

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65534; File No. SR-ISE-2011-58)

October 12, 2011

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Competitive Market Maker Trading Rights

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 October 3, 2011, the 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 Exchange. 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 Exchange proposes to refine how it assigns point values to options classes for purposes of Competitive Market Maker trading rights. The text of the proposed rule change is as follows, with deletions marked in [brackets] and additions underlined:

Rule 802. Appointment of Market Makers

- (a) No change.
- (b) No change.
- (c) Appointments to Competitive Market Makers. Competitive market makers may request appointments to options classes traded on the Exchange, subject to the trading

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

licensing requirements of Rule 2013 with respect to index options and Rule 2213 with respect to foreign currency options.

(1) On a quarterly basis, the Exchange shall 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] one hundredth of a percentage with a maximum of 15 points. New listings [with no industry volume in the previous quarter] will be assigned a point value of zero for the remainder of the quarter in which it was listed.

(2) No change.

(3) No change.

(d) The Exchange may suspend or terminate any appointment of a market maker under this Rule and may make additional appointments whenever, in the Exchange's judgment, the interests of a fair and orderly market are best served by such action. In the case of an Index-Based Product, during the term of that appointment, the Exchange may also base a decision to suspend or terminate a Primary Market Maker's appointment on the failure of the Primary Market Maker to meet the terms of its commitments under paragraph (b)(1) above.

(e) Market Maker Performance. In making appointments to market makers, the Exchange may evaluate the performance of market makers relating to, among other things, quality of markets, competition among market makers, observance of ethical standards, and administrative factors. The Exchange may consider any relevant information, including but not limited to the results of a market maker evaluation questionnaire, trading data, a market maker's regulatory history and such other factors and data as may be pertinent in the circumstances. Moreover, failure by a market maker to meet minimum performance standards may result in,

among other things: (1) suspension, termination or restriction of an appointment to one or more of the options classes appointed to the market maker [within the market maker's appointed Group]; (2) restriction of appointments to additional options classes [in the market maker's appointed Group]; or (3) suspension, termination, or restriction of the market makers registration.

Supplementary Material to Rule 802

.01 - .02 No change.

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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 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 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 recently changed the structure of Competitive Market Maker ("CMM") appointments to give market makers flexibility to choose the options classes to which they are appointed.³ Under this structure, the Exchange assigns 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 is then permitted to seek appointments to

³ See Securities Exchange Act Release No. 65100 (Aug. 11, 2011), 76 FR 51075 (Aug. 17, 2011) (order approving SR-ISE-2011-33).

options classes that total twenty points for the first CMM trading right owned or leased by a member, and ten points for each subsequent CMM trading right owned or leased by the same member.⁴

The Exchange proposes to make three refinements to the point values assigned to certain options classes. First, to prevent any one symbol from having a disproportionate weight with respect to CMM trading rights, the Exchange seeks to cap the total number of points an options class is assigned to 15 (equivalent to 15 percent of industry volume). Second, since point values are refreshed on a quarterly basis, we seek to clarify that any new ISE listings during a quarter will have a point value of zero until a point value is determined at the end of the quarter. Finally, when assigning point values, the Exchange proposes to round down to the nearest hundredth of a percentage, rather than a tenth of a percentage, to more precisely reflect an options class' percentage of industry volume.

Finally, the Exchange proposes to make four changes to Rule 802. First, the Exchange proposes to add the words 'whenever, in the' to Rule 802(d). Second, the Exchange proposes to add the words 'appointed to the market maker' to Rule 802(e)(1). Third, the Exchange proposes to delete the words 'within the market maker's appointed Group' from Rule 802(e)(1). Fourth, the Exchange proposes to delete the words 'in the market maker's appointed Group' from Rule 802(e)(2). The Exchange inadvertently failed to make these rule text changes when it recently amended Rule 802.⁵

⁴ 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. See ISE Rule 802.

⁵ See supra note 3.

2. 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 proposal will provide clarity to members regarding how points are assigned to options classes for purposes of CMM trading rights, and assure that the process is administered in an efficient manner.

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

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)⁶ of the Act and Rule 19b-4(f)(6) thereunder.⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or 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 Exchange 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-2011-58 in the subject line.

Paper comments

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

⁶ 15 U.S.C. 78s(b)(3)(A). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁷ 17 CFR 240.19b-4(f)(6).

All submissions should refer to File Number SR-ISE-2011-58. 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 Commissions 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 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-2011-58 and should be submitted by [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.⁸

Elizabeth M. Murphy
Secretary

⁸ 17 CFR 200.30-3(a)(12).