

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60311; File No. SR-ISE-2009-51)

July 15, 2009

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Expose All-Or-None Orders on A Three-Month Pilot Basis

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 9, 2009, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. On July 13, 2009, ISE filed Amendment No. 1³ to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange is proposing to amend its rules to implement a broadcast message that will inform members when a non-marketable all-or-none limit order is placed on the limit order book. The text of the proposed rule change is as follows, with additions underlined:

Rule 717. Limitations on Orders

* * * * *

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange made technical, non-substantive corrections to Exhibit 1.

Supplementary Material to Rule 717

.01 - .03 No Change.

.04 A non-marketable all-or-none limit order shall be deemed “exposed” for the purposes of paragraphs (d) and (e) one second following a broadcast notifying members that such an order to buy or sell a specified number of contracts at a specified price has been received in the options series. This provision shall be in effect on a pilot basis expiring October 9, 2009.

* * * * *

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 self-regulatory organization 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 self-regulatory organization 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

(a) Purpose – Pursuant to ISE Rule 717(d) and (e), Electronic Access Members must expose agency orders on the Exchange for at least one second before entering a contra-side proprietary order or a contra-side order that was solicited from a broker-dealer, or utilize one of the Exchange’s execution mechanisms that have one second exposure periods built into the functionality.⁴

⁴ See ISE Rule 716(d) (Facilitation Mechanism), Rule 716(e) (Solicited Order Mechanism) and Rule 723 (Price Improvement Mechanism for Crossing Transactions).

The Exchange operates an integrated system that consolidates all market maker quotes and orders, and automatically disseminates the best bid and offer. If a limit order is designated as all-or-none, the contingency that the order must be executed in full makes it ineligible for display in the best bid or offer. Nevertheless, such orders are maintained in the system and remain available for execution after all other trading interest at the same price has been exhausted.⁵ Upon the receipt of a non-marketable all-or-none limit order, the system automatically will send a broadcast message to all members notifying them that an all-or-none order to buy or to sell a specified number of contracts at a specified price has been placed on the book.

The purpose of this rule change is to specify that a non-marketable all-or-none limit order is deemed “exposed” for the purposes of Rule 717(d) and (e) one second following a broadcast notifying members that such an order to buy or sell a specified number of contracts at a specified price has been received in the options series. Thus, all of the terms of the order will be disclosed to all members. The Exchange proposes to adopt this rule change on a three-month pilot basis expiring October 9, 2009.

The Exchange notes that the Commission has previously determined that an order can be deemed “exposed” even in circumstances where the actual terms of the order are not disseminated. Specifically, the Commission approved the Price Improving Order type on the Nasdaq Options Market, which is a limit order in penny increments that is rounded to the minimum price variation in the security for display purposes.⁶ The Commission concluded that this order could be deemed “exposed” under the NOM rule that is

⁵ Supplementary Material .02 to ISE Rule 713.

⁶ Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008).

substantively identical to the exposure requirement contained in ISE Rule 717(d) and (e). Although the actual terms of the order are not displayed to market participants, the Commission found that the ability to “fish” inside the displayed quote, coupled with the restriction on participants that initially submitted the Price Improving Order from trading with that order until after the exposure period had elapsed, provided a meaningful opportunity for interaction prior to the time at which the submitting participant could interact with the order. The Commission also noted that Price Improving Orders might be executed against other trading interest in the system, which will also be the case with respect to all-or-none orders on the Exchange.

The Exchange believes its broadcast message provides complete exposure of all-or-none orders, which is greater exposure than that of Price Improving Orders at NOM, as market participants will be explicitly informed when there is a non-displayed order, as well as the size and price of such order. In contrast, the only indication that there may be a Price Improving Order available for execution on NOM is an increase in size at the NOM best bid or offer (“BBO”) or a new displayed price at the NOM BBO. Since the displayed size and price change constantly, NOM market participants do not know whether there is in fact a non-displayed order available for execution. Therefore, the opportunity for NOM participants to “fish” for such non-displayed orders is greatly diminished. In contrast, the ISE’s broadcast message will specify all of the terms of an all-or-none order.

(b) Basis – The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and in general, to

protect investors and the public interest. In particular, under the proposed rule change all-or-none orders will be exposed to all members on a three-month pilot basis so that there is a greater opportunity for market participants to interact with such orders.

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

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

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

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

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.⁹ However, Rule 19b-4(f)(6)(iii)¹⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. ISE has requested that the Commission waive the 30-day operative delay. ISE states that under the proposal, all-or-none orders will be exposed to all members so that there is a greater opportunity for market participants to interact with such orders. The Commission also notes that the proposal is on a three-month pilot basis. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.¹¹

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.¹²

⁹ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to 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 Commission deems this requirement to be met.

¹⁰ Id.

¹¹ For the 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).

¹² For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on July 13, 2009, the date on which ISE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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. Please include File Number SR-ISE-2009-51 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-ISE-2009-51. This file number should be 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing

also will be available for inspection and copying at the principal office of 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-2009-51 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).