

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71213; File No. SR-ISE-2013-70)

December 31, 2013

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Schedule of Fees

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 December 23, 2013, 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 its Schedule of Fees to waive CMM membership application fees for affiliated CMMs, and to charge an incremental annual regulatory fee for such CMMs. The text of the proposed rule change is available on the Exchange's website (<http://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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 purpose of this proposed rule change is to waive Competitive Market Maker (“CMM”) membership application fees for affiliated CMMs, i.e., CMMs that share common ownership with another CMM, and to charge an incremental annual regulatory fee for such CMMs. The Exchange believes that these changes, which will lower the cost of maintaining separate CMM memberships for affiliated CMMs, will encourage current CMMs to register additional broker dealer entities as necessary to act as Alternative Primary Market Makers (“Alternative PMMs”) on the ISE.

The Exchange currently operates an Alternative PMM program whereby the ISE appoints CMMs that meet certain qualifications to serve as Alternative PMMs for options products that have not been allocated to a willing PMM.³ The purpose of this program is to enable the Exchange to list new products, or continue trading listed products, that are not supported by a PMM, by offering such allocations to appropriately qualified CMMs that will have all of the responsibilities and privileges of a PMM under ISE Rules with respect to appointed options classes. Each broker dealer entity acting as an Alternative PMM, however, must be registered as a CMM on the ISE. Due to capital and other business requirements a CMM may need to house their Alternative PMM appointments

³ See Exchange Act Release No. 59250 (January 14, 2009), 74 FR 4062 (January 22, 2009) (ISE-2008-90). PMM allocations are voluntary and require the consent of the PMM being allocated the options class. See ISE Rule 802.

in a separate affiliated broker dealer entity, which would be required to maintain a separate CMM membership on the ISE.

Currently, since these affiliated entities operate as distinct members these firms must pay a one-time CMM application fee of \$5,500 for each entity. As the incremental cost associated with processing an affiliate's membership application is negligible, and given the significant benefits of attracting CMMs willing to quote unallocated options classes as Alternative PMMs, the Exchange is proposing to waive the application fee for CMM applicants that share at least 75% common ownership with another CMM as reflected on each firm's Form BD, Schedule A. The waiver will apply only to the one-time CMM membership application fee, and the affiliated CMM will be subject to all other fees, such as network and access fees.

The Exchange also charges CMMs an annual regulatory fee in order to cover the cost of surveilling these members and performing other regulatory responsibilities. For a CMM that is not also a Primary Market Maker ("PMM") this regulatory fee is \$5,000 per year for the first CMM membership and \$1,000 per year for each additional CMM membership. The lower fee charged for additional CMM memberships after the first reflects the lower incremental cost to the Exchange of surveilling such additional memberships. As with additional CMM memberships within the same entity, the Exchange does not have to dedicate the same level of resources to surveilling the activities of affiliated CMMs. The Exchange therefore proposes to only charge the higher \$5,000 per year regulatory fee for the first CMM membership within each group of affiliated companies. Affiliated CMMs will pay the \$1,000 per year incremental regulatory fee charged for additional CMM memberships after the first. The Exchange is not proposing any changes to the annual regulatory fee for CMMs that are also PMMs as

that fee, which is \$1,000 per year for each CMM membership, already reflects the incremental regulatory costs of surveilling such members. Again, the Exchange believes that this change will benefit all market participants that trade on the Exchange by attracting additional CMMs to act as Alternative PMMs in options classes not allocated to a PMM.

2. Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and Section 6(b)(4) of the Act,⁵ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that it is fair and equitable to waive the membership application fee for affiliated CMMs due to the negligible cost associated with processing membership applications from such members. This waiver will allow affiliated CMMs to become members without incurring additional “start-up” fees that do not reflect the limited resources expended by the ISE in processing their applications, and will thereby encourage current CMMs to register additional affiliated CMMs as necessary to act as Alternative PMMs. The Exchange similarly believes that it is fair and equitable to charge an incremental regulatory fee to affiliated CMMs due to the incremental cost of regulating these members. This treatment is consistent with how the ISE currently charges regulatory fees for additional CMM memberships within the same entity, and the Exchange is merely extending this treatment to additional CMM memberships that are held within the same affiliated group of companies. By charging the higher initial

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4).

regulatory fee to only the first CMM membership within each group of affiliated companies, the ISE believes that it is more accurately reflecting the costs associated with regulating affiliated members. Moreover, the Exchange believes that this change will encourage more affiliated CMMs to maintain memberships on the Exchange as necessary to support the Alternative PMM program, which, in turn, will benefit all market participants that trade on the ISE. The Exchange does not believe that it is unfairly discriminatory to apply the proposed application fee waiver and incremental regulatory fee only to CMMs. As explained above, these fee changes are being proposed in order to encourage CMMs to seek Alternative PMM appointments. The Exchange believes that reducing the membership application and regulatory costs for affiliated CMMs will encourage more CMMs to register additional affiliated broker dealers as CMMs in order to quote options classes as Alternative PMMs. Greater participation in the Alternative PMM program will benefit all market participants that trade on the Exchange as it will allow the ISE to list additional options products, which will be supported by the Alternative PMMs. Alternative PMMs have all the responsibilities of regular PMMs, including, among other things, conducting the opening rotation on a daily basis and providing continuous quotations in appointed options classes.

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

In accordance with Section 6(b)(8) of the Act,⁶ the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change should have little competitive impact as it merely aligns the CMM membership application and regulatory fees with the cost of processing these

⁶ 15 U.S.C. 78f(b)(8).

applications and regulating these members. While the proposed rule change only applies to CMMs, the Exchange does not believe that this will impose a significant burden on competition as all market participants that trade on the Exchange will benefit from the resulting allocation of options classes to Alternative PMMs. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁷ and subparagraph (f)(2) of Rule 19b-4 thereunder,⁸ because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such 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

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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 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-2013-70 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISE-2013-70. 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 am and 3:00 pm. 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-2013-70 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.⁹

Elizabeth M. Murphy
Secretary

⁹ 17 CFR 200.30-3(a)(12).