

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63761; File No. SR-ISE-2011-04)

January 25, 2011

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change to Establish a New Class of Market Participant for Index Options

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 January 12, 2011, 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 ISE proposes to amend its rules to establish a new class of market participant for index options traded on the Exchange. This new class of market participants will trade on the Exchange pursuant to a trading license. The text of the proposed rule change is available on the Exchange’s Web site 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

¹ 15 U.S.C. 78s(b)(1).

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 amend its rules to establish a new class of market participant for index options traded on the Exchange called Index Options Primary Market Makers (“IXPMM”)³ and Index Options Competitive Market Makers (“IXCMM”),⁴ collectively referred to as IXMMs. IXMMs will trade on the Exchange pursuant to a trading license.

ISE currently lists options on 28 cash-settled equity indexes. Currently, three of the 28 indexes – the Russell 2000 Index (RUT), the Nasdaq-100 Index (NDX), and the Mini-Nasdaq-100 Index (MNX) – account for over 90 percent of the total index options volume traded at ISE. Each index options product currently trading on the Exchange is allocated to a Primary Market Maker (“PMM”) and multiple Competitive Market Makers (“CMM”). All current PMMs will retain the right to trade as an IXPMM in all existing and future index products, including Eligible Index Options (as defined in proposed Rule 2013(c)). Similarly, all current CMMs will also retain the right to trade as an IXCMM in all existing and future index products, including Eligible Index Options.

Traditionally, new index products have been allocated as part of the general allocation to the ISE’s “First Market,” which is the general market for higher-volume equity, ETF and index options. The Exchange proposes now to sell trading licenses much like how the Exchange

² 17 CFR 240.19b-4.

³ An IXPMM is defined in proposed ISE Rule 2013(a) as a primary market maker in Eligible Index Options traded on the Exchange pursuant to proposed ISE Rule 2013.

⁴ An IXCMM is defined in proposed ISE Rule 2013(a) as a competitive market maker in Eligible Index Options traded on the Exchange pursuant to proposed ISE Rule 2013.

currently sells foreign currency (“FX”) options trading licenses to FX market makers.⁵ IXPMM allocations would be based on the same methodology ISE currently uses for FXPMMs in its FX products, which is based, in part, on market quality commitments. In addition, existing market makers will have “first right” to be an IXPMM in a new index product if the terms of its application for becoming an IXPMM in that product are equal to those of new market makers.

The Exchange believes that introducing trading licenses for index options will allow for a greater number of market makers to trade new and untested index products. The market maker trading licenses proposed herein do not hold any equity interest in the Exchange. An IXMM who is not a First Market PMM/CMM will not be able to trade in equity or ETF options traded on the Exchange. This proposal would cover new index products and currently-traded index options classes that are delisted by the Exchange and subsequently re-listed.

Under the proposal, Eligible Index Options are (i) index options that have a 6-month average daily volume of less than 10,000 contracts in the US market, and (ii) index options that have a trading history of less than 6 months, in which case the eligibility threshold would be prorated proportionately over the time that an index was listed in the US market. Prior to the listing of an Eligible Index Option, the Exchange will conduct a one-time eligibility test to determine whether an index product is an Eligible Index Option. The Exchange will conduct the eligibility test when an index product is qualified for listing under ISE rules and prior to its certification with the Options Clearing Corporation. The Exchange currently follows this process with regards to the listing of all equity (including ETF) and index option products traded on the Exchange. The following index products are not Eligible Index Options: Russell 2000

⁵ See Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR-ISE-2006-59).

Index (“RUT”), the NASDAQ-100 Index (“NDX”), and the Mini-NASDAQ-100 Index (“MNX”).

Current and future First Market PMMs/CMMs may act in the capacity of an IXCMM for an Eligible Index Option for no additional cost. Current and future First Market PMMs/CMMs may acquire an IXPMM trading right by participating in an auction, which participation requires the submission of a monetary bid and market quality commitments. All things being equal in an auction for a trading right for an Eligible Index Option between a First Market PMM/CMM and a new Member who is not a First Market PMM/CMM, the Exchange shall allocate the Eligible Index Option to the First Market PMM/CMM.

Index options listed on the Exchange prior to December 31, 2010 (“Legacy Index Options”)⁶ already have an IXPMM⁷ assigned thus those products will not be subject to the auction process found in Rule 2013. A Member who is not a First Market PMM/CMM will be required to purchase an IXCMM trading license to trade in Legacy Index Options as an IXCMM. A current and future First Market PMM may trade Legacy Index Options without having to purchase an additional IXMM trading license. In the event a Legacy Index Option is de-listed, any future listing of that Legacy Index Option will be subject to the auction process applicable to PMMs found in Rule 2013.

