INTERNATIONAL SECURITIES EXCHANGE®

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August 14, 2006

Ms. Catherine McGuire
Chief Counsel
Division of Market Regulation
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D. C. 20549

Re: Request for a Limited Exemption from Paragraph (a)(2)(i)(A) of Exchange Act Rule 10b-10 and Request for No-Action Relief with Respect to Exchange Act Rules 17a-3 and 17a-4

Dear Ms. McGuire:

The International Securities Exchange, Inc. ("ISE" or "Exchange"), respectfully requests a limited exemption from paragraph (a)(2)(i)(A) of Rule 10b-10 under the Securities Exchange Act of 1934 ("Act") on behalf of ISE Electronic Access Members ("EAMs") that execute trades on the ISE for their customers.[1] The exemption request is limited to those trades that EAMs execute on the ISE's equity facility ("ISEstock") against other EAMs using the post-trade anonymity process.[2]

A. Background – ISEstock Explained

ISEstock is the ISE's proposed equity trading facility. It will be a matching system in which EAMs authorized to trade in ISEstock ("ISEstock EAMs") can enter orders for execution, in a continuous auction, at the mid-point of the national best bid and offer ("NBBO"). An ISEstock EAM will be able to enter unpriced orders into the system. In entering an order, a member must specify: the security; whether it is a buy or sell order; and the number of shares the member seeks to buy or sell. Although unpriced, members also may specify a boundary price above which they will not buy (or below which they will not sell). The system will continuously monitor buy and sell orders in the system and will execute orders at the mid-point of the NBBO as long as the execution does not violate the boundary price on an order.

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[1] Paragraph (f) of Rule 10b-10 provides the Securities and Exchange Commission ("Commission") authority to issue exemptions from the requirements contained in paragraphs (a) and (b) of the rules.

[2] See Proposed ISE Rule 2109. As explained herein, the Exchange does not request an exemption for when it reveals the identity of a contra-party to an ISEstock EAM (as defined below) (i) where the ISEstock EAM has executed orders against itself; (ii) when required for legal or regulatory purposes; (iii) if the National Securities Clearing Corporation ("NSCC") ceases to act for an ISEstock EAM or the ISEstock EAM's clearing firm, and (iv) if the NSCC determines not to guarantee the settlement of the ISEstock EAM's trade.

When entering an order, an ISEstock EAM can specify what, if any, information the system should disseminate. First, the ISEstock EAM can specify that the system not disseminate any information regarding the order ("Reserve Order"). Alternatively, the ISEstock EAM can enter a "Solicitation of Interest" or "SOI" that will result in the system disseminating that there is a pending order in a particular security. The system will disseminate a broadcast of an SOI but will not send such broadcast outside of the ISE. An ISEstock EAM entering an SOI may not cancel that SOI for five seconds. In addition, if an SOI is not executed within 10 seconds, the SOI will convert into a Reserve Order, and will thus lose the SOI priority in the execution algorithm discussed below.

The system will execute trades randomly when there is a match of buying and selling interest, with all executions at the mid-point of the NBBO. If there are multiple orders that can be matched at the NBBO, the system will employ specific execution priorities, with orders in each category filled on a first-in, first-served basis. First priority is for SOIs and second priority is for Reserve Orders. There are special priority rules for all-or-none orders to maximize the possibility of order executions. There are no opportunities for ISEstock EAMs: to alter this execution algorithm; to determine or influence the selection of the ISEstock EAM with whom they will trade; or otherwise to change execution priorities.

The proposed ISEstock rules provide that the Exchange will not reveal to an ISEstock EAM the contra-party to a trade. The ISE believes that post-trade anonymity benefits investors because preserving anonymity through settlement limits the potential market impact that disclosing an ISEstock EAM's identity may have. This is similar to the rules of the Pacific Exchange[3] and NASDAQ.[4] We believe it is essential for ISE to offer ISEstock EAMs the same anonymity through the settlement process. To facilitate this proposal, we have worked with NSCC to accommodate anonymity on a post-trade basis. NSCC has assigned post-trade anonymous trades with a unique clearing number. The ISE will submit clearing records to NSCC, which, pursuant to its rules,[5] will report trades back to its clearing firms utilizing this unique clearing number.

To address risk management concerns, ISE will reveal the contra-party only in those instances (i) where the ISEstock EAM has executed orders against itself;[6] (ii) when required for legal or regulatory purposes; (iii) if the NSCC ceases to act for an ISEstock EAM or the ISEstock EAM's clearing firm, and (iv) if the NSCC determines not to guarantee the settlement of the ISEstock EAM's trade.

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[3] *See* Securities Exchange Act Release No. 49786 (May 28, 2004), 69 FR 32087 (June 8, 2004) (order publishing for comment and noticing effectiveness of File No. SR-PCX-2004-40).

[4] *See* Securities Exchange Act Release No. 48527 (September 23, 2003), 68 FR 56361 (September 30, 2003) (order approving SR-NASD-2003-85).

