

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71092; File No. SR-ISE-2013-61)

December 17, 2013

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Back-up Trading Arrangements

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 December 5, 2013, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which items have been prepared by the 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 Exchange proposes to adopt a rule that will permit ISE to enter into arrangements with one or more other exchanges that would provide trading facilities for ISE listed options at another exchange in the event that the functions of ISE are severely and adversely affected by an emergency or extraordinary circumstances (a “Disabling Event”), and similarly provide trading facilities at ISE for another exchange to trade its listed options if that exchange’s facility experiences a Disabling Event. The Exchange also proposes to adopt a rule addressing general Exchange procedures under emergency conditions.

The text of the proposed rule change is available on the Exchange’s Internet website at <http://www.ise.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

Introduction

The Exchange proposes to adopt new Rule 508 (Back-Up Trading Arrangements), which would permit ISE to enter into arrangements with one or more other exchanges (each a “Back-up Exchange”) to permit ISE and its members to use a portion of a Back-up Exchange’s facilities to conduct the trading of ISE exclusively listed options³ in the event of a Disabling Event, and similarly to will [sic] permit ISE to provide trading facilities at ISE for another exchange’s exclusively listed options if that exchange (a “Disabled Exchange”) is prevented from trading due to a Disabling Event. Proposed Rule 508 would also permit ISE to enter into arrangements with a Back-up Exchange to provide for the listing and trading of ISE singly listed options⁴ by the Back-up Exchange if ISE’s facility becomes disabled, and conversely provide for the listing and trading by ISE of the singly listed options of a Disabled Exchange.

³ For purposes of ISE Rule 508, the term “exclusively listed option” means an option that is listed exclusively by an exchange (because the exchange has an exclusive license to use, or has proprietary rights in, the interest underlying the option).

⁴ For purposes of proposed Rule 508, the term “singly listed option” means an option that is not an “exclusively listed option” but that is listed by an exchange and not by any other national securities exchange.

The Exchange also proposes an amendment to its Fee Schedule to address the fees that shall apply to transactions in options of a Disabled Exchange effected on a Back-up Exchange. Additionally, the Exchange proposes to adopt a new Rule 509, which addresses Exchange procedures under emergency conditions and is similar to rules that have been adopted by another exchange.⁵

Background

The back-up trading arrangements contemplated by proposed Rule 508 represent ISE's immediate plan to ensure that ISE's exclusively listed and singly listed options will have a trading venue if a catastrophe renders its primary facility inaccessible or inoperable. The Commission has suggested measures that ISE should undertake to expedite reopening of ISE's exclusively listed securities if a catastrophic event prevents trading at ISE for an extended period of time. Proposed Rule 508 would permit ISE to enter into back-up trading arrangements with other exchanges that would address the measures suggested by the Commission.

The ISE is currently working with the Philadelphia Stock Exchange ("Phlx") to develop a bi-lateral back-up trading arrangement in the event that trading is prevented at one of the exchanges. Once the parties execute the finalized agreement governing the back-up trading arrangement, they will enter into an operational plan for those arrangements.

Proposed Rule 508

If ISE is the Disabled Exchange

The Exchange proposes to adopt Rule 508 to make effective its back-up trading arrangement with another exchange. Section (a) of proposed Rule 508 describes the back-up trading arrangements that would apply if ISE were the Disabled Exchange. Under the proposed

⁵ See Chicago Board Options Exchange ("CBOE") Rule 6.17.

paragraph (a)(1)(ii), the facility of the Back-up Exchange used by ISE to trade some or all of ISE's exclusively listed options will be deemed to be a facility of ISE, and such option classes shall trade as listings of ISE. This approach of deeming a portion of the Back-up Exchange's facilities to be a facility of the Disabled Exchange is an approach previously approved by the Commission.⁶

Since the trading of ISE exclusively listed options will be conducted using the systems of the Back-up Exchange, proposed paragraph (a)(1)(iii) provides that the trading of ISE listed options on ISE's facility at the Back-up Exchange shall be conducted in accordance with the rules of the Back-up Exchange, and proposed paragraph (a)(1)(iv) provides that the Back-up Exchange has agreed to perform the related regulatory functions with respect to such trading, in each case except as ISE and the Back-up Exchange may specifically agree otherwise.⁷ The Back-up Exchange rules that govern trading on ISE's facility at the Back-up Exchange shall be deemed to be ISE rules for purposes of such trading.

Under proposed paragraph (a)(1)(v), ISE shall have the right to designate its members that will be authorized to trade ISE exclusively listed options on ISE's facility at the Back-up Exchange and, if applicable, its member(s) that will be a Primary Market Maker ("PMM") or

⁶ See Securities and Exchange Commission Release Nos. 51717 (May 19, 2005), 70 FR 30160 (May 25, 2005) (SR-CBOE-2004-59); 51926 (June 27, 2005), 70 FR 38232 (July 1, 2005) (SR-PHLX-2004-65).

