a PFOF fee in the Special Non-Select Penny Pilot 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 regular orders in the Special Non-Select Penny Pilot Symbols 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.
- As noted above, PFOF fees will not be collected in the Special Non-Select Penny Pilot Symbols.
- As noted above, the cancellation fee, which only applies to Priority Customer orders, will continue to apply to the Special Non-Select Penny Pilot Symbols.
- The Exchange currently has a fee cap, with certain exclusions, applicable to crossing transactions executed in a member's proprietary account. The cap also applies to 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.[18] This fee cap will continue to apply to executions of regular orders in the Special Non-Select Penny Pilot Symbols.
- The Exchange currently has tiered rebates to encourage members to submit greater numbers 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.[19] These tiered rebates will continue to apply to contracts traded in the Special Non-Select Penny Pilot Symbols.
- The Exchange currently has a $0.20 per contract fee for Market Maker orders sent to the Exchange by EAMs in the Special Non-Select Penny Pilot Symbols.[20] Market Maker orders in the Special Non-Select Penny Pilot Symbols sent to the Exchange by Electronic Access Members will be assessed a fee of $0.35 per contract for making liquidity when trading against Non-Priority Customer and Priority Customer interest, $0.20 per contract for taking liquidity when trading against Non-Priority Customer interest, $0.30 per contract for taking liquidity when trading against Priority Customer orders, $0.20 per contract for crossing orders and $0.40 per contract for responses to special orders.
- The Exchange currently provides a $0.20 per contract fee credit for executions in the Special Non-Select Penny Pilot Symbols resulting from responses to Customer (Professional) orders that are ''flashed'' by the Exchange to its Members. This fee credit shall continue to apply.
- The Exchange currently provides a $0.20 per contract fee credit to Primary Market Makers (PMM) for execution of Priority Customer orders—for classes in which it serves as a PMM—that send an Intermarket Sweep Order to other exchanges. This fee credit shall continue to apply.
- The Exchange currently has a $0.45 per contract fee for execution of Customer (Professional) orders in the Special Non-Select Penny Pilot Symbols that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan. This fee shall continue to apply.
- The Exchange currently provides PMMs a fee credit equal to the fee charged by a destination market, but not more than $0.45 per contract for executing Professional (Customer) orders in the Special Non-Select Penny Pilot Symbols. This fee credit shall continue to apply.

With this proposed rule change, all non-customer orders will be assessed similar fees, thus eliminating the gap that currently exists, largely due to PFOF fees, between Market Makers and non-Market Makers when trading today. The proposed fees are consistent with the fees and rates of payment for order flow commonly applied to symbols that are part of the Penny Pilot program. The Exchange's maker/taker fees and rebates for complex orders have proven to be an effective method of attracting order flow to the Exchange. The Exchange believes that extending its maker/taker fees and rebates to regular orders in the Special Non-Select Penny Pilot Symbols will strengthen its market share in these products. The Exchange believes this proposed rule change will also serve to enhance its competitive position and enable it to attract additional volume in these symbols.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Exchange Act[21] in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act[22] in particular, in that it is an equitable allocation of reasonable

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[17] The Intermarket Linkage Plan prohibits an exchange from allowing the automatic execution of public customer orders at a price that is inferior to the best prices being publically displayed by another exchange. Under ISE Rule 803(c)(2), it is the responsibility of the PMM to either execute an order at a price that matches or betters the NBBO, or obtain such better prices on behalf of the public customer.

[18] *See* Securities Exchange Act Release Nos. 64270 (April 8, 2011), 76 FR 20754 (April 13, 2011) (SR–ISE–2011–13); and 66793 (April 12, 2012), 77 FR 23313 (April 18, 2012) (SR–ISE–2012–27).

[19] *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); 66169 (January 17, 2012), 77 FR 3295 (January 23, 2012) (SR–ISE–2012–01); and 66790 (April 12, 2012), 77 FR 23312 (April 18, 2012) (SR–ISE–2012–25).

[20] *See* Securities Exchange Act Release No. 60817 (October 13, 2009), 74 FR 54111 (October 21, 2009).

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(4).

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 Special Non-Select Penny Pilot Symbols.

The Exchange believes it is reasonable and equitable to charge a maker fee of $0.35 per contract for regular Market Maker, Firm Proprietary and Customer (Professional) orders that trade against Priority Customer and Non-Priority Customer interest in the Special Non-Select Penny Pilot Symbols and $0.40 per contract for regular Non-ISE Market Maker orders that trade against Priority Customer and Non-Priority Customer interest in the Special Non-Select Penny Pilot Symbols. The Exchange notes the proposed fees are comparable to fees currently in place at other exchange for Penny Pilot Symbols.[23]

The Exchange believes it is reasonable and equitable to charge a taker fee of $0.20 per contract for regular Market Maker orders, $0.25 per contract for regular Firm Proprietary and Customer (Professional) orders, and $0.35 per contract for regular Non-ISE Market Maker orders in the Special Non-Select Penny Pilot Symbols that trade against Non-Priority Customer interest. The Exchange also believes it is reasonable and equitable to charge a taker fee of $0.30 per contract for regular Market Maker, Firm Proprietary and Customer (Professional) orders and $0.40 per contract for regular Non-ISE Market Maker orders in the Special Non-Select Penny Pilot Symbols that trade against Priority Customer interest. Again, the Exchange notes the proposed fees are comparable to fees currently in place at other exchanges.[24]

