

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52711; File No. SR-ISE-2004-04)

November 1, 2005

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1 and 2 Relating to Exposure Periods in the Facilitation and Solicited Order Mechanisms

I. Introduction

On February 23, 2004, the International Securities Exchange, Inc. (“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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to reduce the exposure period in its Facilitation and Solicited Order Mechanisms from ten seconds to three seconds. The ISE filed Amendments No. 1 and 2 to the proposal on September 7, 2005, and September 20, 2005, respectively.<sup>3</sup> The proposed rule change, as amended, was published for comment in the Federal Register on September 28, 2005.<sup>4</sup> The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of Proposal

Supplementary Material .04 to ISE Rule 716, “Block Trades,” currently provides ISE members with 10 seconds to respond to broadcast messages for orders entered into

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 superseded and replaced the ISE’s original filing in its entirety. Amendment No. 2 corrected a non-substantive typographical error in the text of the proposed rule change, and two incorrect references in footnotes to the Form 19b-4 for Amendment No. 1 and Exhibit 1 thereto.

<sup>4</sup> See Securities Exchange Act Release No. 52479 (September 21, 2005), 70 FR 56755.

the ISE's Facilitation and Solicited Order Mechanisms. The ISE proposes to amend ISE Rule 716, Supplementary Material .04 to reduce the exposure period in the Facilitation and Solicited Order Mechanisms from 10 seconds to three seconds.<sup>5</sup>

Similar to the Facilitation and Solicited Order Mechanisms, the ISE's Price Improvement Mechanism ("PIM") provides an auction process through which an ISE member may trade with its customer's order as principal or execute its customer's order against orders the member has solicited.<sup>6</sup> The exposure period for orders entered into the ISE's PIM is three seconds. The ISE notes that the PIM is an interactive auction in which ISE members receive and may respond to multiple price updates within the three-second exposure period. In contrast, ISE members receive only one message at the start of an auction for orders entered into the Facilitation and Solicited Order Mechanisms. The ISE believes that there is no reason for providing different exposure periods in the three mechanisms because, in each of the three mechanisms, ISE members are notified of orders and enter their interest in trading with such orders in the same technical manner.

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<sup>5</sup> ISE Rule 716 originally required that orders be exposed in the Facilitation Mechanism for 30 seconds. In September 2002, the Commission approved an ISE proposal to reduce this exposure period from 30 seconds to 10 seconds. See Securities Exchange Act Release No. 46514 (September 18, 2002), 67 FR 60627 (September 25, 2005) (order approving File No. SR-ISE-2001-19). The Commission approved the ISE's Solicited Order Mechanism in June 2004 with an exposure period of 10 seconds. See Securities Exchange Act Release No. 49943 (June 30, 2004), 69 FR 41317 (July 8, 2004) (order approving File No. SR-ISE-2001-22).

<sup>6</sup> See ISE Rule 723, "Price Improvement Mechanism for Crossing Transactions." See also Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (order approving File No. SR-ISE-2003-06) ("PIM Order").

### III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>8</sup> in particular, in that it is 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.<sup>9</sup> In particular, the Commission believes that reducing the exposure period for orders entered into the ISE's Facilitation and Solicited Order Mechanisms from 10 seconds to three seconds could facilitate the prompt execution of these orders while providing participants in ISE's market with an adequate opportunity to compete and provide price improvement for the orders.

In approving the ISE's PIM, the Commission concluded that the three-second PIM auction should afford electronic crowds sufficient time to compete for orders submitted to the PIM.<sup>10</sup> In reaching this conclusion, the Commission stated that the critical issue is determining whether the three-second timeframe would give participants in a fully automated marketplace sufficient time to respond to a PIM broadcast, to compete, and to provide price improvement for orders, and whether electronic systems were available to ISE members that would allow them to respond to PIM broadcasts in a meaningful way within the proposed timeframe.<sup>11</sup> The Commission noted that the ISE is a fully electronic

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> See PIM Order, supra note 6.

<sup>11</sup> See PIM Order, supra note 6.

exchange where crowd members interact by electronic means, and that electronic systems were readily available, if not already in place, that would allow ISE members to respond to PIM broadcasts.<sup>12</sup>

The Commission believes that its rationale for approving the three-second PIM auction applies equally to auctions in the Facilitation and Solicited Order Mechanisms. In this regard, the Commission notes that in contrast to the PIM, which provides an interactive auction in which ISE members may receive and respond to multiple price updates within the three-second exposure period, the Facilitation and Solicited Order Mechanisms provide ISE members with only one message at the start of the auctions. Accordingly, the Commission believes that the electronic systems that would allow ISE members to receive and respond to multiple price updates during a three-second PIM auction also should allow them to respond in a meaningful way to three-second auctions in the Facilitation and Solicited Order Mechanisms.

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-ISE-2004-04), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Jonathan G. Katz  
Secretary

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<sup>12</sup> See PIM Order, supra note 6.

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).