⁷ ISE's proposed back-up trading arrangements contemplate that the operation of the Disabled Exchange's facility at the Back-up Exchange will be conducted in accordance with the rules of the Back-up Exchange except that (i) the rules of the Disabled Exchange will apply with respect to doing business with the public, margin requirements, net capital requirements and listing requirements, and (ii) the members of the Disabled Exchange that are trading on the facility of the Disabled Exchange at the Back-up Exchange (not including members of the Back-up Exchange who become temporary members of the Disabled Exchange) will be subject to the rules of the Disabled Exchange governing or applying to the maintenance of a person's or a firm's status as a member of the Disabled Exchange. The Commission approved a similar arrangement between CBOE and Phlx. See *supra* note 4.

Competitive Market Maker (“CMM”) in those options. If the Back-up Exchange is unable to accommodate all ISE members that desire to trade on ISE’s facility at the Back-up Exchange, ISE may determine which members shall be eligible to trade at that facility by considering factors such as whether the member is a PMM or CMM in the applicable product(s), the number of contracts traded by the member in the applicable product(s), market performance, and other factors relating to a member’s contribution to the market in the applicable product(s).

Under proposed paragraph (a)(1)(vi), members of the Back-up Exchange shall not be authorized to trade in any ISE exclusively listed options, except that (i) ISE may deputize willing brokers of the Back-up Exchange as temporary ISE members to permit them to execute orders as Electronic Access Members (“EAMs”) in ISE exclusively listed options traded on ISE’s facility at the Back-up Exchange,⁸ and (ii) the Back-up Exchange has agreed that it will, at the instruction of ISE, select members of the Back-up Exchange that are willing to be deputized by ISE as temporary ISE members authorized to trade ISE exclusively listed options on ISE’s facility at the Back-up Exchange for such period of time following a Disabling Event as ISE determines to be appropriate, and ISE may deputize such members of the Back-up Exchange as temporary ISE members for that purpose. The foregoing exceptions would permit members of the Back-up Exchange to trade ISE exclusively listed options on the ISE facility on the Back-up Exchange, if, for example, circumstances surrounding a Disabling Event result in ISE members being delayed in connecting to the Back-up Exchange in time for prompt resumption of trading.

Section (a)(2) of the proposed rule provides for the continued trading of ISE singly listed options at the Back-up Exchange in the event of a Disabling Event at ISE. Proposed paragraph (a)(2)(ii) provides that ISE may enter into arrangements with a Back-up Exchange under which

⁸ CBOE and Phlx received approval to deputize its brokers in this manner. See supra note 6.

the Back-up Exchange will agree, in the event of a Disabling Event, to list for trading option classes that are then singly listed only by ISE. Such option classes would trade on the Back-up Exchange as listings of the Back-up Exchange and in accordance with the rules of the Back-up Exchange. Under proposed paragraph (a)(2)(iii), any such options class listed by the Back-up Exchange that does not satisfy the standard listing and maintenance criteria of the Back-up Exchange will be subject, upon listing by the Back-up Exchange, to delisting (and, thus, restrictions on opening new series, and engaging in opening transactions in those series with open interest, as may be provided in the rules of the Back-up Exchange).

ISE singly listed option classes would be traded by members of the Back-up Exchange and by ISE members selected by ISE to the extent the Back-up Exchange can accommodate ISE members in the capacity of temporary members of the Back-up Exchange. If the Back-up Exchange is unable to accommodate all ISE members that desire to trade ISE singly listed options at the Back-up Exchange, ISE may determine which members shall be eligible to trade such options at the Back-up Exchange by considering the same factors used to determine which ISE members are eligible to trade ISE exclusively listed options at the ISE facility at the Back-up Exchange.

Proposed Section (a)(3) provides that ISE may enter into arrangements with a Back-up Exchange to permit ISE members to conduct trading on a Back-up Exchange of some or all of ISE's multiply listed options in the event of a Disabling Event. While continued trading of multiply listed options upon the occurrence of a Disabling Event is not likely to be as great a concern as the continued trading of exclusively and singly listed options, ISE nonetheless believes a provision for multiply listed options should be included in the rule so that the exchanges involved will have the option to permit members of the Disabled Exchange to trade

multiply listed options on the Back-up Exchange. Such options shall trade as a listing of the Back-up Exchange in accordance with the rules of the Back-up Exchange.

