

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65011; File No. SR-ISE-2011-42)

August 2, 2011

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by International Securities Exchange, Inc., Relating to Rule 717

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 25, 2011, the International Securities Exchange, Inc. (“ISE” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 is proposing to specify in its rules an existing policy related to the application of Rule 717(d) and (e). The text of the proposed rule change is as follows (additions are underlined):

Rule 717. Limitation on Orders

(a) through (g) no change.

Supplementary Material to Rule 717

.01 through .05 no change.

.06 The exposure requirement of paragraph (d) and (e) of Rule 717 applies to the entry of orders with knowledge that there is a pre-existing unexecuted agency, proprietary, or solicited order on the Exchange. Members may demonstrate that orders

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

were entered without knowledge by providing evidence that effective information barriers between the persons, business units and/or systems entering the orders onto the Exchange were in existence at the time the orders were entered. Such information barriers must be fully documented and provided to the Exchange upon request.

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

1. Purpose

Rule 717(d) and (e) requires members to expose orders entered on the limit order book for at least one second before executing them as principal or against orders that were solicited from other broker-dealers. This requirement gives other market participants an opportunity to participate in the execution of orders before the entering member executes them. The Exchange recognizes, however, that because the Exchange does not identify the member that entered an order on the limit order book, orders from the same firm may inadvertently execute against each other as a result of being entered by disparate persons and/or systems at the same member firm. Therefore, when enforcing Rule 717(d) and (e), the Exchange has never considered the inadvertent interaction of orders from the same firm within one second to be a violation of the exposure requirement.

When investigating potential violations of Rule 717(d) and (e), the Exchange takes into consideration whether orders that executed against each other within one second on the limit order book were entered by persons, business units and/or systems at the same firm that did not have knowledge of the order on the limit order book.³ Commonly, member firms are able to demonstrate that orders were entered by individuals or systems that did not have the ability to know of the pre-existing order on the limit order book due to information barriers in place at the time the orders were entered.

The Exchange proposes to codify this longstanding policy in Supplementary Material .06 to Rule 717. The proposed rule text specifies that members can demonstrate that orders were entered without knowledge of a pre-existing order on the book represented by the same firm by providing evidence that effective information barriers between the persons, business units and/or systems entering the orders onto the Exchange were in existence at the time the orders were entered. The rule requires that such information barriers be fully documented and provided to the Exchange upon request.⁴

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b),⁵ in general, and Section 6(b)(5)⁶ in particular, that

³ The Exchange conducts routine surveillance to identify instances when an order on the limit order book is executed against an order entered by the same firm within one second.

⁴ The Exchange reviews information barrier documentation to evaluate whether a member has implemented processes that are reasonably designed to prevent the flow of pre-trade order information given the particular structure of the member firm. Additionally, information barriers are reviewed as part of the Exchange's examination program, which is administered by the Financial Industry Regulatory Authority ("FINRA") pursuant to a regulatory services agreement.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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, the Exchange believes that codifying the Exchange's policy that appropriate information barriers can be used to demonstrate that the execution of two orders within one second was inadvertent because the orders were entered without knowledge of each other, will clarify the intent and application of Rule 717(d) and (e) for ISE members.

The Exchange believes that proposed rule change also is consistent with Section 6(b)(7) of the Act,⁷ which requires the rules of an exchange to provide a fair procedure for the disciplining of members and persons associated with members. In particular, by specifying that the information barriers must be fully documented, members will be better prepared to properly respond to requests for information by the Exchange in the course of a regulatory investigation. Moreover, while members are generally required to provide information to the Exchange as requested, specifying that members must provide written documentation regarding information barriers within the context of this rule will assure that all members adhere to the same standard for demonstrating compliance with the rule.

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.

⁷ 15 U.S.C. 78f(b)(7).

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

Within 45 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 shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change 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 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-2011-42 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-2011-42. 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 website (<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 website viewing and printing 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 the Exchange. 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 publicly available. All submissions should refer

to File Number SR-ISE-2011-42 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Elizabeth M. Murphy
Secretary

⁸ 17 CFR 200.30-3(a)(12).