

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63077; File No. SR-ISE-2010-97)

October 12, 2010

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Delta Hedge Exemptions

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 30, 2010, 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 Exchange has filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 (i) expand the delta hedging exemption available for equity options positions limits, (ii) amend the reporting requirements applicable to members relying on the delta hedging exemption, and (iii) adopt a delta hedging exemption from certain index options position limits. The text of the proposed rule change is available on the Exchange’s Web site www.ise.com, at the principal office of the Exchange, on the Commission’s Web site at www.sec.gov, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 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

I. Expansion of Delta-Based Equity Hedge Exemption

On December 14, 2007,⁵ the Commission approved a proposed rule change establishing an exemption from equity options position and exercise limits for positions held by the Chicago Board Options Exchange (“CBOE”) members, and certain of their affiliates, that are “delta neutral”⁶ under a “permitted pricing model”, subject to certain conditions (“Exemption”). ISE filed a rule filing to establish an exemption similar to CBOE’s filing.⁷ CBOE, and more recently, NASDAQ OMX PHLX (“PHLX”), expanded its exemption from equity options

⁵ See Securities Exchange Act Release No. 56970 (December 14, 2007), 72 FR 72428 (December 20, 2007) (SR-CBOE-2007-99). The exemption was extended to certain customers whose accounts are carried by a member. See Securities Exchange Act Release No. 60555 (August 21, 2009), 74 FR 43741 (August 27, 2009) (SR-CBOE-2009-039).

⁶ The term “delta neutral” is defined in ISE Rule 413(a)(7)(A) as referring to an equity option position that is hedged, in accordance with a permitted pricing model, by a position in the underlying security or one or more instruments relating to the underlying security, for the purpose of offsetting the risk that the value of the option position will change with incremental changes in the price of the security underlying the option position.

⁷ See Securities Exchange Act Release No. 57360 (February 20, 2008), 73 FR 11170 (February 29, 2008) (SR-ISE-2008-06).

position and exercise limits, amended reporting requirements and adopted a delta hedging exemption from certain index options position limits.⁸ ISE proposes to amend Rules 413 and 2006 to make similar amendments.⁹

The “options contract equivalent of the net delta” of a hedged equity option position is subject to the position limits under ISE Rule 412, subject to the availability of other exemptions.¹⁰ Currently, the Exemption only is available for securities that directly underlie the applicable option position. This means that with respect to options on exchange-traded funds (“ETF options”), index options overlying the same index on which the ETF is based currently cannot be combined with the ETF options to calculate a net delta for purposes of the Exemption.

Many ETF options overlie exchange-traded funds that track the performance of an index. For example, options on Standard & Poor's Depository Receipts (“SPY”) track the performance of the S&P 500 Index. Market participants often hedge SPY options with options on the S&P 500 Index (“SPX options”) or with other financial instruments based on the S&P 500 Index for risk management purposes. The Exchange believes that in order for eligible market participants to more fully benefit from the Exemption as it relates to ETF options, securities and other instruments that are based on the same underlying ETF or the same index on which the ETF is

⁸ See Securities Exchange Act Release Nos. 62190 (May 27, 2010), 75 FR 31826 (June 4, 2010) (SR-CBOE-2010-021); and 62504 (July 15, 2010), 75 FR 42797 (July 22, 2010) (SR-PHLX-2010-93).

⁹ This proposed rule filing is being done pursuant to an industry-wide initiative, under the auspices of the Intermarket Surveillance Group (“ISG”) to establish comparable delta hedge exemption rules among exchanges.

¹⁰ The term “options contract equivalent of the net delta” is defined in ISE Rule 413(a)(7)(B) as the net delta divided by the number of shares underlying the option contract. The term “net delta” is also defined in ISE Rule 413(a)(7)(B) to mean, at any time, the number of shares (either long or short) required to offset the risk that the value of an equity option position will change with incremental changes in the price of the security underlying the option position, as determined in accordance with a permitted pricing model.

based should also be included in any determination of an ETF option position's net delta or whether the options position is hedged delta neutral.¹¹

Accordingly, the Exchange proposes to expand the Exemption by amending ISE Rule 413 to permit equity option positions for which the underlying security is an ETF that is based on the same index as an index option to be combined with an index option position for calculation of the delta-based equity hedge exemption. The proposed rule would allow financial products such as securities index options, index futures, and options on index futures to be included along with the ETF in an equity option's net delta calculation. So for example, the proposed rule would allow SPY options to be hedged not only with SPY shares, but with S&P 500 options, S&P 500 futures, options on S&P 500 futures or any other instrument that tracks the performance of or is based on the S&P 500 index. This would be accomplished by including such positions with a related index option position in accordance with the Delta-Based Index Hedge Exemption rule proposed below.