If ISE is the Back-up Exchange

Section (b) of proposed Rule 508 describes the back-up trading arrangements that would apply if ISE were the Back-up Exchange. In general, the provisions in Section (b) are the converse of the provisions in Section (a). With respect to the exclusively listed options of the Disabled Exchange, the facility of ISE used by the Disabled Exchange to trade some or all of the Disabled Exchange's exclusively listed options will be deemed to be a facility of the Disabled Exchange, and such option classes shall trade as listings of the Disabled Exchange. Trading of the Disabled Exchange's exclusively listed options on the Disabled Exchange's facility at ISE shall be conducted in accordance with ISE rules, and ISE will perform the related regulatory functions with respect to such trading, in each case except as the Disabled Exchange and ISE may specifically agree otherwise. ISE rules that govern trading on the Disabled Exchange's facility at ISE shall be deemed to be rules of the Disabled Exchange for purposes of such trading.

Sections (b)(2) and (b)(3) describe the arrangements applicable to trading of the Disabled Exchange's singly and multiply listed options at ISE, and are the converse of Sections (a)(2) and (a)(3). One difference is in paragraph (b)(2)(i), which includes a provision that would permit ISE to allocate singly listed option classes of the Disabled Exchange to an ISE PMM in advance of a Disabling Event, without utilizing the allocation process under ISE Rule 802, to enable ISE to quickly list such option classes upon the occurrence of a Disabling Event.

Member Obligations

Section (c) describes the obligations of members and member organizations with respect to the trading by "temporary members" on the facilities of another exchange pursuant to Rule

508. Section (c)(1) sets forth the obligations applicable to members of a Back-up Exchange who act in the capacity of temporary members of the Disabled Exchange on the facility of the Disabled Exchange at the Back-up Exchange.

Section (c)(1) provides that a temporary member of the Disabled Exchange shall be subject to, and obligated to comply with, the rules that govern the operation of the facility of the Disabled Exchange at the Back-up Exchange. This would include the rules of the Disabled Exchange to the extent applicable during the period of such trading, including the rules of the Disabled Exchange limiting its liability for the use of its facilities that apply to members of the Disabled Exchange. Additionally, (i) such temporary member shall be deemed to have satisfied, and the Disabled Exchange has agreed to waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a member of the Disabled Exchange, including all dues, fees and charges imposed generally upon members of the Disabled Exchange based on their status as such, (ii) such temporary member shall have none of the rights of a member of the Disabled Exchange except the right to conduct business on the facility of the Disabled Exchange at the Back-up Exchange to the extent described in the Rule, (iii) the member organization associated with such temporary member, if any, shall be responsible for all obligations arising out of that temporary member's activities on or relating to the Disabled Exchange, and (iv) the clearing member of such temporary member shall guarantee and clear the transactions of such temporary member on the Disabled Exchange.

Section (c)(2) sets forth the obligations applicable to members of a Disabled Exchange who act in the capacity of temporary members of the Back-up Exchange for the purpose of trading singly listed and multiply listed options of the Disabled Exchange. Such temporary members shall be subject to, and obligated to comply with, the rules of the Back-up Exchange

that are applicable to the Back-up Exchange's own members, including the rules of the Back-up Exchange limiting its liability for the use of its facilities that apply to members of the Back-up Exchange. Temporary members of the Back-up Exchange have the same obligations as those set forth in Section (c)(1) that apply to temporary members of the Disabled Exchange, except that, in addition, temporary members of the Back-up Exchange shall only be permitted (i) to act in those capacities on the Back-up Exchange that are authorized by the Back-up Exchange and that are comparable to capacities in which the temporary member has been authorized to act on the Disabled Exchange, and (ii) to trade in those option classes in which the temporary member is authorized to trade on the Disabled Exchange.

Member Proceedings

As noted above, proposed Rule 508 provides that the rules of the Back-up Exchange shall apply to the trading of the singly and multiply listed options of the Disabled Exchange traded on the Back-up Exchange's facilities, and (with certain limited exceptions) the trading of exclusively listed options of the Disabled Exchange traded on the facility of the Disabled Exchange at the Back-up Exchange. The Back-up Exchange has agreed to perform the related regulatory functions with respect to such trading (except as the Back-up Exchange and the Disabled Exchange may specifically agree otherwise).

Section (d) of proposed Rule 508 provides that if a Back-up Exchange initiates an enforcement proceeding with respect to the trading during a back-up period of singly or multiply listed options of the Disabled Exchange by a temporary member of the Back-up Exchange, or exclusively listed options of the Disabled Exchange by a member of the Disabled Exchange (other than a member of the Back-up Exchange who is a temporary member of the Disabled Exchange), and such proceeding is in process upon the conclusion of the back-up period, the

Back-up Exchange may transfer responsibility for such proceeding to the Disabled Exchange following the conclusion of the back-up period. This approach to the exercise of enforcement jurisdiction is also consistent with past precedent.⁹

With respect to arbitration jurisdiction, proposed Section (d) provides that arbitration of any disputes with respect to any trading during a back-up period of singly or multiply listed options of the Disabled Exchange or of exclusively listed options of the Disabled Exchange on the Disabled Exchange's facility at the Back-up Exchange will be conducted in accordance with the rules of the Back-up Exchange, unless the parties to an arbitration agree that it shall be conducted in accordance with the rules of the Disabled Exchange.

