SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65100; File No. SR-ISE-2011-33)

August 11, 2011

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval to a Proposed Rule Change Relating to Appointments to Competitive Market Makers

I. Introduction

On June 10, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b-4 thereunder,[3] a proposed rule change to revise the manner in which Competitive Market Makers are appointed to options classes. The proposed rule change was published for comment in the Federal Register on June 28, 2011.[4] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The ISE's membership is divided into three categories, Primary Market Makers ("PMMs"), Competitive Market Makers ("CMMs") and Electronic Access Members. There are 10 PMM trading rights and 160 CMM trading rights (collectively "market maker rights"). In order to access the Exchange as a market maker, a member must own or lease one or more market maker rights. EAMs are not required to purchase such a right in order to access the Exchange. Under the current structure, options traded on the Exchange are divided into 10

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1 15 U.S.C. 78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

4 See Securities Exchange Act Release No. 64719 (June 22, 2011), 76 FR 37863 ("Notice").

groups, with one of the 10 PMM trading rights and 16 of the 160 CMM trading rights appointed to each group. Thus, each PMM and CMM trading right is associated with a specific group of options. Under the existing structure, a member is required to own and/or lease 10 CMM trading rights (one in each of the 10 options groups) in order to have the ability to make markets in all of the options classes traded on the Exchange. Moreover, because the number of options classes contained in each group varies, CMM trading rights currently represent 10 different levels of participation.

The Exchange proposes to change the structure of CMM appointments to allow CMMs to seek appointment in the options classes listed on the Exchange across the groups of options assigned to particular PMMs. Under the proposal, the Exchange will assign points to each options class equal to its percentage of overall industry volume (not including exclusively-traded index options), rounded down to the nearest tenth of a percentage. A CMM will be able to seek appointments to options classes that total: (i) 20 points for the first CMM trading right it owns or leases; and (ii) 10 points for the second and each subsequent CMM trading right it owns or leases.[5] CMMs will be able to change their appointments at any time upon advance notification to the Exchange.[6] The Exchange will provide members with a transition period of 30 to 60 days following approval of the proposed rule change. During the transition period, the Exchange will

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5 Under the proposal, CMMs can select the options classes to which they seek appointment, but the Exchange retains the authority to make such appointments and to remove appointments from CMMs based on their performance. Under the proposal, either the Exchange or a committee designated by the Board will be permitted to make appointments.

6 The Exchange will notify CMMs of the procedure for requesting changes to their appointments, including the length of advance notification required. The Exchange will establish the shortest advance notification period that is operationally feasible, such as a specific time on the day prior to the intended effectiveness of a change in a CMM's appointments, or by a specified time prior to the opening on the same trading day.

work with existing market makers to restructure their appointments within the new point-based structure.

The proposal seeks to standardize the level of access gained by owning or leasing a CMM trading right. In addition, the proposal will make additional memberships available. Specifically, by assigning 20 points to the first CMM trading right owned or leased by a member and 10 points to each subsequent CMM trading right owned or leased by the same member, only 9 CMM trading rights (instead of 10) will be required to cover the entire ISE market.

The Exchange also proposes to adjust its CMM quotation requirements to reflect the proposed elimination of specified groups of options associated with CMM trading rights. Under the current structure, CMMs are required to participate in the opening and provide continuous quotations in a minimum number of options classes in each of their assigned groups. Since CMMs will have the flexibility to choose the options classes to which they are appointed, rather than being appointed to a pre-determined group of options, the Exchange proposes to modify this requirement to limit the number of appointed options classes in which a CMM can initiate intraday quoting to the number of options classes in which it participates in the opening rotation.

