SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69329; File No. SR-ISE-2013-22)

April 5, 2013

Self-Regulatory Organizations; International Securities Exchange LLC; Order Approving, on an Accelerated Basis, Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, to Suspend Certain Market Maker Quotation Requirements and to Suspend Rule 720 Regarding Obvious Errors During Limit Up-Limit Down States in Securities that Underlie Options Traded on the ISE

I. Introduction

On March 8, 2013 the International Securities Exchange, LLC (the "Exchange" or "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 provide for how the Exchange proposes to treat market-making quoting obligations and trading errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility. The proposed rule change was published for comment in the Federal Register on March 18, 2013.[4] On March 12, 2013, the Exchange submitted Amendment No. 1 to the proposed rule change.[5] The Exchange then submitted Amendment No. 2 on March 19, 2013.[6]

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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. 69110 (March 11, 2013), 78 FR 16726 ("Notice").

5 In Amendment No. 1, the Exchange submitted Exhibit 2 to the filing, which the Exchange inadvertently omitted when the filing was first submitted. Because the changes made in Amendment No. 1 do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

6 In Amendment No. 2, the Exchange noted that its Order Protection rule will continue to apply during Limit and Straddle States and represented that it would conduct its own analysis concerning the elimination of obvious error rule during Limit and Straddle States and agreed to provide the Commission with relevant data to assess the impact of the

The Commission received one comment letter on the proposal.[7] This order approves the proposed rule change on an accelerated basis.

II. Background

On May 6, 2010, the U.S. equity markets experienced a severe disruption that, among other things, resulted in the prices of a large number of individual securities suddenly declining by significant amounts in a very short time period before suddenly reversing to prices consistent with their pre-decline levels.[8] This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices. One response to the events of May 6, 2010, was the development of the single-stock circuit breaker pilot program, which was implemented through a series of rule filings by the equity exchanges and by FINRA.[9] The single-stock circuit breaker was designed to reduce extraordinary market volatility in NMS stocks by imposing a five-minute trading pause when a trade was executed at a price outside of a specified percentage threshold.[10]

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proposal. Because the changes made in Amendment No. 2 do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, Amendment No. 2 is not subject to notice and comment.

7 See Letter to David Dimitrious, Senior Special Counsel, Division of Trading and Markets, Commission, from Michael Simon, General Counsel, ISE, dated April 4, 2013 ("ISE Letter").

8 The events of May 6 are described more fully in a joint report by the staffs of the Commodity Futures Trading Commission ("CFTC") and the Commission. See Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, "Findings Regarding the Market Events of May 6, 2010," dated September 30, 2010, available at http://www.sec.gov/news/studies/2010/marketevents-report.pdf.

9 For further discussion on the development of the single-stock circuit breaker pilot program, see Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) ("Limit Up-Limit Down Plan" or "Plan").

10 See Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR-FINRA-2010-033) (describing the

To replace the single-stock circuit breaker pilot program, the equity exchanges filed a National Market System Plan[11] pursuant to Section 11A of the Act,[12] and Rule 608 thereunder,[13] which featured a "limit up-limit down" mechanism (as amended, the "Limit Up-Limit Down Plan" or "Plan").

The Plan sets forth requirements that are designed to prevent trades in individual NMS stocks from occurring outside of the specified price bands. The price bands consist of a lower price band and an upper price band for each NMS stock. When one side of the market for an individual security is outside the applicable price band, i.e., the National Best Bid is below the Lower Price Band, or the National Best Offer is above the Upper Price band, the Processors[14] are required to disseminate such National Best Bid or National Best Offer[15] with a flag identifying that quote as non-executable. When the other side of the market reaches the applicable price

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"second stage" of the single-stock circuit breaker pilot) and Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (describing the "third stage" of the single-stock circuit breaker pilot).

11 NYSE Euronext filed on behalf of New York Stock Exchange LLC ("NYSE"), NYSE Amex LLC ("NYSE Amex"), and NYSE Arca, Inc. ("NYSE Arca"), and the parties to the proposed National Market System Plan, BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated ("CBOE") , Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the "Participants"). On May 14, 2012, NYSE Amex filed a proposed rule change on an immediately effective basis to change its name to NYSE MKT LLC ("NYSE MKT"). See Securities Exchange Act Release No. 67037 (May 21, 2012) (SR-NYSEAmex-2012-32).

