

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67211; File No. SR-ISE-2012-53)

June 18, 2012

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate the Rules and Fees Related to the Second Market

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 June 6, 2012, 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 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 Exchange proposes to eliminate the rules and fees related to the listing and trading of low-volume options classes in what is known as the Second Market. The text of the proposed rule change is available on the Exchange's Internet website at <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 statements may be examined at the

---

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

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

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

When the ISE was launched in 2000, it began trading options on approximately 900 equity securities that qualified for options trading pursuant to the listing standards contained in ISE Rule 502. The listing standards for underlying securities is uniform across all of the options exchanges, and while there were many additional underlying equity securities that qualified for options trading under these standards, ISE did not list options on these securities although they were traded on one or more of the other options exchanges. In general, the Exchange had chosen not to list and trade these options classes because of their low average daily trading volume (“ADV”).

In 2006, however, the Exchange decided to pursue this segment of the market and adopted rules for the listing and trading of these low-volume options classes that qualified for listing under Rule 502 in a “Second Market.”<sup>3</sup> While the Exchange’s total volume modestly increased by listing these low-volume options classes, ISE does not believe the separate structure has added any appreciable value. In particular, all of the market makers that participate in the Second Market are also market makers in the First Market, so the creation of the Second Market did not attract additional market makers. On the other hand, the Exchange believes that the cost associated with maintaining the infrastructure to support the two separate structures outweighs the benefits of maintaining the Second Market. Accordingly, ISE proposes to eliminate the

---

<sup>3</sup> See Securities Exchange Act Release No. 54580 (October 6, 2006), 71 FR 60781 (October 16, 2006) (SR-ISE-2006-40).

Second Market structure altogether and incorporate the securities currently traded thereunder into the First Market.

The consolidation of securities into the First Market will be accomplished through database changes by the Exchange's Technology staff. The Exchange notes that the elimination of the Second Market will be seamless for ISE Members. No action will be required on part of ISE Members. Additionally, options listed on the Exchange, whether in the First Market or the Second Market, must meet the qualification standards in Chapter 5. The Exchange is not making any changes to these listing standards and all options listed on the Exchange will continue to be subject to these listing standards.

With the Second Market, the Exchange provided members that are only approved as Electronic Access Members ("EAMs") with an opportunity to register as competitive market makers with the requirement that they pay a \$0.10 transaction surcharge over those market makers that own or lease ISE market maker memberships. The Exchange believed that providing greater access to make markets in the Second Market would help to attract additional liquidity in these low-volume options classes from firms that did not participate on the ISE as market makers. However, as noted above, all market makers in the Second Market options classes are currently also First Market market makers thus, the introduction of the Second Market did not attract additional market makers, as the Exchange had hoped.

Once the Second Market has been eliminated, all of the market makers currently quoting in the Second Market options classes can continue to do so. The Exchange notes that the quoting requirements for market makers, whether quoting in the First Market or the Second Market are the same. Thus, market makers currently quoting in the Second Market who want to quote in the First Market will be required to meet all of the requirements of Rules 803, 804 and 805. The

Exchange is not proposing any changes to the Exchange's quoting rules. The Second Market options classes are allocated to the Exchange's current Primary Market Makers, and they will be transferred into those Primary Market Makers' "bins" in the First Market. With respect to Competitive Market Makers ("CMMs"), appointments to these options classes will have no impact on their membership points, as the percentage of total industry volume for each Second Market option class is zero.<sup>4</sup>

With this proposed rule change, the Exchange proposes to delete ISE Rules 900 through 904. The Exchange also proposes several changes to its Schedule of Fees, as follows: (1) remove the execution fee of \$0.00 per contract for customer orders in Second Market options; (2) remove the \$.10 per contract surcharge currently applied to transactions executed by market makers that do not own or lease an ISE market maker membership (i.e., EAMs that make markets in the Second Market); (3) remove the \$2,000 per month access fee for market makers; and (4) remove the \$5,000 annual regulatory fee paid by firms that are only market makers in the Second Market (i.e., EAMs that make markets in the Second Market).

## 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities, and the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a

---

<sup>4</sup> Options classes are assigned CMM member points based on their percentage of overall options industry volume rounded down to the nearest one hundredth of a percentage. See Securities Exchange Act Release No. 65100 (August 11, 2011), 76 FR 51075 (August 17, 2011) (SR-ISE-2011-33).

national market system, and, in general, to protect investors and the public interest. The Exchange believes it is reasonable and equitable to eliminate the Second Market and incorporate the low-volume options classes that were in the Second Market into the Exchange's First Market because the Second Market did not achieve its intended objective of attracting additional liquidity in those low-volume options. Further, the Exchange notes that the transition of Second Market securities to the First Market will be seamless for ISE Members and no action will be required on their part. The Exchange further believes that the proposed rule change is not unfairly discriminatory because it treats all market participants equally and will not have an adverse impact on any market participant, in particular, ISE's EAMs. While this segment of the Exchange's membership would have been impacted the most by the elimination of the Second Market, the Exchange notes that no EAM currently operates as a market maker in the Second Market thus, the proposed rule change will not have any adverse impact on this group.

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 does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such

shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)<sup>5</sup> of the Act and Rule 19b-4(f)(6)<sup>6</sup> thereunder. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change.

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.

#### 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-2012-53 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>5</sup> 15 U.S.C. 78s(b)(3)(A).

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

All submissions should refer to File Number SR-ISE-2012-53. 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 a.m. and 3:00 p.m. Copies of the 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-2012-53 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

Kevin M. O'Neill  
Deputy Secretary

---

<sup>7</sup> 17 CFR 200.30-3(a)(12).