

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53850; File No. SR-ISE-2006-21)

May 23, 2006

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Exposure Period for Crossing Orders

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> notice is hereby given that on April 17, 2006, 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 ISE. The ISE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The ISE proposes to decrease the exposure period for crossing orders under ISE Rule 717(d) and (e) to three seconds. The text of the proposed rule change is as follows, with deletions in [brackets] and additions underlined.

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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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

**Rule 717. Limitations on Orders**

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(d) Principal Transactions.

Electronic Access Members may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least three (3) [thirty (30)] seconds, (ii) the Electronic Access Member has been bidding or offering on the Exchange for at least three (3) [thirty (30)] seconds prior to receiving an agency order that is executable against such bid or offer, or (iii) the Member utilizes the Facilitation Mechanism pursuant to Rule 716(d).

(e) Solicitation Orders.

Electronic Access Members may not execute orders they represent as agent on the Exchange against orders solicited from Members and non-member broker-dealers to transact with such orders unless (i) the unsolicited order is first exposed on the Exchange for at least three (3) [thirty (30)] seconds, or (ii) the Member utilizes the Solicited Order Mechanism pursuant to Rule 716(e).

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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 ISE 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 IV below. The ISE 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

An Electronic Access Member (“EAM”) of the Exchange may not execute an order it represents as agent with a facilitation or solicited order (referred to herein as “crossing orders”) unless it complies with the order exposure requirements contained in ISE Rule 717(d) and (e) respectively. As set forth in these provisions, if an EAM seeking to cross two orders does not choose to use the Facilitation Mechanism or the Solicited Order Mechanism, which automatically expose crossing orders for 3 seconds, it is required to comply with a 30-second exposure requirement. Specifically, when an EAM chooses not to use the Facilitation Mechanism, it may not execute a facilitation cross unless (i) the agency order is first exposed on the Exchange for at least 30 seconds; or (ii) the EAM has been bidding or offering on the Exchange for at least 30 seconds prior to receiving the agency order that is executable against such bid or offer. Similarly, when an EAM chooses not to use the Solicited Order Mechanism, it may not execute a solicitation cross unless the agency order is first exposed on the Exchange for 30 seconds.

The Exchange proposes to shorten the duration of the exposure period contained in the rules governing such transactions from 30 seconds to 3 seconds. This shortened exposure period is fully consistent with the electronic nature of the Exchange’s market. Market participants on the ISE have implemented systems that monitor any updates to the ISE market, including any changes resulting from orders being entered into the market, and can automatically respond based on pre-set parameters. Thus, an exposure period of 3 seconds will permit exposure of orders on the ISE in a manner consistent with the Exchange’s electronic market.

By reducing the exposure time to 3 seconds, the ISE believes that EAMs will be able to provide liquidity to their customers' orders on a timelier basis, thus providing investors with more speedy executions. Timely and accurate executions are consistent with the principles under which the ISE's electronic market was developed.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>5</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. In particular, the proposal will permit members to provide liquidity to customer orders on a more timely basis, thus providing investors with more speedy executions. At the same time, it will preserve a reasonable period for orders to interact in the auction market.

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

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

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>8</sup> However, Rule 19b-4(f)(6)(iii)<sup>9</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6). When filing a proposed rule change pursuant to Rule 19b-4(f)(6) under the Act, an Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange provided notice to the Commission two business days prior to filing the proposed rule change, and the Commission has determined to waive the five business day requirement.

<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>9</sup> Id.

public interest. The ISE has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change is based on rules recently approved by the Commission for two other exchanges.<sup>10</sup> For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>11</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2006-21 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2006-21. This file number should be

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<sup>10</sup> See Securities Exchange Act Release Nos. 53567 (March 29, 2006), 71 FR 17529 (April 6, 2006) (SR-CBOE-2006-09) and 53609 (April 6, 2006), 71 FR 19224 (April 13, 2006) (SR-NYSEArca-2006-01).

<sup>11</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 ISE. 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-2006-21 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Nancy M. Morris  
Secretary

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