12 15 U.S.C. 78k-1.

13 17 CFR 242.608.

14 As used in the Plan, the Processor refers to the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act. See id.

15 "National Best Bid" and "National Best Offer" has the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act. See id.

band, i.e., the National Best Offer reaches the lower price band, or the National Best Bid reaches the upper price band, the market for an individual security enters a 15-second Limit State, and the Processors are required disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation. Trading in that stock would exit the Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange will declare a five-minute trading pause, which is applicable to all markets trading the security.

The Primary Listing Exchange may also declare a trading pause when the stock is in a Straddle State, i.e., the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State. In order to declare a trading pause in this scenario, the Primary Listing Exchange must determine that trading in that stock deviates from normal trading characteristics such that declaring a trading pause would support the Plan's goal to address extraordinary market volatility.[16]

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[16] As set forth in more detail in the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would be able to disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless may be inadvertently submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

On May 31, 2012, the Commission approved the Plan as a one-year pilot, which shall be implemented in two phases.[17] The first phase of the Plan shall be implemented beginning April 8, 2013.[18]

III. Description of the Proposal

1. Market Maker Quoting Obligations

In light of the Plan, the Exchange has proposed to suspend the maximum quotation spread requirement for market maker quotes contained in Rule 803(b)(5) and the continuous market maker quotation requirements contained in Rule 804(e) when the security underlying an option class is in a Limit State or Straddle State. Concerning the calculation of a market maker's quoting obligation, the Exchange will not consider the time periods associated with Limit and Straddle States when evaluating whether a market maker complied with the continuous quotation requirements contained in Rule 804(e).

The Exchange represented that market makers should be exempted from their continuous quoting obligations during Limit and Straddle states because during such periods, market makers could not be certain whether they could buy or sell an underlying security, or if they could, at what price or quantity. The Exchange's corresponding proposal to suspend the maximum quotation spread requirement during Limit or Straddle States is intended to encourage market makers to choose to provide liquidity during such states. According to the Exchange, allowing options market makers the flexibility to choose whether to enter quotes and to do so without

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17 See "Limit Up-Limit Down Plan," supra note 9. See also Securities Exchange Act Release No. 68953 (February 20, 2013), 78 FR 13113 (February 26, 2013) (Second Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., et al.) and Securities Exchange Act Release No. 69062 (March 7, 2013), 78 FR 15757 (March 12, 2013) (Third Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., et al.)

18 See "Second Amendment to Limit Up-Limit Down Plan," supra note 17.

spread restrictions is necessary to encourage market makers to provide liquidity in options classes overlying securities that may enter a Limit State or Straddle State.

Additionally, the Exchange notes that all other requirements relating to market maker quotes will remain applicable to market makers that choose to enter quotes during a Limit or Straddle State. For instance, the Exchange represents that market makers would still be subject to the obligation to maintain fair and orderly markets in their appointed classes, and they would still be prohibited from making bids or offers or entering into transactions that are inconsistent with such course of dealings.[19]

2. Obvious Error

In connection with the implementation of the Plan, the Exchange proposes to adopt new Rule 703A(d) to exclude transaction that occur during a Limit State or Straddle State from the obvious error or catastrophic error review, nullification, and adjustment procedures pursuant to Rule 720 for a one year pilot ending April 8, 2014.

Rule 720 provides a process by which a transaction may be busted or adjusted when the execution price of a transaction deviates from the option's theoretical price by a certain amount. Under Rule 720(a)(3)(i), the theoretical price is the national best bid price for the option with respect to a sell order and the national best offer for the option with respect to a buy order, just prior to the trade in question. In certain circumstances, Exchange officials have the discretion to determine the theoretical price pursuant to Rule 720(a)(3)(ii).[20]

The Exchange believes that neither method is appropriate during a Limit State or Straddle State. According to the Exchange, during a Limit State or Straddle State, options prices may

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[19] See Notice, supra note 4, 78 FR at 16728-16729.

[20] Rule 720 provides that if there are no quotes from other options exchanges for comparison purposes, the theoretical price will be determined by designated personnel in the Exchange's market control center.

deviate substantially from those available prior to or following the state. The Exchange believes this provision would give rise to much uncertainty for market participants as there is no bright line definition of what the theoretical price should be for an option when the underlying NMS stock has an unexecutable bid or offer or both. Because the approach under Rule 720(a)(3)(i) by definition depends on a reliable NBBO, the Exchange does not believe that approach is appropriate during a Limit State or Straddle State.

