

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77410; File No. SR-ISE-2016-07)

March 21, 2016

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate the Strict Concentration Limits on Primary Market Makers

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 March 15, 2016, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange 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

ISE proposes to eliminate the 30% strict cap on the number of Primary Market Maker (“PMM”) memberships that the ISE’s Board of Directors (the “Board”) can approve for an ISE member to operate. The text of the proposed rule change is available on the Exchange’s website at 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

places specified in Item IV below. The Exchange 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 the proposal is to eliminate the 30% strict cap on the number of PMM memberships that the Board can approve for an ISE member to operate.³ ISE Rule 303(b) currently requires the Board show “good cause” to approve any PMM membership that would result in the PMM operating trading privileges associated with more than one PMM membership. The Board may waive the limitations contained in this rule if it determines that good cause has been shown and such action is, in its judgment, in the best interests of the Exchange.⁴ The Board is not permitted, however, to grant this approval if the member and its affiliates would, as a result, be approved to exercise trading privileges associated with more than 30% of all outstanding PMM memberships.⁵ Section 6.5(b) of ISE’s Third Amended and Restated Limited Liability Company Agreement (the “LLC Agreement”) contains the same 30% strict cap as Rule

³ A PMM serves a function similar to that of a specialist on other exchanges. Among other things, a PMM must provide continuous quotations in all assigned options classes. See Rule 804(e)(1); Supplementary Material .01 to Rule 804. There are currently 10 outstanding PMM memberships authorized and issued by the Exchange under its Third Amended and Restated LLC Agreement (the “LLC Agreement”). See LLC Agreement, Section 6.1(a).

⁴ When making its determination whether good cause has been shown to waive the limitations contained in this rule, the Board must consider whether an operational, business or regulatory need to exceed the limits has been demonstrated, and in those cases where such a need is demonstrated, the Board must also consider any operational, business or regulatory concerns may be raised if such a waiver were granted. See Supplementary Material .01 to Rule 303.

⁵ In 2006, the Commission approved an ISE proposal to increase the maximum number of PMM memberships that an ISE member may operate from two to three PMM memberships. See Securities Exchange Act Release No. 53271 (February 10, 2006), 71 FR 8625 (February 17, 2006) (SR-ISE-2005-46) (Approval Order).

303(b). This limitation on exercising PMM trading privileges is in addition to ownership and voting limitations in the LLC Agreement and in the Exchange's rules that prohibit any member from owning (or voting the shares representing) more than 20% of any class of membership.⁶

Due to the continued concentration and specialization in the options market making community, and the decreasing number of market makers available to operate these memberships, the Exchange is proposing to eliminate the 30% cap on the number of PMM memberships that the Board can approve for a member to operate.

As the number of market makers decreases, the Exchange is concerned that there may not be a sufficient number of members qualified to be PMMs if the Exchange retains the current 30% cap (thus limiting a member to operating three PMM memberships). The options markets are highly competitive, and each exchange actively seeks to attract order flow by disseminating tight and liquid markets and by providing a high level of customer satisfaction. Ensuring that the Exchange has high quality PMMs is critical in this competitive battle.

The Exchange believes that the proposed approach is consistent with treatment on other markets that do not have strict market maker concentration limits, and will enable the Board to approve members to operate multiple PMM memberships after the Board determines that good cause has been shown and if doing so would be in the best interest of the Exchange.

The Commission has previously approved rule changes that eliminated mandatory caps on the number of issues that may be allocated to market makers on other markets, such as on Pacific Exchange, Inc. ("PCX") (n/k/a "NYSE Arca"), where the Commission approved a rule change by PCX to eliminate its Lead Market Maker ("LMM") concentration limit of 15% of the

⁶ See LLC Agreement, Section 6.5(a); Supplementary Material .02 to Rule 303. The Exchange is not proposing any changes to the ownership and voting limitations.

issues traded on the PCX options floor.⁷ There, the Commission noted that PCX's concentration limits served the purpose of minimizing the disturbance to a fair and orderly market that may otherwise result from the failure of an LMM. However, the Commission also noted that other exchanges did not impose specified mandatory limits on the number of options that may be allocated to specialists, citing to the rules of the Chicago Board Options Exchange ("CBOE").⁸ In addition, the Commission has previously granted registration to new exchanges that do not have similar concentration limits.⁹

The Exchange recognizes that increasing the number of PMM memberships a member can operate could raise issues regarding concentration of market making expertise. In this regard, the proposed rule change is only an enabling rule. With the proposed change, the Board will still be required to show good cause to approve any member to operate more than one PMM membership, and could consider the number of memberships already by the member in determining whether or not there is good cause shown. Thus, the Board will need to weigh each potential application on its own merits, balancing the potential benefits of allowing a member to exercise more than one PMM membership against any potential concentration concerns. The Board would not be prohibited under the rules and under the LLC Agreement, however, from approving PMMs to operate more than a specified percentage of outstanding memberships.

2. Statutory Basis

⁷ See Securities Exchange Act Release Nos. 47795 (May 5, 2003), 68 FR 25074 (May 9, 2003) (Notice); 48029 (June 13, 2003), 68 FR 37187 (June 23, 2003) (SR-PCX-2002-25) (Approval Order).

⁸ See CBOE Rule 8.84 (Rule 8.84 does not impose a mandatory cap on the number of issues that may be allocated to a Designated Primary Market-Maker ("DPM")).

⁹ See MIAX Options Exchange ("MIAX") Rules.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.¹⁰ In particular, the proposal is consistent with Section 6(b)(5) of the Act,¹¹ because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The options industry continues to experience a consolidation and decrease in the number of market makers and therefore, the Exchange is proposing a rule change that would eliminate the 30% PMM cap and would allow the Board the flexibility to approve or deny each potential PMM application based upon its determination of whether good cause had been shown and if doing so would be in the best interest of the Exchange. Also as noted above, the Commission has previously approved rule changes eliminating mandatory caps on the number of issues that may be allocated to market makers on other markets, and has granted registration to new exchanges that do not have similar concentration limits. The Exchange therefore believes that the proposed rule change is designed to remove impediments to and perfect the mechanisms of a free and open market and a national market system. Furthermore, this proposed rule change would not amend the current prohibitions in the LLC Agreement and in the Exchange's rules against a member owning or voting more than 20% of any class of membership. Thus, the only

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

way a member could operate more than 30% of all outstanding PMM memberships would be to lease such membership, with the lease providing that the lessor retains all voting rights.¹²

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

In accordance with Section 6(b)(8) of the Act,¹³ the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change will increase competition among market makers to be approved as a PMM on the Exchange, thus allowing the Exchange to choose the most qualified PMM that will provide the Exchange with strong market making capabilities. Also as noted above, other markets do not have comparable mandatory caps or concentration limits, so eliminating the 30% PMM cap will bring the Exchange's rules in line with its competitors.

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

The Exchange has neither solicited nor received written comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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

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

¹² See ISE Second A&R Constitution, Section 12.4; Supplementary Material .02 to Rule 303.

¹³ 15 U.S.C. 78f(b)(8).

Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹⁶ As noted above, the Exchange states that waiver of this requirement will allow the Exchange to immediately remove the 30% cap and align its rules with other competing options markets that do not have comparable restrictions. The Exchange also notes that the proposed rule change preserves existing ownership and voting limitations in the LLC Agreement.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

¹⁶ 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).

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-2016-07 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2016-07. 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-2016-07 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.¹⁷

Brent J. Fields
Secretary

¹⁷ 17 CFR 200.30-3(a)(12).