



October 7, 2013

Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-0609

Re: SR-ISE-2013-48

Dear Ms. Murphy:

The Futures Industry Association Principal Traders Group (“FIA PTG”) appreciates the opportunity to comment on the above referenced proposed rule filing by the International Securities Exchange, LLC (the “ISE”). FIA PTG is composed of firms that trade their own capital on the exchange-traded markets, including the equity options markets. Our members engage in manual, automated, and hybrid methods of trading and are active in a variety of asset classes, such as foreign exchange, commodities, fixed income, and equities. We are a critical source of liquidity in the exchange-traded markets, allowing those who use these markets to manage their business risks to enter and exit the markets efficiently.

FIA PTG seeks to comment on the rule change, filed by the ISE with the Securities and Exchange Commission (the “Commission”) on September 16, 2013, concerning the Continuing Education (“CE”) Program for Proprietary Traders registered with the ISE. While FIA PTG supports part of the ISE proposal, for the reasons outlined below, FIA PTG believes that the Commission should suspend the portion of the ISE’s rule change that modifies ISE Rule 604(c)(1).

### **Background**

The submitted change to ISE Rule 604 (the “Rule”) was filed with the Commission pursuant to Section 19(b)(3)(A)(iii) of the Securities Exchange Act of 1934 (the “Act”) and Rule 19b-4(f)(6) thereunder, and the ISE requested that the change become effective immediately upon filing.

The change to the Rule consists of two operative parts: (i) the addition of language to the Rule setting forth the CE program a registered person is required to take (and the fees associated therewith) and (ii) the addition of language to Rule 604(c)(1) that requires registered persons with a Series 56 registration to complete the Firm Element of the CE requirement.

The revised Rule that requires registered persons with a Series 56 registration to complete the Firm Element of the CE requirement means that ISE member firms (“Members”), even if they do not have customers, must now conduct the Firm Element of CE. The imposition of the Firm Element on Members is a new obligation for Members that do not transact customer business and is not required under the rules of other exchanges and FINRA.<sup>1</sup> For this reason, FIA PTG believes that the Commission, pursuant to Section 19(b)(3)(C) of the Act, should temporarily suspend the ISE’s change to part (c)(1) of the Rule.

#### **A. The ISE’s rule change imposes new and distinct obligations on Members**

The Firm Element portion of the change to the Rule adds new obligations for those Members that do not transact customer business and have personnel who solely possess the Series 56 registration. In particular, Members that are proprietary trading firms had not, until the change to the Rule, been required by the ISE to perform the Firm Element of CE. In general, member firms that do not transact business with customers are exempt from the Firm Element of CE under the rules of other exchanges.<sup>2</sup>

Under FINRA and exchange rules, most member firms are required to conduct appropriate annual compliance training with all of their associated persons, not only registered persons. There are meaningful differences between the annual compliance meeting requirement and the ISE’s proposed Firm Element requirement. The annual compliance meeting requirement focuses on compliance matters relevant to the persons attending the meeting. The Firm Element, according to ISE Rule 604(c)(2)(ii), must cover “general investment features and associated risk factors; suitability and sales practice considerations; and applicable regulatory requirements” of the securities products, services and strategies offered by the Member. Additionally, as part of the Firm Element requirement, Rule 604(c)(2)(i) requires that Members develop a written training plan and prioritize its training needs, neither of which are required as part of the annual compliance meeting requirement of FINRA or other exchanges. Accordingly, adding the Firm

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<sup>1</sup> See, NASDAQ Rule 1120, NASDAQ OMX PHLX Rule 640, NASDAQ OMX BX Rule 1120, NYSE Arca Rule 2.23, NYSE Arca Equities Rule 2.21, Chicago Stock Exchange Rule 11.

<sup>2</sup> The only exchange to require such a Firm Element requirement of CE is the Chicago Board Options Exchange (“CBOE”). See SR-CBOE-2013-076; Letter from Mary Ann Burns, Chief Operating Officer, FIA to Elizabeth A. Murphy, Secretary, SEC dated September 20, 2013 (comment letter on CBOE-2013-076).

Element requirement increases a Member's costs, as Members would have to either allocate resources or turn to third-party providers to fulfill the Firm Element requirement. The ISE has not, in its rule filing or elsewhere, explained the purpose of this new burden on Members that do not transact business with customers.