Index options and equity options (i.e., ETF options) that are eligible to be combined for computing a delta-based hedge exemption, along with all securities and/or other instruments that are based on or track the performance of the same underlying security or index, will be grouped and the net delta and options contract equivalent of the net delta will be calculated for each respective option class based on offsets realized from the grouping as a whole.

The Exchange proposes to amend the definition of “net delta” in ISE Rule 413(a)(7)(B) to mean, at any time, the number of shares and/or other units of trade¹² (either long or short)

¹¹ However, this would not include baskets of securities for purposes of the Exemption.

¹² “Other units of trade” would include, for example, options or futures contracts hedging the relevant option position. When determining whether an ETF option hedged with other instruments such as ETF or index options is delta neutral, the relative size of the ETF option when compared to the other product is taken into consideration. For example, SPX

required to offset the risk that the value of an equity option position will change with incremental changes in the price of the security underlying the option position, as determined in accordance with a permitted pricing model. The Exchange proposes to amend the definition of the “option contract equivalent of the net delta” in ISE Rule 413(a)(7)(B) to mean the net delta divided by the number of shares that equate to one option contract on a delta basis.

II. Reporting Requirements

ISE Rule 413(a)(7)(F) sets forth the reporting requirements applicable to Exchange members who rely on the Exemption. The Exchange proposes to amend ISE Rule 413(a)(7)(F) to exempt from the reporting requirements Exchange market-makers relying on the Exemption who use the Options Clearing Corporation (“OCC”) pricing model, because market-maker positions and delta information can be accessed through the Exchange's market surveillance systems. This proposed exemption is consistent with similar exemptions from the reporting requirements under ISE Rule 2006(a)(13) applicable to broad-based (market) index options and narrow-based (industry) index options.

III. Delta-Based Index Hedge Exemption

Index options traded on the Exchange are subject to position and exercise limits, as provided under ISE Rules 2004 (Position Limits for Broad-Based Index Options), 2005 (Position Limits for Industry Index Options) and 2007 (Exercise Limits). Position limits are imposed, generally, to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the holder of the options position.

options are ten (10) times larger than SPY options thus 1 SPX delta is equivalent to .10 SPY deltas.

Index options are often used by market participants such as institutional investors to hedge large portfolios. Exchange rules include hedge exemptions to allow certain positions in index options in excess of the applicable standard position limit if hedged with an Exchange-approved qualified portfolio. Under ISE Rule 2006, a qualified portfolio must be previously established and the options must be carried in an account with an Exchange member or if not carried by an Exchange member, the account must be carried by a member of a self-regulatory organization participating in the ISG. Securities used as a hedge pursuant to this provision may not be used to hedge other option positions.

The Exchange believes that any limit on the ability of market participants to use index options to hedge their portfolios exposes market participants to unnecessary risk on the unhedged portion of their portfolios. The Exchange proposes to adopt a delta-based exemption from index option position and exercise limits that are substantially similar to the delta-based equity hedge exemption under ISE Rule 413. A delta-based index hedge exemption would provide market participants the ability to accumulate an unlimited number of index options contracts provided that such contracts are properly delta hedged in accordance with the requirements of the exemption.

Proposed Exemption. The Exchange proposes to adopt an exemption from index options position and exercise limits¹³ for positions held by Exchange members and certain of their affiliates that are “delta neutral” (as defined below) under a “permitted pricing model” (as defined below), subject to certain conditions (“Index Exemption”).

¹³ ISE Rule 2007 establishes exercise limits for an index option at the same level as the index option's position limit under index options position limit rules in ISE Rules 2004 and 2005, therefore no changes are proposed to ISE Rule 2007.

The term “delta neutral” is defined in proposed ISE Rule 2006(c)(i) as referring to an index option position that is hedged, in accordance with a permitted pricing model, by a position in one or more correlated instruments for the purpose of offsetting the risk that the value of the option position will change with incremental changes in the value of the underlying index. Correlated instruments would be defined to mean securities and/or other instruments that track the performance of or are based on the same underlying index as the index underlying the option position. These definitions would allow financial products such as ETF options, index futures, options on index futures and ETFs that track the performance of or are based on the same underlying index to be included in an index option's net delta calculation.

Any index option position that is not delta neutral would be subject to position and exercise limits, subject to the availability of other exemptions. Only the “options contract equivalent of the net delta” of such position would be subject to the appropriate position limit.¹⁴

In addition, members could not use the same positions in correlated instruments in connection with more than one hedge exemption. Therefore, a position in correlated instruments used as part of a delta hedging strategy could not also serve as the basis for any other index hedge exemption.

