

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70417; File No. SR-ISE-2013-48)

September 16, 2013

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 604, Continuing Education for Registered Persons, and to Adopt a Corresponding Fee

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 September 13, 2013, 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 is proposing to amend Rule 604 to clarify the current continuing education requirements for registered persons based upon their registration with the Exchange, and to adopt a new continuing education requirement for Series 56 registered persons, including a corresponding fee.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 purpose of the proposed rule change is to clarify the current continuing education requirements for registered persons based upon their registration with the Exchange, and to adopt a new continuing education requirement for Series 56 registered persons (“Proprietary Traders”). The Exchange also proposes to adopt a fee for the new continuing education program applicable to Proprietary Traders.

The Exchange adopted the Proprietary Trader registration in 2011, working with various other exchanges and the Financial Industry Regulatory Authority (“FINRA”). At this time, the Exchange is proposing a new Proprietary Trader continuing education program which will be administered by FINRA. The new program, the S501, is intended to address the specific continuing education of Proprietary Traders, based on the content outline for the Series 56 exam, which covers the main categories of rules and regulations generally applicable to such persons.³

³ These generally include recordkeeping and recording requirements, types and characteristics of securities and investments, trading practices and display execution and trading systems. See Securities Exchange Act Release No. 65054 (Aug. 8, 2011), 76 FR 50277 (Aug. 12, 2011) (SR-ISE-2011-36).

The S501 is required for persons who are registered as Proprietary Traders and do not maintain any other registration. Individuals that are registered under any other registration are required to maintain the continuing education [sic] obligations associated with such registrations. For example, an individual that engages solely in proprietary trading activities but has passed the Series 7 and is registered as a General Securities Representative will be required to continue taking the Series 7 continuing education program (S101). Although such an individual may be engaging in the same activities as an individual registered as a Proprietary Trader, the Series 7 examination is more comprehensive and covers topics that the Series 56 does not. Thus, the Exchange believes that this individual should complete the continuing education associated with the Series 7 because this covers all aspects of the individual's registration.

The introduction of the S501 allows the Exchange to tailor its continuing education requirements more closely to the duties of individuals who have registered with the Exchange as Proprietary Traders after passing the Series 56. More specifically, the Exchange believes allowing individuals engaging solely in proprietary trading who take the Series 56 and register as Proprietary Traders to complete a separate continuing education program than those Proprietary Traders who passed the Series 7 and maintain a General Securities Representative registration is appropriate given that all individuals who engage solely in proprietary trading have the option of taking either test. In comparison to the more comprehensive Series 7, the Series 56 examination is more closely tailored to the practice of proprietary trading. As such, the Exchange believes a Series 56 continuing education program should be tailored as well. At the same time, if an individual who has passed the Series 7 would like to retain a General Securities Representative registration, the Exchange believes it is appropriate they [sic] continue to be required to complete the broader continuing education program, which covers all aspects of this registration.

The Exchange also proposes to amend Rule 604(a) to specify the required Regulatory Element for each category of registered persons. Currently, Rule 604(a) provides that no Member shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of paragraph (a). Each registered person shall complete the Regulatory Element of the continuing education program on the occurrence of their [sic] second registration anniversary date(s), and every three years thereafter or as otherwise prescribed by the Exchange. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, also known as the "base date," shall establish the cycle of anniversary dates for purposes of this Rule. This applies to persons registered as Proprietary Traders as well.

The Rule further provides that the content of the Regulatory Element of the program shall be determined by the Exchange for each registration category of persons subject to the Rule. The Exchange now proposes to make clear which specific programs are required, including both existing programs (S101 and S201) as well as the new Proprietary Trader continuing education program (S501). The following Regulatory Elements administered by FINRA shall be required:

The S201 Supervisor Program for registered principals and supervisors;

The S501 Series 56 Proprietary Trader Continuing Education Program for Series 56 registered persons; and

The S101 General Program for Series 7 and all other registered persons.

The Exchange believes that specifying the applicable Regulatory Element in the Rule should be helpful to Members in complying with the Rule. Only one Regulatory Element is required. For example, members registered as supervisors are subject to the S201 only; they do

not also have to complete the Regulatory Element applicable to their prerequisite registration, such as the S501 or the S101.⁴ This proposal does not change the registration requirements.

The Exchange also proposes to adopt a \$60 fee for the S501 continuing education program, which will be used for the administration of the S501. FINRA administers this program on behalf of the exchanges and therefore the fees are payable directly to FINRA.⁵ The Exchange expects that the exchanges that recognize the Proprietary Trader registration either have or will adopt the same fee for continuing education.

The Exchange's Schedule of Fees does not currently set forth the session fees for other continuing education programs required by the Exchange because these programs are within the jurisdiction of the Financial Industry Regulatory Authority ("FINRA"), which collects these session fees from its members. The Series 56, however, applies to ISE Members that are not required by Section 15(b)(8)⁶ of the Act to become members of FINRA. Therefore, the Exchange believes it is appropriate to include the Series 56 continuing education fee within the Exchange's Schedule of Fees to make the cost of this program clear to ISE Members.