⁶ As of December 31, 2010, the following indexes are Legacy Index Options: Mini FTSE 100 (symbol, UKX); ISE Semiconductors (BYT); ISE Electronic Trading (DMA); ISE-Revere Natural Gas (FUM); ISE Water (HHO); ISE Homeland Security (HSX); ISE Long Gold (HVY); ISE 250 (IXZ); ISE U.S. Regional Banks (JLO); ISE Oil and Gas Services (OOG); ISE Integrated Oil and Gas (PMP); ISE Bio-Pharmaceuticals (RND); ISE Homebuilders (RUF); ISE SINdex (SIN); ISE Nanotechnology (TNY); ISE Revere Wal-Mart Supplier (WMX); KBW Bank Index (BXX); KBW Mortgage Finance Index (MFX); Morgan Stanley Technology Index (MSH); Morgan Stanley Retail Index (MVR); Nasdaq Q-50 Index (NXTQ); Mini-Russell 2000 (RMN); Russell 1000 Index (RUI); S&P Mid Cap 400 Index (MID); Standard & Poor’s Small Cap 600 Index (SML);

The Exchange will conduct a one-time eligibility test where any index product whose six-month average daily volume (“ADV”) exceeds 10,000 contracts in the US market will not be subject to a market maker trading license. For index options that have a trading history of less than six months, the eligibility threshold would be prorated proportionately over the time that an index was listed. Thus, if an index has a trading history for just three months in the US market, the prorated eligibility threshold applied by ISE would be 20,000 ADV. As noted above, the one-time eligibility test will be conducted prior to the listing of an Eligible Index Option. The Exchange believes that index options trading licenses will attract additional market makers because the costs associated with becoming an index options market maker will be much lower than those associated with becoming a PMM or CMM.

The Exchange notes that while First Market PMMs and CMMs do not have a need to purchase an additional license, a Member who is not currently a First Market PMM/CMM will require an IXMM trading license for each Eligible Index Options product if that Member wants to serve as an IXMM in an Eligible Index Option. Further, a Member may acquire and hold an IXMM trading license only if and for so long as such Member is qualified and approved to be a Member of the Exchange. An IXMM trading license is not transferable and may not be, in whole or in part, transferred, assigned, sublicensed or leased; provided, however, that the holder of the IXMM trading license may, with the prior written consent of the Exchange, transfer it to a qualified and approved Member (i) who is an affiliate or (ii) who continues substantially the same business of such trading right holder without regard to the form of the transaction used to achieve such continuation, e.g., merger, sale of substantially all assets, reincorporation,

⁷ The current PMM is deemed the IXPMM for Legacy Index Options and will receive an IXPMM trading license in the Legacy Index Option.

reorganization or the like.⁸ A Member may purchase an unlimited amount of IXMM trading licenses across all Eligible Index Options.⁹

Once an IXPMM obtains a trading license in an Eligible Index Option, the IXPMM will have all of the responsibilities and privileges of a PMM under the Exchange's rules. For example, IXPMMs 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 an Eligible Index Option for which it has a trading license, to conducting the opening rotation on a daily basis for as long as the IXPMM retains a trading license in an Eligible Index Option. Similarly, once an IXCMM obtains a trading license in an Eligible Index Option, the IXCMM will have all the responsibilities and privileges under the Exchange's rules.¹⁰

Proposed ISE Rule 2013(e) relates specifically to IXPMMs and states that there will be one (1) IXPMM per each Eligible Index Option and that all IXPMM trading licenses shall be permanently granted as long as the IXPMM meets its stated market quality commitments, except that the Board or designated committee may suspend or terminate any trading license of a market maker whenever, in the Board's or designated committee's judgment, the interests of a fair and orderly market are best served by such action. Further, IXPMM trading licenses will be sold by means of a sealed bid auction conducted by the Exchange. The price at which an IXPMM trading license is sold in an auction shall be referred to as the "Auction Price." The Auction

⁸ See Proposed ISE Rule 2013(b).

⁹ See Proposed ISE Rule 2013(d).

¹⁰ In this Filing, the Exchange also proposes to amend ISE Rule 802(b) to permit the allocation of Eligible Index Options, subject to proposed Rule 2013. As a result, market makers in Eligible Index Options will be subject to the obligations imposed on Exchange market makers, per Chapter 8 of the Exchange's rules.

