

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59053; File No. SR-ISE-2008-90)

December 4, 2008

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to Alternative 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 November 21, 2008, 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, 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 proposes to amend Rule 802 to provide for an Alternative Primary Market Maker. The text of the proposed rule change is as follows, with additions underlined:

Rule 802. Appointment of Market Makers

(a) no change.

(b) (1) The Board or designated committee will allocate equity options classes into groupings (“Groups” of options) and will make appointments to those Groups rather than individual classes, except as provided in paragraph (f) and Supplementary Material .02 below. Absent an exemption by the Exchange, an appointment of a market maker shall be limited to the options classes trading in no more than one Group for each Membership held by the market maker.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(2) no change.

(c) – (f) no change.

Supplementary Material To Rule 802

.01 no change.

.02 A Member that is approved to act in the capacity of a Competitive Market Maker with respect to one or more CMM Rights may voluntarily be appointed to act as an “Alternative Primary Market Maker,” so long as the Exchange has determined that such Member has the appropriate systems and procedures in place to undertake the responsibilities of a Primary Market Maker.

(a) The Exchange may appoint an Alternative Primary Market Maker to an options class only in the event that no Primary Market Makers or Second Market Primary Market Makers seek allocation of the security.

(b) If no Primary Market Makers or Second Market Primary Market Makers seek allocation of an options class, all eligible Competitive Market Makers will be given notice and an opportunity to seek allocation of the security as an Alternative Primary Market Maker. Such allocations will be made by the Allocation Committee according to the guidelines contained in Rule 802.

(c) An Alternative Primary Market Maker shall have all of the responsibilities and privileges of a Primary Market Maker under the Rules with respect to all appointed options classes.

(d) Options classes allocated to Alternative Primary Market Makers may be traded in the Second Market as provided in Chapter 9 of the Rules. With respect to options classes traded in the First Market, such classes will not be allocated to a particular

Group under Rule 802(b)(1), and all Competitive Market Makers shall be eligible for appointment to such classes.

(e) If an Alternative Primary Market Maker ceases trading of an options class, the class will be reallocated by the Exchange to a Primary Market Maker or another Alternative Primary Market Maker, as appropriate.

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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 Exchange proposes to enhance its market by establishing Alternative Primary Market Makers ("Alternative PMMs"). Currently, when the ISE lists new options classes, it allocates them to one of its Primary Market Makers ("PMMs") under Rule 802. Pursuant to power delegated to the Board, an Allocation Committee, which consists of representatives of Electronic Access Members, makes allocation decisions according to the guidelines contained in Rule 802. Under Rule 802, allocations are voluntary, and at times ISE is unable to list new products because none of the PMMs are interested in trading the class. At other times, ISE must delist certain products due to lack of PMM interest. Most frequently, this occurs with respect to options on

stocks that have pending corporate actions, and options products that are not listed at any other options exchange. Despite the lack of PMM interest, these products may be of interest to other market making firms at the Exchange.

To better enable the Exchange to list and retain these options classes, ISE proposes to appoint Competitive Market Makers (“CMMs”) that meet certain qualifications as Alternative PMMs when none of the PMMs want an allocation.³ Specifically, under this proposal, in order to be appointed as an Alternative PMM, the Exchange must first determine that a CMM has the appropriate systems and procedures in place to undertake the responsibilities of a PMM. Further, before an Alternative PMM is appointed to an options class, that options class will always be offered first to the PMMs or Second Market PMMs (as applicable) under the Exchange’s regular allocation procedure. Rule 802(b)(1) currently states that the Board or a designated committee will make appointments to “Groups” of options rather than individual classes. For the purpose of allocating a product, *i.e.*, an individual options class, to an Alternative PMM, the Exchange proposes to carve out an exception in Rule 802(b)(1) pursuant to which the Allocation Committee shall allocate individual options classes to an Alternative PMM in accordance with Supplementary Material .02 to Rule 802. The options class may be a new listing or a listing that the current PMM or Second Market PMM (as applicable) no longer wishes to make a market in.

Under the proposal, if no PMMs or Second Market PMMs (as applicable) want the allocation, then the Alternative PMMs will be offered the opportunity to serve as PMM in the options class according to ISE’s regular allocation procedures. Once appointed to an options class, the Alternative PMM will have all of the responsibilities and privileges of a PMM under

³ Only CMMs that own or lease CMM Rights shall be eligible to be appointed as an Alternative PMM. That is, Electronic Access Members (“EAMs”) acting as market makers in the Second Market will not be eligible to be appointed as Alternative PMMs.

the Rules with respect to all appointed options classes. For example, Alternative PMMs will enjoy privileges that include, among other things, participation rights and small order execution preference while accepting responsibilities that include, among other things, the obligation to provide continuous quotations in the options class to which the Alternative PMM is appointed, to conducting the opening rotation on a daily basis for as long as the Alternative PMM is appointed to that options class.

Finally, if an Alternative PMM ceases trading of an options class, that options class will be reallocated by the Exchange. An Alternative PMM will not have any transferable rights in options classes to which it is appointed nor will it have any PMM voting rights.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (“Exchange Act”) for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, and 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. In particular, the proposed rule change will allow the Exchange to allocate more new products and continue listing existing products for the benefit of both investors and the Exchange. Further, the Exchange believes that Alternative PMMs will make ISE a more competitive market.

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 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 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. Please include File Number SR-ISE-2008-90 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISE-2008-90. 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 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 ISE. 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-2008-90 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.⁴

Florence E. Harmon
Acting Secretary

⁴ 17 CFR 200.30-3(a)(12).