

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65361; File No. SR-ISE-2011-42)

September 20, 2011

Self-Regulatory Organizations; International Securities Exchange, Inc., Order Granting Approval of Proposed Rule Change Relating to Rule 717

I. Introduction

On July 25, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 codify an existing policy related to the application of ISE Rules 717(d) and (e). The proposed rule change was published for comment in the Federal Register on August 8, 2011.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of Proposal

ISE Rules 717(d) and (e) require members to expose orders entered on the limit order book for at least one second before executing them as principal or against orders that were solicited from other broker-dealers. This requirement gives other market participants an opportunity to participate in the execution of orders before the entering member executes them. In its enforcement of ISE Rules 717(d) and (e), the Exchange has not considered the inadvertent interaction of orders from the same firm within one second to be a violation of the exposure requirement. The Exchange currently has a policy that member firms may demonstrate that orders were entered by individuals or systems that did not have the ability to know of the pre-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 34-65011 (August 2, 2011), 76 FR 48187.

existing order on the limit order book due to the operation of effective information barriers in place at the time the orders were entered. This proposed rule change codifies this policy in Supplementary Material .06 to Rule 717. The proposed rule change will require that such information barriers be fully documented and provided to the Exchange upon request.⁴

III. Discussion and Commission Findings

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 and, in particular, the requirements of Section 6 of the Act.⁵ The Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,⁶ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.⁷

⁴ The Exchange reviews information barrier documentation to evaluate whether a member has implemented processes that are reasonably designed to prevent the flow of pre-trade order information given the particular structure of the member firm. Additionally, information barriers are reviewed as part of the Exchange's examination program, which is administered by the Financial Industry Regulatory Authority ("FINRA") pursuant to a regulatory services agreement.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation.

ISE Rules 717(d) and (e) require members to expose orders entered on the limit order book for at least one second before executing them as principal or against orders that were solicited from other broker-dealers. This requirement gives other market participants an opportunity to participate in the execution of orders before the entering member executes them. The Exchange represented that it conducts routine surveillance to identify instances when an order on the limit order book is executed against an order entered by the same firm within one second. The Exchange represented that when it investigates potential violations of ISE Rules 717(d) and (e), it considers whether such executions during the one second exposure period were entered by persons, business units and/or systems at the same firm, and whether the firm has knowledge of pre-existing orders on the limit order book. Further, the Exchange indicated that it does not consider inadvertent interaction of such orders from the same firm during the one second exposure period to be a rule violation. This proposal codifies this policy by adding Supplementary Material .06 to Rule 717 to allow members to provide evidence of effective information barriers between the persons, business units and /or systems at the time of order entry to indicate that there was no knowledge of other pre-existing orders entered by the firm.

The Commission believes that this proposed rule change should clarify the intent and application of ISE Rules 717(d) and (e). In addition, the proposed rule change should enable Exchange to administer the rule more efficiently by helping to assure that member firms are adhering to the same standards for compliance with ISE Rules 717(d) and (e). The Commission therefore believes that the proposal is consistent with Section 6(b)(5) of the Act.⁸

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-2011-42), be, and hereby is, approved.

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

Elizabeth M. Murphy
Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).