Permitted Pricing Model. Under the proposed rule, the calculation of the delta for any index option position, and the determination of whether a particular index option position is hedged delta neutral, must be made using a permitted pricing model. A “permitted pricing model” is defined in proposed ISE Rule 2006(c)(iii) to have the same meaning as defined in ISE

¹⁴ Under proposed ISE Rule 2006(c)(ii), the term “options contract equivalent of the net delta” is defined as the net delta divided by units of trade that equate to one option contract on a delta basis, and the term “net delta” is defined as, at any time, the number of shares and/or other units of trade (either long or short) required to offset the risk that the value of an index option position will change with incremental changes in the value of the underlying index, as determined in accordance with a permitted pricing model.

Rule 413(a)(7)(C), namely, the pricing model maintained and operated by OCC and the pricing models used by (i) a member or its affiliate subject to consolidated supervision by the SEC pursuant to Appendix E of SEC Rule 15c3-1; (ii) a financial holding company (“FHC”) or a company treated as an FHC under the Bank Holding Company Act of 1956, or its affiliate subject to consolidated holding company group supervision;¹⁵ (iii) an SEC registered OTC derivatives dealer;¹⁶ and (iv) a national bank.¹⁷

Aggregation of Accounts. Members and non-member affiliates relying on the

¹⁵ The pricing model of an FHC or of an affiliate of an FHC would have to be consistent with: (i) the requirements of the Board of Governors of the Federal Reserve System, as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Board of Governors of the Federal Reserve System, provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company’s consolidated supervised holding company group; or (ii) the standards published by the Basel Committee on Banking Supervision, as amended from time to time and as implemented by such company’s principal regulator, in connection with the calculation of risk-based deductions or adjustments to or allowances for the market risk capital requirements of such principal regulator applicable to such company – where “principal regulator” means a member of the Basel Committee on Banking Supervision that is the home country consolidated supervisor of such company – provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company’s consolidated supervised holding company group. See ISE Rule 413(a)(7)(C)(3).

¹⁶ The pricing model of an SEC registered OTC derivatives dealer would have to be consistent with the requirements of Appendix F to SEC Rule 15c3-1 and SEC Rule 15c3-4 under the Act, as amended from time to time, in connection with the calculation of risk-based deductions from capital for market risk thereunder. Only an OTC derivatives dealer and no other affiliated entity (including a member) would be able to rely on this part of the Exemption. See ISE Rule 413(a)(7)(C)(4).

¹⁷ The pricing model of a national bank would have to be consistent with the requirements of the Office of the Comptroller of the Currency, as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Office of the Comptroller of the Currency. Only a national bank and no other affiliated entity (including a member) would be able to rely on this part of the Exemption. See ISE Rule 413(a)(7)(C)(5).

Index Exemption would be required to ensure that the permitted pricing model is applied to all positions in correlated instruments hedging the relevant option position that are owned or controlled by the member, or its affiliates.

However, the net delta of an index option position held by an entity entitled to rely on the Index Exemption, or by a separate and distinct trading unit of such entity, may be calculated without regard to positions in correlated instruments held by an affiliated entity or by another trading unit within the same entity, provided that: (i) the entity demonstrates to the Exchange's satisfaction that no control relationship, as defined in ISE Rule 412(f), exists between such affiliates or trading units, and (ii) the entity has provided the Exchange written notice in advance that it intends to be considered separate and distinct from any affiliate, or, as applicable, which trading units within the entity are to be considered separate and distinct from each other for purposes of the Index Exemption.¹⁸ Any member or non-member affiliate relying on the Index Exemption must designate, by prior written notice to the Exchange, each trading unit or entity whose options positions are required by Exchange rules to be aggregated with the options positions of such member or non-member affiliate relying on the Index Exemption for purposes of compliance with Exchange position or exercise limits.¹⁹

The Exchange previously issued a Regulatory Information Circular to provide guidance to members regarding the use of delta hedge exemption.²⁰

Obligations of Members and Affiliates. Any member relying on the Index Exemption would be required to provide a written certification to the Exchange that it is using a permitted

¹⁸ See proposed ISE Rule 2006(c)(iv)(2)(B).

¹⁹ See proposed ISE Rule 2006(c)(iv)(3).

²⁰ See Regulatory Information Circular 2008-04 dated March 5, 2008.

pricing model as defined in the rule for purposes of the Index Exemption.²¹ In addition, by such reliance, such member would authorize any other person carrying for such member an account including, or with whom such member has entered into, a position in a correlated instrument hedging the relevant option position to provide to the Exchange or OCC such information regarding such account or position as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under this exemption.²²

The index option positions of a non-member affiliate relying on the Index Exemption must be carried by a member with which it is affiliated.²³ A member carrying an account that includes an index option position for a non-member affiliate that intends to rely on the Index Exemption would be required to obtain from such non-member affiliate a written certification that it is using a permitted pricing model as defined in the rule for purposes of the Index Exemption.²⁴

Reporting. Under proposed ISE Rule 2006(c)(v)(4), each member (other than an

²¹ See proposed ISE Rule 2006(c)(v)(1)(A).

