

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56694; File No. SR-ISE-2007-61)

October 24, 2007

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Specific Performance Commitments for Primary Market Makers

On July 17, 2007, 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 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its Rule 802(b)(2) regarding specific performance commitments for Primary Market Makers (“PMMs”). On September 10, 2007, ISE filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on September 19, 2007.³ The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

I. Description of the Proposal

Currently, ISE Rule 802(b)(2) requires PMMs to submit specific performance commitments each time they request an allocation of options on indices, foreign currency options and Fund Shares (collectively, “Index-Based Products”). The initial rationale behind adopting a requirement on PMMs to submit proposed performance commitments for allocations of options on new Index-Based Products was to require a stronger commitment for certain competitive products like exchange-traded funds and indices and to assist the Exchange’s Allocation

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 56383 (September 11, 2007), 72 FR 53612.

Committee when choosing between PMMs seeking the same product.

The Exchange now believes that its rule is overbroad and may actually discourage some PMMs from seeking allocations of options on Index-Based Products. Therefore, ISE is proposing to amend the rule to provide that specific performance commitments need only be submitted in response to a request by the Exchange, thereby eliminating their submission as a uniform requirement each time a PMM seeks a new allocation of options in Index-Based Products.⁴

II. Discussion

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 securities exchange.⁵ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁶ which requires 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 national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed amendment of ISE Rule 802(b)(2) will encourage PMMs to seek allocations of products on the Exchange, and thereby remove impediments to and perfect the mechanism for a free and open market. Further, the Exchange will continue to evaluate performance standards of its market makers pursuant to existing practice. The proposed rule also allows the Exchange to require the submission of specific performance commitments from a PMM seeking a new

⁴ ISE notes that modifying this requirement will not affect a PMM's other obligations as a market maker on the Exchange under Chapter 8 of ISE's Rules.

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

allocation as the Exchange in its discretion deems appropriate. Accordingly, the Commission finds that the proposal promotes just and equitable principles of trade and protects investors and the public interest.

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-ISE-Phlx-2007-61), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Florence E. Harmon
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).