

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53164; File No. SR-ISE-2005-50)

January 20, 2006

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of a Proposed Rule Change, and Amendment No. 1 Thereto, to Amend ISE Rule 803 to Provide for a Back-Up Primary Market Maker

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 October 14, 2005, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. On January 12, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.³ 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 ISE Rule 803 to provide for a Back-Up Primary Market Maker and to correct an inconsistency in the Exchange's Rules. The text of the proposed rule change, as amended, is available on the ISE's Web site (<http://www.iseoptions.com>), at the principal office of the ISE, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1, which replaced the original filing in its entirety, made technical and clarifying changes to the proposed rule change.

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 Exchange 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

The Exchange proposes to enhance the ISE System to allow Competitive Market Makers that are also Primary Market Maker members on the Exchange to voluntarily act as Back-Up Primary Market Makers when the appointed Primary Market Maker experiences technical difficulties that interrupt its participation in the market. According to the Exchange, the ISE System will automatically switch a Competitive Market Maker quoting in the options series to act as a Back-Up Primary Market Maker when the appointed Primary Market Maker stops quoting. The ISE believes that this will reduce the number of non-firm quotes or “fast market” states disseminated by the ISE and allow for virtually seamless trading even when a Primary Market Maker experiences difficulties that cause it to remove its quotes from the market.

Under the proposal, only Competitive Market Maker members that are also Primary Market Makers on the Exchange will be eligible to be designated as a Back-Up Primary Market Maker because these members already have systems built to assume all of the responsibilities of a Primary Market Maker on the Exchange, such as handling

customer orders when the away market has a better price.⁴ The ISE System will automatically switch back to the appointed Primary Market Maker when it re-establishes its quotes in the series, but the Back-Up Primary Market Maker will continue to be responsible for any outstanding unexecuted orders it is handling. A Back-Up Primary Market Maker assumes all of the responsibilities and privileges of a Primary Market Maker under the ISE Rules with respect to any series in which the appointed Primary Market Maker fails to have a quote in the ISE System.⁵

The Exchange also proposes to correct an inconsistency in its rules. In April 2004, the Exchange received approval of a rule change that allowed it to disseminate a quotation for less than ten contracts.⁶ Because the options intermarket linkage plan and the Exchange's rules continued to require the Exchange to guarantee that the Firm Customer Quote Size ("FCQS") and Firm Principal Quote Size ("FPQS") would be at least 10 contracts, ISE Rule 803(c)(1) was amended to provide that the Primary Market Maker had the obligation to buy or sell the number of contracts necessary to provide an execution of at least 10 contracts to incoming linkage orders when the Exchange's disseminated market quotation was for less than 10 contracts.

In August 2004, the intermarket linkage plan was amended to provide that the 10 contract minimum FCQS and FPQS does not apply when the Exchange is disseminating

⁴ If there is more than one eligible member quoting in the series, the ISE System will automatically switch to the member with the largest offer in the series.

⁵ A Competitive Market Maker does not become subject to the requirement in ISE Rule 804(e)(1) to enter continuous quotations in all of the series of all of the options classes to which it is appointed, as opposed to only 60% of the options classes under ISE Rule 804(e)(2), by acting as a Back-Up Primary Market Maker.

⁶ See Exchange Act Release No. 49602 (April 22, 2004), 69 FR 23841 (April 30, 2004) (the "Real Size Filing").

a quotation of fewer than 10 contracts.⁷ In October 2004, the Exchange, and all of the other options exchanges, received approval for changes to their linkage rules to implement this change to the intermarket linkage plan.⁸ Accordingly, the Primary Market Maker no longer is required to guarantee a minimum of 10 contracts to an incoming linkage order when the Exchange's disseminated market quotation is for less than 10 contracts. However, the Exchange neglected to remove the language in ISE Rule 803(c)(1) at the time the changes to the linkage rules were approved, thereby creating an apparent inconsistency in the ISE Rules. The Exchange now proposes to delete the language in ISE Rule 803(c)(1) as a purely non-substantive clean-up to the ISE Rules.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ in particular because it is designed to promote just and equitable principles of trade, 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 that it enhances the Exchange's ability to disseminate firm quotes and removes an inconsistency from its rules.

⁷ See Exchange Act Release No. 50211 (Aug. 18, 2004), 69 FR 52050 (Aug. 24, 2004).

⁸ See Exchange Act Release Nos. 50562 (Oct. 19, 2004), 69 FR 62925 (Oct. 28, 2004) and 50587 (Oct. 25, 2004), 69 FR 63417 (Nov. 1, 2004).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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

The ISE does not believe that the proposed rule change, as amended, will 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

Written comments on the proposed rule change were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (a) by order approve such proposed rule change, as amended, or
- (b) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form at <http://www.sec.gov/rules/sro.shtml>; or

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-ISE-2005-50 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 20549-9303.

All submissions should refer to File Number SR-ISE-2005-50. 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. 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-2005-50 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris
Secretary

¹¹ 17 CFR 200.30-3(a)(12).