²² See proposed ISE Rule 2006(c)(v)(1)(B).

²³ See proposed ISE Rule 2006(c)(v)(2).

²⁴ In addition, the member would be required to obtain from such non-member affiliate a written statement confirming that such non-member affiliate: (a) is relying on the Index Exemption; (b) will use only a permitted pricing model for purposes of calculating the net delta of its option positions for purposes of the Index Exemption; (c) will promptly notify the member if it ceases to rely on the Index Exemption; (d) authorizes the member to provide to the Exchange or the OCC such information regarding positions of the non-member affiliate as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under the Index Exemption; and (e) if the non-member affiliate is using the OCC Model, has duly executed and delivered to the Exchange such documents as the Exchange may require to be executed and delivered to the Exchange as a condition to reliance on the Exemption. See proposed ISE Rule 2006(c)(v)(3).

Exchange market-maker using the OCC Model) relying on the Index Exemption would be required to report, in accordance with Rule 415:²⁵ (i) all index option positions (including those that are delta neutral) that are reportable thereunder, and (ii) on its own behalf or on behalf of a designated aggregation unit pursuant to ISE Rule 2006(c)(iv) for each such account that holds an index option position subject to the Index Exemption in excess of the levels specified in ISE Rules 2004 and 2005 the net delta and the options contract equivalent of the net delta of such position.

Records. Under proposed ISE Rule 2006(c)(v)(5), each member relying on the Index Exemption would be required to (i) retain, and undertake reasonable efforts to ensure that any non-member affiliate of the member relying on the Index Exemption retains, a list of the options, securities and other instruments underlying each option position net delta calculation reported to the Exchange hereunder, and (ii) produce such information to the Exchange upon request.²⁶

Reliance on Federal Oversight. As provided under proposed ISE Rule 2006(c)(iii), a permitted pricing model includes proprietary pricing models used by members and affiliates that have been approved by the SEC, the Fed or another Federal financial regulator. In adopting the proposed Index Exemption, the Exchange would be relying upon the rigorous approval processes and ongoing oversight of a Federal financial regulator. The Exchange notes that it would not be under any obligation to verify whether a member's or its affiliate's use of a proprietary pricing model is appropriate or yielding accurate results.

²⁵ ISE Rule 415 requires, among other things, that members report to the Exchange aggregate long or short positions of 200 or more options contracts of any single class of options traded on the Exchange.

²⁶ A member would be authorized to report position information of its non-member affiliate pursuant to the written statement required under proposed ISE Rule 2006(c)(v)(3)(B)(d).

The Exchange will issue a regulatory circular upon publication of the notice of this filing regarding the proposal herein.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act²⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act²⁸ in particular, in that it is designed 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.

The Exchange believes that allowing correlated instruments to be included in the calculation of an equity option's net delta would enable eligible market participants to more fully realize the benefit of the delta based equity hedge exemption. The proposed delta-based index hedge exemption would be substantially similar to the delta-based equity hedge exemption under ISE Rule 413. Also, the Commission has previously stated its support for recognizing options positions hedged on a delta neutral basis as properly exempted from position limits.²⁹

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 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

No written comments were either solicited or received.

²⁷ 15 U.S.C. 78f(b).

²⁸ 15 U.S.C. 78f(b)(5).

²⁹ See Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59380 (November 3, 1998) (adopting rules relating to OTC Derivatives Dealers).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act³⁰ and Rule 19b-4(f)(6) thereunder.³¹

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.³² However, Rule 19b-4(f)(6)(iii)³³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that it has approved a substantially similar proposal filed by the Chicago Board Options Exchange, Incorporated,³⁴ and therefore believes that no significant purpose is served by a 30-day operative delay. For these

³⁰ 15 U.S.C. 78s(b)(3)(A).

³¹ 17 CFR 240.19b-4(f)(6).

³² 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³³ Id.

³⁴ See Securities Exchange Act Release No. 62190 (May 27, 2010), 75 FR 31826 (June 4, 2010) (SR-CBOE-2010-21). See also Securities Exchange Act Release No. 62504 (July 15, 2010), 75 FR 42797 (July 22, 2010) (SR-PHLX-2010-93).

reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission.³⁵

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.

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 Number SR-ISE-2010-97 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-2010-97. 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

³⁵ For the 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).

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 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-2010-97 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.³⁶

Florence E. Harmon
Deputy Secretary

³⁶ 17 CFR 200.30-3(a)(12).