**B. The guidelines to establish, and minimum requirements of, the Firm Element make little sense for Members who do not transact customer business**

The ISE provides no appropriate guidance on how proprietary, non-customer Members should develop and administer the Firm Element. Instead, Rule 604(c)(2), which purports to provide standards and minimum standards when developing the Firm Element, is tailored to the types of firms that traditionally have had to administer the Firm Element of CE (i.e., firms that transact customer business).

The minimum standards set forth in Rule 604(c)(2) state that a Member's Firm Element *must* cover the following topics: (i) general investment features and associated risk factors; (ii) suitability and sales practice considerations; and (iii) applicable regulatory requirements.

The ISE has not explained the benefits to the registered persons of a Member who does not transact business with customers of meeting the Firm Element requirement that covers "general investment features and associated risk factors" and "suitability and sales practice considerations." Moreover, the absence of guidance or analysis leaves FIA PTG members who would be subject to the revised Rule uncertain about the ISE's expectations for Members or the goals it is attempting to accomplish with this Firm Element requirement.

At a minimum, the ISE should clarify its expectations under the proposal with respect to Firm Element CE before imposing any new obligations on Members. More appropriately, however, the ISE should amend the filing to remove the Firm Element requirement for Members that do not transact any customer business. As an alternative, the ISE could seek to formalize a requirement for an annual compliance meeting, consistent with other exchanges and with FINRA rules.

**C. The rule change was improperly submitted pursuant to Section 19(b)(3)(A) of the Act and should be made available for comment prior to implementation**

In order to self-certify a rule under Section 19(b)(3)(A) of the Act, a proposed rule must, generally: (i) constitute a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of an exchange; (ii) establish a due, fee, or other charge imposed by the exchange; or (iii) be concerned solely with the administration of the exchange. The Firm Element CE portion of the change to the Rule was not properly filed under

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Section 19(b)(3)(A) of the Act and should be made available for public comment under Section (19(b)(2) of the Act.

The Firm Element change to the Rule was not mentioned in the ISE's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change submitted to the Commission. The FIA PTG recognizes that this oversight was in error. Nevertheless, because the Firm Element change is not supported by the filing, procedurally the change to the Firm Element portion of the Rule was not properly filed with the Commission.

Moreover, the ISE justified the filing under Section 19(b)(3)(A) of the Act because “[the] proposal does not propose any unique policies or provisions, but would instead align the [ISE's] rules and fees regarding continuing education for Proprietary Traders with the rules and fees of other options exchanges.” This statement is incorrect with respect to the Firm Element requirement for two reasons. First, as was stated above, the change to the Firm Element requirement of the Rule does impose an additional, new, and unique obligation on certain Members, and it does change both the Members' and registered persons' CE obligations in a manner that is not consistent with the vast majority of other exchanges. Second, the ISE states that change to the Rule is aligned with the rules of other exchanges, and further states that the proposal is based on filings by the CBOE, C2 Options Exchange, Inc. (“C2”), BATS Exchange, Inc. (“BATS”), and NASDAQ OMX PHLX, LLC (“PHLX”). This is correct in part, but it is not correct with respect to the Firm Element CE requirement. In fact, C2, BATS, and PHLX do not require the Firm Element for their member firms who do not conduct customer business, nor as of the date of this letter have they proposed to do so.

For these reasons the Firm Element portion of the change to the Rule was not properly filed under Section 19(b)(3)(A) of the Act and should therefore be withdrawn. In the alternative, the Commission should temporarily suspend the change to the Rule as it relates to the Firm Element.

**Conclusion**

The FIA PTG would like to thank the Commission for the opportunity to provide our thoughts on the proposed change to the Rule. As always, we look forward to playing a constructive role in helping the Commission achieve its regulatory goals in the most effective manner.

Please contact Mary Ann Burns ([maburns@futuresindustry.org](mailto:maburns@futuresindustry.org)) if you have any questions regarding this request.

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Respectfully,

Futures Industry Association Principal Traders Group

A handwritten signature in black ink that reads "Mary Ann Burns". The signature is fluid and cursive, with "Mary" on the first line and "Ann Burns" on the second line.

Mary Ann Burns  
Chief Operating Officer  
Futures Industry Association

cc: Mary Jo White, Chairman  
Luis A. Aguilar, Commissioner  
Daniel M. Gallagher, Commission  
Kara M. Stein, Commissioner  
Michael S. Piwowar, Commissioner  
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