The Exchange further notes that the proposed $0.35 per contract maker fee for Market Maker, Firm Proprietary and Customer (Professional) orders in the Special Non-Select Penny Pilot Symbols 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 $0.20 per contract to $0.40 per contract, and a fee of $0.22 per contract for adding liquidity in these classes, for an 'all-in' rate of as high as $0.62 per contract.[25]

[23] *See* NASDAQ OMX PHLX LLC Pricing Schedule at *http://nasdaqomxtrader.com/content/marketregulation/membership/phlx/feesched.pdf.*

[24] *Id.*

[25] *See* BOX Fee Schedule.

The Exchange believes it is reasonable and equitable to charge ISE Market Maker, Non-ISE Market Maker, Firm Proprietary and Customer (Professional) orders a fee of $0.40 per contract when such members are responding to special orders in the Special Non-Select Penny Pilot Symbols because these fees are identical to the fees the Exchange currently charges for responses to special orders in the Select Symbols.[26]

In particular, the Exchange believes the proposed fees are reasonable and equitably allocated because they are within the range of fees assessed by other exchanges employing similar pricing schemes. In addition, the Exchange believes that charging Non-ISE Market Maker orders a higher rate than the fee charged to ISE Market Maker, Firm Proprietary and Customer (Professional) orders is appropriate and not unfairly discriminatory because Non-ISE Market Makers are not subject to many of the non-transaction based fees that these other categories of membership are subject to, e.g., membership fees, access fees, API/Session fees, market data fees, etc. Therefore, it is appropriate and not unfairly discriminatory to assess a higher transaction fee on Non-ISE Market Makers because the Exchange incurs costs associated with these types of orders that are not recovered by non-transaction based fees paid by members.

The Exchange further believes it is reasonable and equitable for the Exchange to charge a fee of $0.20 per contract for regular orders in the Special Non-Select 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.

The Exchange believes that it is reasonable and equitable to provide rebates for regular Priority Customer orders in the Special Non-Select Penny Pilot Symbols because paying a rebate would attract additional order flow to the Exchange and create additional liquidity in these symbols, which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange already has a number of similar rebate programs in place. 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.

[26] *See* ISE Schedule of Fees, Rebates and Fees for Adding and Removing Liquidity in Select Symbols and Complex Order Maker/Taker fees for symbols that are in the Penny Pilot Program, footnote 8.

The Exchange believes it is reasonable and equitable to provide a two cent discount to ISE Market Makers on preferenced orders as an incentive for them to quote more aggressively in the Special Non-Select Penny Pilot Symbols and thereby create more trading opportunities on the Exchange. ISE currently provides Market Makers a similar two cent discount for preferenced complex orders in the Select Symbols, Non-Select Penny Pilot Symbols and Non-Penny Pilot Symbols and is now proposing to extend the same discount for preferenced regular orders in the Special Non-Select Penny Pilot Symbols. ISE notes that with this proposed fee change, the Exchange will maintain the two cent differential that is currently in place for preferenced complex orders in the group of symbols noted above.

The Exchange believes that adopting maker/taker fees and rebates for regular orders in the Special Non-Select Penny Pilot Symbols will attract additional business in these symbols to the Exchange. 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 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 at favorable prices.

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.[27] 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–2012–49 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–2012–49. 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–2012–49 and should be submitted on or before July 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–15054 Filed 6–19–12; 8:45 am]

BILLING CODE 8011–01–P

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

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67203; File No. SR–NASDAQ–2012–066]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Adopt a New Market Maker Peg Order Available to Exchange Market Makers

June 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 6, 2012, the NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new Market Maker Peg Order to provide similar functionality as the automated functionality provided to market makers under Rules 4613(a)(2)(F) and (G).

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

4751. Definitions

The following definitions apply to the Rule 4600 and 4750 Series for the trading of securities listed on Nasdaq or a national securities exchange other than Nasdaq.

(a)–(e) No change.

(f) The term ''Order Type'' shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)–(14) No change.

(15) *''Market Maker Peg Order'' is a limit order that, upon entry, the bid or offer is automatically priced by the System at the Designated Percentage away from the then current National Best Bid and National Best Offer, or if no National Best Bid or National Best Offer, at the Designated Percentage away from the last reported sale from the responsible single plan processor in order to comply with the quotation requirements for Market Makers set forth in Rule 4613(a)(2). Upon reaching the Defined Limit, the price of a Market Maker Peg Order bid or offer will be adjusted by the System to the Designated Percentage away from the then current National Best Bid and National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor. If a Market Maker Peg Order bid or offer moves a specified number of percentage points away from the Designated Percentage towards the then current National Best Bid or National Best Offer, as described in Rule 4613(a)(2)(F) (Quotation Creation and Adjustment), the price of such bid or offer will be adjusted to the Designated Percentage away from the then current National Best Bid and National Best Offer, or if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor. In the absence of a National Best Bid or National Best Offer and if no last reported sale, the order will be cancelled or rejected. Market Maker Peg Orders are not eligible for routing pursuant to Rule 4758 and are always*