

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52066; File No. SR-ISE-2005-35)

July 20, 2005

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto To Extend the Pilot Program for Preferred Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 14, 2005, the International Securities Exchange, Inc. (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 19, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis, for a pilot period through June 10, 2006.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot program for preferred orders until June 10, 2006. The text of the proposed rule change is set forth below. Italics indicate additions; [brackets] indicate deletions.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Form 19b-4 dated July 19, 2005 (“Amendment No. 1”). Amendment No. 1 replaced and superseded the original filing in its entirety.

Rule 713. Priority of Quotes and Orders

(a) through (f) no change.

Supplementary Material to Rule 713

.01 through .02 no change.

.03 Preferred Orders. For a pilot period ending [July 22, 2005] June 10, 2006, an Electronic Access Member may designate a “Preferred Market Maker” on orders it enters into the System (“Preferred Orders”).

(a) through (c) no change.

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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 Exchange 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 places specified in Item III below. The Exchange 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

The pilot period for preferred orders provided in paragraph .03 of the Supplementary

Material to Exchange Rule 713 expires on July 22, 2005.⁴ The Exchange initially adopted this rule on a six-week pilot basis. The Exchange believes that the short pilot period gave the Commission an opportunity to seek public comment on the Exchange's proposal to preference orders to Exchange market makers ("Proposal") before determining whether the Proposal should be approved for a longer pilot period. The approval order and notice for the Proposal was published in the Federal Register.⁵ The comment period for the Proposal expired on July 7, 2005, and the Commission did not receive any new comments on the Proposal.⁶ Accordingly, the Exchange believes it is now appropriate for the Commission to extend the pilot period so that the Exchange and the Commission can evaluate the rule change over a one-year period.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act⁷, in that the proposed rule change is designed to promote just and equitable principles of trade, 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 Exchange believes that extension of the pilot period will allow the Exchange and the Commission to evaluate the rule change over a one-year period.

⁴ See Securities Exchange Act Release No. 51818 (June 10, 2005), 70 FR 35146 (June 16, 2005) (notice of filing and order approving SR-ISE-2005-18).

⁵ Id.

⁶ The Commission received one comment letter on the Proposal before the approval order and notice relating to the Proposal was published in the Federal Register. See Letter from Matthew B. Hinerfeld, Managing Director and Deputy General Counsel, Citadel Investment Group, L.L.C., on behalf of Citadel Derivatives Group LLC, to Jonathan G. Katz, Secretary, Commission, dated April 6, 2005.

⁷ 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that 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 the proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act and whether the pilot time frame is appropriate. 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. Please include File Number SR-ISE-2005-35 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-ISE-2005-35. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room. Copies of such 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-2005-35 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act⁸ and the rules and regulations thereunder applicable to a national securities exchange⁹, and, in particular, the requirements of

⁸ 15 U.S.C. 78f.

⁹ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Section 6(b)(5) of the Act.¹⁰ Section 6(b)(5) requires, among other things, that the rules of a national securities exchange be 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 notes that the current pilot was approved on a six-week basis to allow the Commission an opportunity to solicit comments on the proposed rule change prior to considering whether to approve such pilot program for an extended period. The Commission did not receive any new comments regarding the Proposal.¹¹ The Commission believes that extending the pilot period will provide the Commission with additional time to evaluate the impact of the Proposal on the options markets to determine whether it would be beneficial to customers and to the options markets as a whole before approving any request for permanent approval of the pilot program. In addition, the Commission notes that it has recently approved proposals similar to ISE's preferenced order proposal for one-year pilot periods for other options markets.¹²

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the Federal Register. The Commission believes that granting accelerated approval of the proposed rule change would allow the pilot program to continue without disruption while the Commission and the Exchange continue to review the pilot program's impact on the options market. Accordingly,

¹⁰ 15.U.S.C. 78f(b)(5).

¹¹ See supra note 6.

¹² See Securities Exchange Act Release Nos. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (order approving SR-Phlx-2004-91); and 51779 (June 2, 2005), 70 FR 33564 (June 8, 2005) (order approving SR-CBOE-2004-71).

the Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹³ for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the Federal Register.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-ISE-2005-35), as amended, which extends the pilot program until June 10, 2006, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Jonathan G. Katz
Secretary

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).