

SR15E200626-8

David Krell
President & CEO
International Securities Exchange, Inc
60 Broad St.
New York, NY 10004

Dear Mr. Krell:

I have watched with great admiration as the ISE has evolved from a start-up concept to a thriving public company. No doubt, the ISE has benefited from superior management and positioning themselves at the most propitious moment as the first all electronic options exchange. The success of the ISE has also resulted from numerous customers like me who have elected to trade millions of options contracts annually on the ISE. As a customer, I have always felt the ISE to be the most progressive and welcoming options exchange for customer participation...until now.

Recently, I have noticed several attempts by the ISE to discourage, resist, or impede customer participation. All, I believe, primarily in an effort to appease the interests of specialists, who no doubt have seen their impact on the market erode: An erosion that is a normal expected outcome from an electronic platform. An erosion that should be embraced, as the critical mass of customer participation (from large sophisticated customers as well as small users) diminishes the need for specialists to step in and provide additional liquidity in the marketplace.

Indeed, one recent example of this propensity to manipulate customer participation is ISE proposed rule change 36-2006-26. This vague, misguided, regulatory proposal will in the long run serve only to limit customer participation, retard ISE business development and market share expansion, require unnecessary expenditures to regulate and enforce, and generate litigation alleging anti-competitive practices and restraint of trade. Moreover, I would be very surprised if the SEC allowed an exchange to usurp their jurisdiction with regard to who is and who is not a public customer. One would think the SEC would not want an exchange to determine "degrees" of customers who are entitled to SEC protection based on what could ostensibly become a moving target/sliding scale predicated on the degree of competition the customer presents for specialists and other broker-dealers. One, too, has to question the motivation of a proposal that punishes large customers with fees and restrictions when most business plans reward customers for doing more business. Finally, one would think the SEC would be astute enough to realize that the best protection for all customers, particularly small customers, is one that encourages price discovery by maximizing, without encumbrance, the participation of all customers, large and small. Indeed, I am sure that the SEC is aware that any attempt to unravel the fabric of the market results in dislocation to the detriment of all participants.

Imagine the dilemma of the SEC if NYSE specialists had argued that customers they stepped in front of were not entitled to protection because they were large or sophisticated or professional customers. SEC enforcement would become a nightmare. If the SEC allows this new category of second-class customer, then what is next: two more categories or six or more? Where are the lines drawn? Who controls the designation of a customer? Will each exchange have a different set of criteria? Who will enforce these rules? For example, who will determine who has a beneficial interest in an account? Will it be one thing one day and something else the next? Is the ISE going to investigate every retail account in the world trying to determine who has a beneficial interest? The expense of enforcement alone will exceed the revenue the proposal would produce.

Additionally, it appears that your proposal limits customer participation without concurrently proposing capital relief and additional access to the marketplace that broker-dealers and specialists enjoy. This proposal, along with being misguided on its face, is also predicated on a false pretext. Many customers who do not have the information and technology alleged are ensnared by the restrictive nature of the rule. No customer I know has the ability or the authorization to stream quotes based on the underlying security. Basically, this proposal appears to be just another disingenuous attempt to squeeze out sophisticated customers who are careful, yet active in their market participation. Moreover, by placing the specialist on equal footing with the customer, the specialist will, in effect, be able to interposition himself ahead of or instead of customer orders: A practice for which New York specialists have been sanctioned and fined.

In addition to all of the foregoing, the proposal does not meet the basis for a rule change under the Securities Act of 1934. Indeed, if allowed, the proposed rule change would result in the very behavior the Act is designed to prevent. All retail investors should be treated fairly and uniformly. The allegations of technological and informational advantages are simply not true. But, even if they were true, specialists should not be competing with customers. And, finally, the exchange rule proposal does not treat this new professional customer equally within the ISE marketplace as alleged. These new professional customers cannot stream quotes, they are not provided broker-dealer or specialist capital relief and they are still subject to other rules that restrict participation.

Accordingly, and with all due respect to you and your management, here are three simple business principles around which you can build a viable, straightforward business free of all unnecessary enforcement and regulation, beholden only to your customers and shareholders:

1. Charge a nominal fee (3 to 6 cents) along the lines of the OCC for every customer order executed on the ISE. The more orders you execute, the lower the fee should be. This provides a stable revenue source and encourages participation by all customers. It provides a clear, regulation-free, profitable growth model.
2. You serve customers. Therefore, customer price time priority should be preserved.
3. Specialists and broker-dealers should not compete with customers. Therefore, the marketplace should be free of regulation and rules which place the interest of specialists ahead of any customers. Broker-dealer orders should be treated like specialist's orders as they have elected to prefer capital relief over priority in the marketplace.

I have taken a great deal of time to analyze your proposed rule changes. Without over-simplification, I have attempted to distill the rule and its implication to its essence. I'm sure you will consider my proposals, as no doubt you realize this rule change and others like it only lead to a slippery slope of regulation and enforcement expense, lawsuit defense, and to a fundamentally flawed business model.

Thank you for your attention. I look forward to hearing from you personally.

Sincerely,

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