Under the current rules, a CMM is required to participate in the opening in 60% of the options classes in its appointed group of options or 40 options classes, whichever is lesser. If, for example, a CMM is appointed to a group with 100 options classes, then it must participate in the opening for 40 options classes and may initiate intra-day quoting in 60 options classes. Under the proposed structure, a CMM appointed to 100 options classes that participates in the opening in 40 options classes may only initiate intra-day quoting in 40 additional classes. Additionally, under the proposal the Exchange will retain the current requirement that once a CMM enters a quotation in an appointed options class, it must maintain continuous quotations for that series and at least 60% of the series of the options class until the close of trading that day. CMMs will also continue to be subject to the quotation requirements contained in Rule 803 and 804. If a CMM receives Preferenced Orders in an options class, it will continue to be required to maintain continuous quotations in at least 90% of the series in that class. The Exchange will continue to have the ability under its rules to call upon a CMM to submit quotations in one or more series of an options class to which the CMM is appointed.

Finally, the Exchange proposes to terminate its current CMM inactivity fee. That fee currently imposes a charge of $25,000 a month for CMM trading rights that are not active. The purpose of the fee is to help recoup a portion of the income that the Exchange loses when market makers do not operate their trading rights and generate transaction-based revenue. Under the proposed CMM trading rights structure, the Exchange does not believe that the inactivity fee is appropriate or necessary, as CMMs will now be able to manage the number of options classes to which they are appointed.[7] Moreover, the Exchange believes that there will be increased demand for CMM trading rights, and that owners of such rights will have a financial incentive to sell or lease any unused trading rights. If this does not turn out to be the case, the Exchange states that it will consider reinstituting some form of inactivity fee that is appropriate for the new structure.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements

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7 For example, under the current structure, a CMM that owns or leases three CMM trading rights is obligated to continuously quote a minimum of 120 options classes. Under the new structure, a CMM with three trading rights could seek appointment for only three options classes (one for each trading right), thus making the inactivity fee ineffective.

of the Act and the rules and regulations thereunder applicable to a national securities exchange[8] and, in particular, the requirements of Section 6 of the Act.[9] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission also believes that the proposal is consistent with Section 6(b)(4) of the Act,[11] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable fees and other charges among the Exchange's members and issuers and other persons using its facilities.

In particular, the Commission believes that the proposal should allow CMMs additional flexibility to choosing their appointed classes.[12] The Commission notes that potential market makers will be able to purchase or lease newly-available CMM trading rights. Under the proposal, CMMs can select the options classes to which they seek appointment, but the Exchange

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[8] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(4).

[12] The Commission also notes that the new structure is similar to the Chicago Board Options Exchange's ("CBOE") rules, which permit its market makers to choose the options to which they are appointed. See CBOE Rule 8.3.

retains the authority to make such appointments and to remove appointments from CMMs based on their performance.[13] In addition, because a PMM will continue to be appointed to each options class, there will continue to be continuous, two-sided quotations in all options listed on the Exchange.[14]

The Exchange proposes to limit the number of appointed options classes in which a CMM can initiate intraday quoting to the number of options classes in which it participates in the opening rotation. The Commission notes that CMMs will also continue to be subject to the quotation requirements contained in Rules 803 and 804. In addition, once a CMM enters a quotation in an appointed options class, it must maintain continuous quotations for that series and at least 60% of the series of the options class until the close of trading that day.[15] If a CMM receives Preferenced Orders in an options class, it will continue to be required to maintain continuous quotations in at least 90% of the series in that class.[16] Also, the Exchange will continue to have the ability under its rules to call upon a CMM to submit quotations in one or more series of an options class to which the CMM is appointed.[17]

Finally, the Exchange proposes to eliminate its current charge of $25,000 a month for CMM trading rights that are not active. The Exchange states that the inactivity fee is not appropriate or necessary, as CMMs will now be able to manage the number of options classes to

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13 ISE Rule 802(e)-(f).

14 Pursuant to Rule 804(a)(2), PMMs have the obligation to provide continuous quotations in all of the series of all of the options to which they are appointed.

15 ISE Rule 804(e)(2)(iii).

16 ISE Rule 804(e)(2)(iii).

17 ISE Rule 802(e)(2)(iv).

which they are appointed. The Commission believes that the proposal is consistent with Section 6(b)(4) of the Act.[18]

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR-ISE-2011-33), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Elizabeth M. Murphy
Secretary

[18] 15 U.S.C. 78f(b)(4).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30-3(a)(12).