Price paid by an IXPMM shall remain unchanged for as long as an IXPMM retains a trading license in the Eligible Index Option. The Exchange will conduct one (1) sealed bid auction per Eligible Index Option for an IXPMM trading license. Together with its bid, a Member seeking an IXPMM trading license must provide, at a minimum, market quality commitments regarding (i) the average quotation size it will disseminate in an Eligible Index Option, and (ii) the maximum quotation spread it will disseminate in such product at least ninety percent (90%) of the time. At the end of the auction, the Exchange will determine the winning bidder for an IXPMM trading license based on bid amount and market quality commitment, and may reject a bid if the Exchange deems a market quality commitment to be unrealistic or significantly inferior to market quality commitments submitted by other bidding Members.

Additionally, under proposed Rule 2013(e)(4), the Exchange will measure market quality commitments on a quarterly basis to ensure IXPMMs are in compliance with their stated commitments. Failure to meet stated commitments may, at the discretion of the Exchange and subject to the procedural protections provided under the rules of the Exchange,¹¹ result in ISE terminating an allocation and conducting an auction to reallocate the failing IXPMM's Eligible Index Option to another Member.¹² The IXPMM may only change its market quality commitment to the extent that the new commitments are an improvement to its existing commitment.

Under proposed Rule 2013(e)(5), current market makers shall be given priority to purchase a IXPMM trading license in an Eligible Index Option so long as the terms of a current

¹¹ See Chapter 17 of ISE Rules.

¹² A Member seeking an allocation of a failing IXPMM's Eligible Index Option will be required to compete for that allocation much the same way that the failing IXPMM competed to get the allocation initially.

market maker's bid to purchase an IXPMM trading license in an Eligible Index Option, as well as its market quality commitments for the Eligible Index Option, are equal to those of Members that are not currently a market maker on the Exchange. After an IXPMM has purchased a trading license, the IXPMM has the ability to terminate its obligations as an IXPMM in an index option if the IXPMM is unable to meet its obligations, provided the IXPMM gives at least 60 days prior written notice to the Exchange of such termination. In the event the Exchange is unable to re-allocate the IXPMM's index option product within the notice period and the index option product is singly listed on ISE, then the IXPMM shall continue to fulfill its obligations in that product until all open interest has been closed.

Proposed ISE Rule 2013(f) relates specifically to IXCMMs and states that there shall be an unlimited number of IXCMM trading licenses available for purchase by Members who are not currently PMMs or CMMs. PMMs and CMMs who want to be an IXCMM may request and will be given an IXCMM trading license without having to pay any additional fee. By virtue of their status as market makers in the Exchange's primary market, PMMs and CMMs are deemed qualified to serve as a market maker in an Eligible Index Option. Additionally, all IXCMM trading licenses shall be for a term of one year. An IXCMM who is not currently a PMM or a CMM shall be subject to a fee established by the Exchange. The Exchange may sell IXCMM trading licenses at any time during a calendar year. IXCMM trading licenses sold during a calendar year shall be prorated to reflect the number of trading days in the year. Finally, all IXCMM trading licenses shall expire at the end of the calendar year in which they are issued but will be renewed, upon request by PMMs and CMMs, for subsequent years on an annual basis. An IXCMM, however, may terminate its trading license prior to its scheduled expiration by providing at least 10 days prior written notice to the Exchange of such termination.

The Exchange believes that the procedures under which market maker trading licenses will be made available are calculated to comply with the requirements of Section 6(b)(2) of the Exchange Act regarding fair access to the facilities of a registered exchange. The sealed bid auction, by which IXPMM trading licenses will be sold, requires potential bidders to provide the Exchange with market quality commitments along with a bid. The Exchange believes that this added measure of qualification will enable the Exchange to sell these market maker trading licenses in an objective manner without solely awarding a trading license to the highest bidder.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)¹³ of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5)¹⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system in a manner consistent with the protection of investors and the public interest. In particular, the Exchange believes the proposed rule change will attract additional market makers in low-volume index options to the Exchange because the costs associated with becoming an index options market maker will be much lower than those associated with becoming a PMM or CMM thus providing for open access to market makers.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

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

The proposed rule change does not impose any burden on competition.

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 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate 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 or disapprove the 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 No. SR-ISE-2011-04 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISE-2011-04. 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 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-2011-04 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Elizabeth M. Murphy
Secretary

¹⁵ 17 CFR 200.30-3(a)(12).