With respect to Rule 720(a)(3)(ii) affording discretion to designated personnel in the Exchange's market control center to determine the theoretical price, the Exchange notes that does not believe it would be reasonable for ISE personnel to derive theoretical prices to be applied to transactions executed during such unusual market conditions, given that options market makers and other industry professionals will have difficulty pricing options during Limit States and Straddle States.

Ultimately, the Exchange believes the application of the current rule would be impracticable given the lack of a reliable national best bid or offer in the options market during Limit States and Straddle States, and would produce undesirable effects. The Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange, thus promoting fair and orderly markets. On balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying these provisions during such unusual market conditions. In further support of its proposed rule change, in Amendment No. 2, the Exchange noted that Rule 1901 (Order Protection) would continue to apply during Limit States and Straddle States. According to the Exchange, the application of Rule 1901 would mean that only orders identified as

Intermarket Sweep Orders will trade through protected bids and offers during Limit and Straddle States, and as a result, the only trades that would potentially have been reviewed under Rule 720 during Limit and Straddle States are those involving Intermarket Sweep Orders.

Therefore, the Exchange proposes to adopt 703A(d) to provide that transactions executed during a Limit State or Straddle State are not subject to the provisions of Rule 720.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange.[21] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[22] which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and 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 regulation, 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.

The Commission finds that the proposal to suspend a market maker's obligations when the underlying security is in a limit up-limit down state is consistent with the Act. During a

21 In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

22 15 U.S.C. 78f(b).

limit up-limit down state, there may not be a reliable price for the underlying security to serve as a benchmark for market makers to price options. In addition, the absence of an executable bid or offer for the underlying security will make it more difficult for market makers to hedge the purchase or sale of an option. Given these significant changes to the normal operating conditions of market makers, the Commission finds that the Exchange's decision to suspend a market maker's obligations in these limited circumstances is consistent with the Act.

The Commission notes, however, that the Plan was approved on a pilot basis and its Participants will monitor how it is functioning in the equity markets during the pilot period. To this end, the Commission expects that, upon implementation of the Plan, the Exchange will continue monitoring the quoting requirements that are being amended in this proposed rule change and determine if any necessary adjustments are required to ensure that they remain consistent with the Act.

In addition, the Commission finds that the Exchange's proposed rule change to exclude transactions that occur during a Limit State or Straddle State from the obvious error or catastrophic error review, nullification, and adjustment procedures pursuant to Rule 720 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[23] in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the

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[23] 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

In the filing, the Exchange notes its belief that excluding transactions executed during a Limit State or Straddle State from the provisions of Rule 720 will ensure that limit orders that are filled during a Limit or Straddle State will have certainty of execution in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The Exchange believes the application of the current rule would be impracticable given what it perceives will be the lack of a reliable NBBO in the options market during Limit States and Straddle States, and that the resulting actions (i.e., busted trades or adjusted prices) may not be appropriate given market conditions. In addition, given the Exchange's view that options prices during Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes that providing market participants time to re-evaluate a transaction executed during a Limit or Straddle State will create an unreasonable adverse selection opportunity that will discourage participants from providing liquidity during Limit States or Straddle States.

The Exchange, however, has proposed this rule change based on its expectations about the quality of the options market during Limit States and Straddle States. The Exchange states, for example, that it believes that application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options market during Limit States and Straddle States. Given the Exchange's recognition of the potential for unreliable NBBOs in the options markets during Limit States and Straddle States, the Commission is concerned about the extent to which investors may rely to their detriment on the quality of quotations and price discovery in the options markets during these periods. This concern is heightened by the Exchange's proposal to exclude transactions that occur during a Limit State or Straddle State from the obvious error or catastrophic error review procedures pursuant to Rule 720. The Commission urges investors and market professionals to exercise caution when considering trading options under these circumstances. Broker-dealers also should be mindful of their obligations to customers that may or may not be aware of specific options market conditions or the underlying stock market conditions when placing their orders.

