

SEC

When is the SEC going to fight for our rights as investors. 300 seconds, why not make it hour or the whole day. The problem is the customer priority rule, the ISE should eliminate it. The NYSE does not charge for cancels and they have no customer priority. The NYSE eliminated their customer priority rule and in turn did not charge for cancels going forward. The other problem here is based on ISE members cancelling and replacing orders at such a rapid pace based on market volatility. The ISE has over a three year period continuously changed its cancellation policy.

Eliminate your customer priority, then no customer will come to your exchange including myself. Based on a report from the CBOE, the stock symbol is Alcoa (NYSE- AA), the entire optionclass on a day cancelled and replaced orders about 2 million times. How are my 700 cancellations per month compared to that daily amount. There is no comparison. The ISE wants to blame the customers when the problem lies with their own members. I would love to cancel replace my order versus cancelling it but it makes no difference to the ISE, it is still consider a cancel.

This would save the ISE from unwarranted system overloading. The SEC should eliminate this new ISE amendment with it also allowing all customers the same access to customer margining compared to the broker dealers and eliminate all cancellation fees. If the ISE rule SR-ISE-2008-92 rule is allowed to hold then the industry will see falling volumes, higher prices through higher commissions by EAM's. Let's level the playing field. If the ISE is so worried about overloads to their system and the extra costs, then eliminate your customer priority rule. I am pretty sure they will not have a problem going forward. Please reject this entire rule and instruct the ISE to eliminate their customer priority rule. Do not allow the ISE to continually violate the Anti-Trust laws of this nation. The integrity of the SEC is in doubt if you allow the ISE to pass amendment after amendment to their cancellation policy.

(a) Purpose

The Exchange believes this proposed fee change is justified to counter the level of cancellation activity. Cancelled orders continue to be an issue on the Exchange.

This fee is currently charged only to customer orders; broker-dealer orders, including non-member market maker (FARMM) orders, are excluded from this fee.

The rule change is specifically targeted and limited to customer orders. This rule creates a disadvantage specifically for the customer or individual investor.

Additionally, there is no transparency for the cancellation activity of institutional orders (broker-dealer orders, including non-member market maker (FARMM) orders, are excluded from this fee) who are not charged for cancellations. Many institutional firms electronically auto-quote a two sided market in almost every series of every exchange

listed option. Cancels are sent when market conditions change (i.e. the underlier moves up or down or volatility changes). As most customers do not autoquote in thousands of options at once, the cancel activity of the institutional firms will dwarf the cancel activity by customers many times over.

It would appear necessary to substantiate the claim that cancelled customer orders are and continue to be an issue on the exchange in order to affect a rule change limited to customer orders only. The ISE has not done this.

Most recently, some members have sought to circumvent this fee by sending cancelled orders every 31 seconds precisely to avoid the 30 second window that is currently in place for this fee.

This is incorrect. To 'circumvent' this fee, a member would be required to execute an order every 31 seconds not send a cancelled order every 31 seconds. Given that this would be required to 'circumvent' this fee, the net effect is that ISE is creating more trading volume on its exchange from which it profits.

(b) Basis

The basis under the Securities Exchange Act of 1934 (the "Exchange Act") for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the Exchange believes amending the 30 second window in its current cancel fees to 300 seconds is necessary to allow the Exchange to target cancellations that do not have a valid justification.

This statement indicates that all cancels sent by institutions have valid justification as they are not charged for cancels. What is valid justification for cancellation? Is it reasonable for the exchange to determine which orders are valid for cancellation or for the account sending the order?

Kind Regards,

Gerald Schneider
Chicago, Illinois