⁴ As stated above, in the event that a person is registered both as a Proprietary Trader (Series 56) and a General Securities Representative (Series 7), only one Regulatory Element is required – the “higher” of the two, which is the S101.

⁵ The S501 was established for those registrants who have passed the Series 56 Qualification Exam as reflected in WebCRD. WebCRD is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

⁶ 15 U.S.C. 78o(b)(8).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of: (1) Section 6(c)(3)(B) of the Act,⁸ pursuant to which a national securities exchange prescribes standards of training, experience and competence for members and their associated persons; and (2) Section 6(b)(5) of the Act,⁹ in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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, by requiring registered persons to complete the applicable continuing education program. The Exchange believes that a strong continuing education program should bolster the integrity of the Exchange by helping to ensure that all associated persons engaged in a securities business are, and will continue to be, properly trained and qualified to perform their functions.

The Exchange does not believe that the proposal is unfairly discriminatory with respect to persons registered as a General Securities Representative who function in their current job as a Proprietary Trader, even though these persons are subject to the more stringent S101 rather than the S501. Such persons are registered and qualified (Series 7) in a “higher” capacity and are therefore qualified to function in a capacity other than a Proprietary Trader, whether they choose to or not. Accordingly, requiring the S101 for such persons is appropriate and facilitates them being able to maintain their “higher” registration. Moreover, the Exchange believes that permitting General Securities Representatives functioning as Proprietary Traders to complete the S501 would be confusing and difficult to monitor.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78(c)(3)(B).

⁹ 15 U.S.C. 78f(b)(5).

The Exchange also believes that the proposal furthers the objectives of Section 6(b)(4) of the Act,¹⁰ in that it provides for an equitable allocation of reasonable fees and other charges among Exchange Members and other persons using its facilities. The proposed fee is equitable, because it applies equally to all persons registered solely as Proprietary Traders. The Exchange notes that it will not invoice or collect funds from Members that are subject to these fees because these fees will be paid directly to FINRA as administrator of the continuing education program. The proposed fees are reasonably designed to allow FINRA to cover its cost of administering the Series 56 continuing education program on behalf of the Exchange, and the Exchange believes it is reasonable and equitable to include these fees in its Schedule of Fees to make the costs of the Series 56 continuing education requirement clear to Members. Moreover, the Exchange believes other exchanges will be assessing the same fees for this continuing education program.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. All Proprietary Traders, regardless of where they are registered, will be subject to same continuing education requirements and fees. Thus, the proposal treats similarly situated persons in the same way. In addition, all of the exchanges that recognize the Proprietary Trader registration category are expected to adopt the same continuing education requirements¹¹ and fee.¹²

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ See e.g. Securities Exchange Act Release Nos. 70237 (Aug. 20, 2013), 78 FR 52814 (Aug. 26, 2013) (SR-BATS-2013-046); 70027 (July 23, 2013), 78 FR 45584 (July 29, 2013) (SR-CBOE-2013-076); 70327 (Sept. 5, 2013), 78 FR 55766 (Sept. 11, 2013) (SR-Phlx-2013-85).

¹² See e.g. Securities Exchange Act Release Nos. 70257 (Aug. 26, 2013), 78 FR 53814 (Aug. 30, 2013) (SR-BATS-2013-047); 70064 (July 30, 2013), 78 FR 47469 (Aug. 5, 2013) (SR-CBOE-2013-078); 70194 (Aug. 14, 2013) 78 FR 51259 (Aug. 20, 2013) (SR-C2-2013-030); 70327 (Sept. 5, 2013), 78 FR 55766 (Sept. 11, 2013) (SR-Phlx-2013-85).

The proposed rule change will merely align Exchange Rules with those of other exchanges. The Exchange does not believe that these proposed rule changes will affect intermarket competition because the Exchange believes that all exchanges that impose the same continuing education requirements will file similar rule changes addressing these continuing education programs. Furthermore, the Exchange does not believe the proposed change will affect intramarket competition because all similarly situated registered persons (e.g. registered persons maintaining the same registrations) are required to complete the same continuing education requirements. For example, all individuals maintaining a Series 7 registration as a General Securities Representative will be required to complete the S101 continuing education program, while all individuals maintaining a Series 56 registration (and no other registrations) will be required to complete the new S501 continuing education program.

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: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.

¹³ 15 U.S.C. 78s(b)(3)(A).

The Exchange has requested that the Commission waive the 30-day operative delay. The proposed rule change specifies the continuing education requirements that currently apply to registered persons, and adopts a continuing education requirement, the S501, and a related fee for persons registered as Proprietary Traders. Waiver of the operative delay would allow the Exchange to clarify its rules and implement the proposed rule change at once, enabling its members to clearly understand which continuing education program applies to their registered persons and to comply with the continuing education requirements in a timely manner, and thus is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.¹⁴

At any time within 60 days of the filing of this 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 will 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 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

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2013-48 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.

All submissions should refer to File Number SR-ISE-2013-48. 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 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-2013-48 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).