Member Preparations

To ensure that members are prepared to implement ISE's back-up trading arrangements, proposed Section (e) requires ISE members to take appropriate actions as instructed by ISE to accommodate ISE's back-up trading arrangements with other exchanges and ISE's own back-up trading arrangements.

Supplementary Material

Proposed Supplementary Material .01 to Rule 508 clarifies that to the extent Rule 508 provides that another exchange will take certain action, the Rule is reflecting what that exchange has agreed to do by contractual agreement with ISE, but Rule 508 is not binding on the other exchange.

Fee Schedule

The Exchange proposes to add a new section to its fee schedule to inform its members regarding what fees will apply to transactions in the listed options of a Disabled Exchange

⁹ CBOE and Phlx received approval to handle enforcement jurisdiction in this manner. See supra note 6.

effected on a Back-up Exchange under Rule 508. The new section provides that if ISE is the Disabled Exchange, the Back-up Exchange has agreed to apply the per contract and per contract side fees in the ISE fee schedule to transactions in ISE exclusively listed options trading on the ISE facility on the Back-up Exchange. If any other ISE listed options are traded on the Back-up Exchange (such as ISE singly listed options that are listed by the Back-up Exchange) pursuant to ISE Rule 508, the fee schedule of the Back-up Exchange shall apply to such trades. The new section contains a second paragraph stating the converse if ISE is the Back-up Exchange under Rule 508.

Proposed Rule 509

The Exchange proposes to adopt a general emergency rule in proposed Rule 509. Although not directly required for the implementation of the back-up trading arrangements, the Exchange believes that it is appropriate to adopt such a rule in conjunction with implementing the back-up trading arrangements. Currently, there is no Exchange rule that grants specific authority in an emergency to any person or persons to take all actions necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act. In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act,¹⁰ in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest.

¹⁰ 15 U.S.C. 78f(b)(5).

The ISE believes that it is important that it develop back-up trading arrangements in order to minimize the potential disruption and market impact that a Disabling Event could cause. The proposed rule changes are designed to address the key elements necessary to mitigate the effects of a Disabling Event affecting the Exchange, minimize the impact of such an event on market participants, and provide for a liquid and orderly marketplace for securities listed and traded on the Exchange if a Disabling Event occurs. In particular, the proposed rule change is intended to ensure that ISE's exclusively listed and singly listed products will have a trading venue in the event that trading at ISE is prevented due to a Disabling Event. The Exchange believes that having these back-up trading arrangements in place will minimize potential disruptions to the markets and investors if a catastrophe occurs that requires the Exchange's primary facility to be closed for an extended period. Other options exchanges, such as the CBOE and Phlx, have similar arrangements in place,¹¹ and the Exchange believes that it is important to the protection of investors and the public interest that it also adopt rules that allow ISE exclusively and singly listed options to continue to trade in the event of a Disabling Event. The proposed rule change also provides authority for the ISE to provide a back-up trading venue should another exchange be affected by a Disabling Event, which will benefit the markets and investors if a Disabling Event were to happen on another exchange that has entered into a back-up trading arrangement with the ISE. Finally, the proposed rule change grants authority to Exchange officials to take action under emergency conditions, which should enable key actions to be taken by ISE representatives in the event of a Disabling Event, and clarifies the fees that will apply if these back-up trading arrangements are invoked, which will reduce investor confusion and minimize the disruption to investors associated with a Disabling Event.

¹¹ See supra notes 5 and 6.

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

This proposed rule change does not impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As explained above, the Exchange believes that it is important that it have back-up trading arrangements in place in order to minimize the potential disruption and market impact that a Disabling Event could cause. The proposed back-up trading arrangements are not designed to have any competitive impact.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹⁴

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will allow it to immediately enter into a back-up trading arrangement with another exchange, which will enable market participants to continue to trade exclusively and singly listed options of the ISE in the event of a Disabling Event. The Exchange also stated that having this back-up trading arrangement in place is important for the protection of investors and the public interest because it will minimize potential disruptions to the markets and investors that might otherwise occur if the ISE experiences a Disabling Event. Based on the Exchange representations above, and since the proposal is based, in part, on a proposal submitted by the CBOE and approved by the Commission,¹⁷ the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.¹⁸

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action,

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ See supra note 5 and 6.

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁹ of the Act 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 e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2013-61 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-2013-61. 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

¹⁹ 15 U.S.C. 78s(b)(2)(B).

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-2013-61 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.²⁰

Kevin M. O'Neill
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).