While the Commission remains concerned about the quality of the options market during the Limit and Straddle States, and the potential impact on investors of executing in this market without the protections of the obvious or catastrophic error rules that are being suspended during the Limit and Straddle States, it believes that certain aspects of the proposal could help mitigate those concerns.

First, despite the removal of obvious and catastrophic error protection during Limit States and Straddle States, the Exchange states that there are additional measures in place designed to protect investors. For example, the Exchange states that by rejecting market orders and cancelling pending market orders, only those orders with a limit price will be executed during a Limit State or Straddle State. The Exchange also notes that, pursuant to ISE Rule 705(d), the Exchange may compensate Members for losses resulting directly from the malfunction of the Exchange's systems, and that this protection is independent from ISE Rule 720. Additionally, the Exchange notes the existence of SEC Rule 15c3-5 requiring broker-dealers to have controls and procedures in place that are reasonably designed to prevent the entry of erroneous orders. Finally, with respect to limit orders that will be executable during Limit States and Straddle States, the Exchange states that it applies price checks to limit orders that are priced sufficiently far through the NBBO. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying Rule 720 during such unusual market conditions.

The Exchange also noted that during the pilot period it will evaluate whether adopting a provision that permits the Exchange to review trades on its own motion trades during Limit and Straddle states is necessary and appropriate.

Finally, the Exchange has proposed that the changes be implemented on a one year pilot basis. The Commission believes that it is important to implement the proposal as a pilot. The one year pilot period will allow the Exchange time to assess the impact of the Plan on the options marketplace and allow the Commission to further evaluate the effect of the proposal prior to any proposal or determination to make the changes permanent. To this end, in Amendment No. 2, the Exchange has committed to: (1) evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally, the Exchange has agreed to provide the Commission with data requested to evaluate the impact of the elimination of the obvious error rule, including data relevant to assessing the various analyses noted above. On April 4, 2013, the Exchange submitted a letter stating that it would provide specific data to the Commission and the public and certain analysis to the Commission to evaluate the impact of Limit States and Straddle States on liquidity and market quality in the options markets.[24] This

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24 In particular, the Exchange represented that, at least two months prior to the end of the one year pilot period of proposed Rule 703A(d), it would provide to the Commission an evaluation of (i) the statistical and economic impact of Straddle States on liquidity and market quality in the options market and (ii) whether the lack of obvious error rules in effect during the Limit States and Straddle States are problematic. In addition, the

will allow the Commission, the Exchange, and other interested parties to evaluate the quality of the options markets during Limit States and Straddle States and to assess whether the additional protections noted by the Exchange are sufficient safeguards against the submission of erroneous trades, and whether the Exchange's proposal appropriately balances the protection afforded to an erroneous order sender against the potential hazards associated with providing market participants additional time to review trades submitted during a Limit State or Straddle State.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act[25] for approving the proposed rule change on an accelerated basis. This proposal is related to the Plan, which will become operative on April 8, 2013. Without accelerated approval, the proposed rule change would take effect after the Plan's implementation date. Accordingly, the

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Exchange represented that each month following the adoption of the proposed rule change it would provide to the Commission and the public a dataset containing certain data elements for each Limit State and Straddle State in optionable stocks. The Exchange stated that the options included in the dataset will be those that meet the following conditions: (i) the options are more than 20% in the money (strike price remains greater than 80% of the last stock trade price for calls and strike price remains greater than 120% of the last stock trade price for puts when the Limit State or Straddle State is reached); (ii) the option has at least two trades during the Limit State or Straddle State; and (iii) the top ten options (as ranked by overall contract volume on that day) meeting the conditions listed above. For each of those options affected, each dataset will include, among other information: stock symbol, option symbol, time at the start of the Limit State or Straddle State and an indicator for whether it is a Limit State or Straddle State. For activity on the Exchange in the relevant options, the Exchange has agreed to provide executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during Limit States and Straddle States, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit State or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit State or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit State or Straddle State. See ISE Letter, supra note 7.

25 15 U.S.C. 78s(b)(2)

Commission finds that good cause exists for approving the proposed rule change, as modified by Amendments Nos. 1 and 2, on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act[26] that the proposed rule change (SR-ISE-2013-22), as modified by Amendments Nos. 1 and 2, is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill
Deputy Secretary

[26] 15 U.S.C. 78f(b)(2).

[27] 17 CFR 200.30-3(a)(12).