

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59250; File No. SR-ISE-2008-90)

January 14, 2009

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change Relating to Alternative Primary Market Makers

I. Introduction

On November 21, 2008, the International Securities Exchange, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change relating to the introduction of Alternative Primary Market Makers (“Alternative PMMs”) on the Exchange. The proposed rule change was published for comment in the Federal Register on December 15, 2008.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend ISE Rule 802 to provide for Alternative PMMs. Currently, when the ISE lists new options classes, it allocates them to one of its Primary Market Makers (“PMMs”) under ISE Rule 802. Pursuant to power delegated to the Board, an Allocation Committee, which consists of representatives of Electronic Access Members, makes allocation decisions according to the guidelines contained in ISE Rule 802. Under ISE Rule 802, allocations are voluntary.⁴ To better enable the Exchange to list and retain options classes that

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59053 (December 4, 2008), 73 FR 76078 (the “Notice”).

⁴ According to ISE, at times, the Exchange is unable to list new products because existing PMMs are not interested in trading the options class. At other times, ISE must delist

PMMs do not wish to trade, ISE proposes to appoint Competitive Market Makers (“CMMs”) that meet certain qualifications as Alternative PMMs when none of the PMMs want an allocation.⁵

Under the proposal, if no PMMs or Second Market PMMs (as applicable) want the allocation, the Alternative PMMs would be offered the opportunity to serve as PMM in the options class in accordance with the Exchange’s regular allocation procedures. Once appointed to an options class, the Alternative PMM would have all of the responsibilities and privileges of a PMM under the ISE Rules with respect to all appointed options classes.⁶ If an Alternative PMM ceases trading of an options class, that options class will be reallocated by the Exchange. An Alternative PMM will not have any transferable rights in options classes to which it is appointed nor will it have any PMM voting rights.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

certain products due to lack of PMM interest. ISE represents that this occurs most frequently with respect to options on stocks that have pending corporate actions and options products that are not listed at any other options exchange. ISE believes that despite the lack of PMM interest, these products may be of interest to other market making firms at the Exchange.

⁵ Only CMMs that own or lease CMM Rights shall be eligible to be appointed as an Alternative PMM. That is, Electronic Access Members acting as market makers in the Second Market will not be eligible to be appointed as Alternative PMMs.

⁶ For example, Alternative PMMs would enjoy privileges that include, among other things, participation rights and small order execution preference while accepting responsibilities that include, among other things, the obligation to provide continuous quotations in the options class to which the Alternative PMM is appointed, and the obligation to conduct the opening rotation on a daily basis for as long as the Alternative PMM is appointed to that options class.

securities exchange.⁷ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁸ which requires that an exchange have rules 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 Commission believes that the proposed rule change, which is intended to allow the Exchange to allocate more new products and to facilitate the continued listing of existing products, is consistent with the Act. The Commission believes that the introduction of Alternative PMMs on the Exchange should add liquidity to the market in the options classes that PMMs on the Exchange decline to seek an allocation, and therefore should provide trading opportunities that should benefit all market participants. In addition, the Commission notes that Alternative PMMs will have all of the responsibilities and all of the privileges of a PMM under the ISE's rules with respect to all appointed options classes.

⁷ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-ISE-2008-90) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).