[5] *See* Securities Exchange Act Release No. 48526 (September 23, 2003), 68 FR 56367 (September 30, 2003) (order approving SR-NSCC-2003-14 regarding NSCC's procedures for post-trade anonymity).

[6] When an order submitted to ISEstock by an ISEstock EAM is matched against other trading interest of the ISEstock EAM, the Exchange will inform the ISEstock EAM that it executed a trade against itself by the end of the trading day.

B. Rule 10b-10 - Identifying Contra-Party

Rule 10b-10, among other things, requires a broker-dealer to disclose to its customers the identity of the party the broker-dealer sold to, or bought from, to fill the customer's order. Specifically, under paragraph (i)(A) of Rule 10b-10(a)(2), when a broker-dealer is acting as agent for a customer, some other person, or for both the customer and some other person, the broker dealer must disclose "the name of the person from whom the security was purchased, or to whom it was sold, for such customer or the fact that the information will be furnished upon written request of such customer" (the "Contra-Party Identification Requirement"). A broker-dealer can provide this information on the confirmation, or it has the option to provide the information to a customer at a later time after receiving a written request from the customer. A broker-dealer has this option as long as it discloses on the confirmation that the contra-party information is available upon written request.

In ISEstock, the Exchange will not routinely reveal the identity of the actual contra-party when the order is executed against another ISEstock EAM. Therefore, ISEstock EAMs will not know the identity of the party to whom they sold securities or from whom they purchased securities. Without this information, ISEstock EAMs cannot comply with the Contra-Party Identification Requirement. To permit ISEstock EAMs to utilize ISEstock without violating Rule 10b-10, the Exchange is seeking an exemption, on behalf of such ISEstock EAMs, from the Contra-Party Identification Requirement.

The Contra-Party Identification Requirement, in conjunction with the other requirements of paragraph (a)(2) of Rule 10b-10, is designed to provide customers with information that could alert them to potential conflicts of interest their broker-dealer may have had when handling their orders.[7] The Exchange believes an exemption from the Contra-Party Identification Requirement when an ISEstock EAM trades with another ISEstock EAM on ISEstock would not diminish the public policy and investor protection objectives of the Contra-Party Identification Requirement of Rule 10b-10. The Exchange believes the potential for a conflict of interest is less likely in those circumstances when an ISEstock EAM trades with another ISEstock EAM on ISEstock because the trades are executed only at the midpoint of the NBBO and the contra party is determined randomly based upon multiple factors not controlled by either ISEstock EAM. In such situations, ISEstock EAMs are not permitted the discretion in executing the order that would normally give rise to the opportunity for a conflict of interest.

There will be an exception to the post-trade anonymity process under which the Exchange will inform ISEstock EAMs when they have executed an order by matching against other trading interest they have submitted to ISEstock. As a result, all ISEstock EAMs who execute trades on ISEstock will have available to them the information necessary to comply with the remaining applicable requirements of Rule 10b-10.

C. Books and Record Retention

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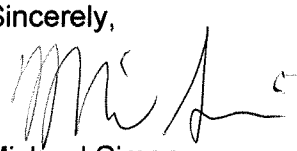
[7] Paragraph (a)(2) of Rule 10b-10 requires a broker-dealer to disclose on a confirmation to a customer the capacity in which the broker-dealer handled the customer's order (*i.e.*, as agent or principal), and whether the broker-dealer acted as agent for some other person, or as agent for both the customer and some other person. Paragraph (i)(D) of Rule 10b-10(a)(2) requires a broker-dealer to disclose to its customer the source and amount of remuneration received, or to be received, by the broker-dealer in connection with the trade.

The Exchange asks that the Commission staff not recommend enforcement action to the Commission if, in lieu of making and preserving a separate record, a broker-dealer relies on the Exchange's retention of the identities of ISEstock EAMs that execute anonymous trades on ISEstock to satisfy requirements of Rules 17a-3(a)(1) and 17a-4(a) under the Act. A broker-dealer would retain the responsibility to make, keep current and preserve records of all purchase and sales of securities in accordance with Exchange Act Rules 17a-3 and 17a-4 for trades on ISEstock if the broker-dealer knows the identity of the contra-party, including those instances where the Exchange discloses the contra-party to a trade.

In view of the foregoing, we respectfully request that the Commission issue an exemption from the paragraph (a)(2)(i)(A) of Rule 10b-10 for ISEstock EAMs that execute anonymous trades in ISEstock for their customers with other ISEstock EAMs. We further request that the Commission staff provide no-action relief with respect to the corresponding books and records requirements of Rules 17a-3(a)(1) and 17a-4(a). We do not request that the exemption or no-action relief apply to those ISEstock EAMs that know the identity of the contra party.

Sincerely,



Michael Simon
Chief Regulatory Officer

cc: Brian A. Bussey
Elizabeth MacDonald