

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67216; File No. SR-ISE-2012-52)

June 19, 2012

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change to Allow Competitive Market Makers to use their Membership Points to Enter Multiple Quotes in an Options Class

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 adopt .03 of the Supplementary Material to Rule 802 (Appointment of Market Makers) to allow Competitive Market Makers ("CMMs") to use their membership points to enter multiple quotes in an options class. 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

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<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

On August 11, 2011, the Exchange changed the structure of CMM appointments to give market makers flexibility to choose the options classes to which they are appointed.<sup>3</sup> On October 3, 2011, the Exchange made three refinements to the point values assigned to certain options classes.<sup>4</sup> Currently, under this structure, the Exchange assigns points to each options class equal to its percentage of overall industry volume (not including exclusively-traded index options), rounded down to the nearest hundredth of a percentage, with a maximum of 15 points. New listings are assigned a point value of zero for the remainder of the quarter in which it was listed. A CMM is then permitted to seek appointments to options classes that total twenty points for the first CMM trading right owned or leased by a member, and ten points for each subsequent CMM trading right owned or leased by the same member.<sup>5</sup>

The Exchange is now proposing to adopt .03 of the Supplementary Material to Rule 802 (Appointment of Market Makers) to allow CMMs to use their membership points to enter multiple quotes in an options class. The quoting requirements in ISE Rules will be applicable to each set of quotes that a CMM enters in an options class. In other words, CMMs will not be

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<sup>3</sup> See Securities Exchange Act Release No. 65100 (Aug. 11, 2011), 76 FR 51075 (Aug. 17, 2011) (order approving SR-ISE-2011-33).

<sup>4</sup> See Securities Exchange Act Release No. 65534 (October 12, 2011), 76 FR 64417 (October 18, 2011) (Notice of Filing and Immediate Effectiveness SR-ISE-2011-58).

<sup>5</sup> CMMs can select the options classes to which they seek appointment, but the Exchange retains the authority to make such appointments and to remove appointments from CMMs based on their performance. See ISE Rule 802.

permitted to aggregate multiple quotes in an options class in order to meet the quoting requirements under ISE Rules. Additionally, there will be no restriction on a CMM seeking appointment to options classes in which it or an affiliated market-maker holds a CMM or Primary Market Maker appointment,<sup>6</sup> provided that such Member has sufficient CMM points for each such appointment.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is found in Section 6(b)(5),<sup>7</sup> in that the proposed change 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. In particular, the proposal will promote competition by increasing the number of competitive quotes in active options classes traded on the Exchange. The proposed rule change is consistent with the current CMM membership structure because it requires market makers to use their membership points in order to enter multiple quotes. Additionally, the proposed rule change is non-discriminatory in that each CMM is able to choose how to use their membership points. Accordingly, the Exchange believes that the proposed rule change is consistent with the requirements of the Exchange Act.

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<sup>6</sup> The Chicago Board Options Exchange (“CBOE”) has a membership structure that allows a market maker and its affiliates to enter multiple quotes in an options class. CBOE Rule 8.3(c)(vi) restricts market makers from holding appointments in the same class as an affiliate if CBOE uses in that class an allocation algorithm that allocates electronic trades, in whole or in part, in an equal percentage based on the number of market participants quoting at the best bid or offer. The CBOE rule then provides that this restriction does not apply if CBOE uses in a particular options class an allocation algorithm that does not allocate electronic trades, in whole or in part, in an equal percentage based on the number of market participants quoting at the best bid or offer. Unlike the CBOE, the ISE allocation algorithm does not provide for the potential allocation of orders, in whole or in part, in an equal percentage based on the number of market participants quoting at the best bid or offer. ISE Rule 713. Therefore, the proposed ISE rule text does not reference the restriction contained in CBOE Rule 8.3(c)(vi).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

Within 45 days of the publication date of this notice or within such longer period (1) as the Commission may designate up to 45 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (2) as to which the self-regulatory organization consents, the Commission will:

- (a) by order approve or disapprove such Proposed Rule Change; or
- (b) institute proceedings to determine whether the Proposed Rule Change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2012-52 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-2012-52. 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-2012-52 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>8</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).