

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56383; File No. SR-ISE-2007-61)

September 11, 2007

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Specific Performance Commitments for Primary Market Makers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 17, 2007, the International Securities Exchange, LLC (“ISE” or “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 substantially prepared by the Exchange. On September 10, 2007, ISE filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

ISE is proposing to amend its rule regarding specific performance commitments for the Exchange’s Primary Market Makers (“PMM”). The text of the proposed rule change is available at the Commission’s Public Reference Room, at the Exchange, and at [www.ise.com](http://www.ise.com).

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 Exchange 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 Exchange is proposing to amend its rule regarding performance commitments for the Exchange's PMMs. Specifically, the Exchange is proposing to amend its Rule 802(b)(2), which currently requires PMMs to submit specific performance commitments when requesting an allocation of options on indices, foreign currency options and Fund Shares (collectively, "Index-Based Products"). The initial rationale behind adopting commitments was to require a stronger commitment for certain competitive products like exchange-traded funds and indices and to assist the Exchange's Allocation Committee when choosing between PMMs seeking the same product. With the recent proliferation of ETFs and indices in the marketplace, and as ISE's practice under this rule has developed, the Exchange believes that the rule is overly broad and a deterrent to these products being allocated effectively. For example, if a certain Index-Based Product is of interest to a single PMM, a performance commitment has no effect because the PMM is not in competition with another PMM. As a consequence of the rule, PMMs are sometimes submitting the broadest commitments allowed, contrary to the intent of the rule. Further, this requirement could discourage some PMMs from seeking allocations altogether if they are expected to maintain additional performance commitments. The Exchange notes that none of the other options exchanges have a similar requirement. ISE therefore proposes to amend the rule so that specific performance commitments need only be submitted upon a request

by the Exchange, thereby eliminating their submission as a uniform requirement.<sup>3</sup>

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>4</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change will strengthen the effectiveness of an existing rule and allow PMMs to seek allocations of more products on the Exchange, thus fostering competition for the benefit of investors.

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

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds

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<sup>3</sup> ISE notes that relaxing the requirement proposed in this filing does not affect a PMM's other obligations as a market maker on the Exchange under Chapter 8 of the Exchange Rules.

<sup>4</sup> 15 U.S.C. 78f(b)(5).

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2007-61 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2007-61. 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 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such 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-2007-61 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>5</sup> 17 CFR 200.30-3(a)(12).