

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60897; File No. SR-ISE-2009-85)

October 28, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, LLC Related to Market Maker Guidelines

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on October 22, 2009, 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, II and III below, which Items have been prepared by the Exchange. The Exchange has filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 amend Rule 803 to eliminate the provision providing for bids (offers) to be no more than \$1 lower (higher) than the last preceding transaction plus or minus the aggregate change in the last sale price of the underlying, and amend the provision pertaining to trades that are more than \$0.25 below parity. The text of the proposed rule change is available on the Exchange’s Web site [www.ise.com](http://www.ise.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

---

<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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

This proposed rule change is based on a filing previously submitted by the Chicago Board Options Exchange ("CBOE") that was effective on filing.<sup>5</sup>

ISE proposes to amend Rule 803 to eliminate the provision providing for bids (offers) to be no more than \$1 lower (higher) than the last preceding transaction plus or minus the aggregate change in the last sale price of the underlying, and amend the provision pertaining to trades that are more than \$0.25 below parity. Rule 803, in part, provides that market makers are expected ordinarily, except in unusual market conditions, not to bid more than \$1 lower or offer more than \$1 higher than the last preceding transaction price for the particular option contract plus or minus the aggregate change in the last sale price of the underlying security since the time of the last preceding transaction for the particular option contract (the "one point" rule). In addition, market makers are expected ordinarily, except in unusual market conditions, to refrain from purchasing a call option or a put option at a price more than \$0.25 below parity. In the case of

---

<sup>5</sup> See Securities Exchange Act Release No. 60295 (July 13, 2009), 74 FR 35215 (July 20, 2009) (SR-CBOE-2009-49).

call options, parity is measured by the bid in the underlying security, and in the case of put options, parity is measured by the offer in the underlying security (the “parity” rule).

First, the Exchange proposes to eliminate the one point rule. The one point rule has been in place at the Exchange since its inception.<sup>6</sup> Since that time, various market changes have rendered the rule obsolete and unnecessary. For example, market makers are now subject to various quotation requirements, including bid/ask quote width requirements contained elsewhere in Rule 803. The Exchange also has an obvious error rule that contains provisions on erroneous pricing errors (e.g., Rule 720) and has in place certain price check parameters that will not permit the automatic execution of certain orders if the execution would take place at prices inferior to the national best bid/offer (e.g., Rules 714(a), 721).

Second, at this time the Exchange is proposing to retain the parity rule, which has also been in place at the Exchange since its inception,<sup>7</sup> as a guideline but to modify it to provide that an amount larger than \$0.25 may be appropriate considering the particular market conditions (not just unusual market conditions as the rule currently states). The text will also be revised to provide that the \$0.25 guideline may be increased, or the parity rule waived, by the Exchange on a series-by-series basis. The Exchange believes that revising the \$0.25 parity rule in this manner modernizes the guideline to reflect market changes (including those discussed above) and will provide more flexibility to take into consideration the particular trading in a security, including but not limited to the underlying market price, market conditions, and applicable minimum bid/ask width requirements for a given options series.

## 2. Statutory Basis

---

<sup>6</sup> See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000).

<sup>7</sup> Id.

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”)<sup>8</sup> and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>9</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest, because it will eliminate the outdated one point rule and update the parity rule to incorporate more flexibility and recognize changing market conditions.

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 filing,

---

<sup>8</sup> 15 U.S.C. 78s(b)(1).

<sup>9</sup> 15 U.S.C. 78(f)(b).

<sup>10</sup> 15 U.S.C. 78(f)(b)(5).

or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A)<sup>11</sup> of the Act and Rule 19b-4(f)(6)(iii)<sup>12</sup> thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.<sup>13</sup>

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2009-85 on 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.

---

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 C.F.R. 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of 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 the pre-filing requirement.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(C).

All submissions should refer to File Number SR-ISE-2009-85. 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 Web site (<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 inspection and copying 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 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-2009-85 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Florence E. Harmon  
Deputy Secretary

---

<sup>14</sup> 17 CFR 200.30-3(a)(12).