

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69085; File No. SR-ISE-2013-15)

March 8, 2013

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change to Amend the Obvious and Catastrophic Errors Rule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 26, 2013, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) 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 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 Exchange proposes to amend Rule 720, Obvious and Catastrophic Errors.

The text of the proposed rule change is available on the Exchange’s Web site www.ise.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange is proposing two changes to ISE Rule 720 (Obvious and Catastrophic Errors) to harmonize the rule so that it is applied consistently for both obvious errors and catastrophic errors.

Erroneous Transactions Involving Priority Customers

First, under the current rule, the Exchange nullifies obvious error transactions unless all parties to the trade are ISE market makers, in which case the Exchange adjusts the price of the transaction. With respect to catastrophic errors, the ISE currently adjusts all transactions even if they involve non-market makers. The Exchange notes that while market professionals would prefer that all transactions be adjusted rather than nullified, there is an equally valid opposing view because adjustments can result in retail customer orders being adjusted to prices that may exceed their limit order price, potentially by a large amount, which retail customers would not expect.

Therefore, ISE proposes amend [sic] Rule 720(b) (Obvious Error Procedure) and 720(c)³ (Catastrophic Error Procedure) to harmonize the obvious error and catastrophic error procedures by nullifying trades in both cases for transactions involving Priority

³ This proposed rule change also realigns certain parts of Rule 720. The rule on Catastrophic Error Procedure rule was previously found in Rule 720(d) and with the proposed realignment, this rule now appears as Rule 720(c).

Customers and adjusting trades where none of the parties to the trade are Priority Customers (i.e., market makers, broker-dealers and professional customers). Specifically, the Exchange proposes to amend Rule 720(b)(2)(ii) and adopt Rule 720(c)(2)(B) which states that where at least one party to the obvious or catastrophic error is a Priority Customer, the trade will be nullified by Market Control⁴ unless both parties agree to an adjustment price for the transaction within thirty (30) minutes of being notified by Market Control of its determination. If the customer is willing to accept the adjusted price, and the customer has thirty (30) minutes to make that determination and the trade will be adjusted. If the customer does not respond within the prescribed time period, the trade will be nullified.

The Exchange believes that the proposal to limit obvious error trade nullification only to transactions involving Priority Customers, and allowing catastrophic error trade nullification for transactions involving Priority Customers appropriately limits the number of nullifications, while assuring that retail customer orders are not adjusted through their limit order price (in other words, the adjusted price is higher than the limit price if it is a buy and lower than the limit price if it is a sell order) and forced to spend additional money for a trade at a price the customer had no interest in trading.

The Exchange believes that retail customers are less likely to be immersed in the day-to-day trading of the markets and are also less likely to be watching trading activity in a particular option throughout the day. The Exchange, therefore, believes that it is fair and reasonable, and consistent with statutory standards, to change the procedure for

⁴ Market Control consists of designated personnel in the Exchange's market control center. See ISE Rule 720(a)(3)(ii).

obvious and catastrophic errors involving Priority Customers, and not for other market participants, so as not to expose Priority Customers to additional risk.

The Exchange believes that this proposed rule change is a fair way to address the issue of a trade executing through a customer's limit order price while balancing the competing interests of certainty that trades stand versus dealing with true errors. The proposed rule change would continue to entail specific and objective procedures. Furthermore, the proposed rule change more fairly balances the potential windfall to one market participant against the potential reconsideration of a trading decision under the guise of an error.

Determination of Erroneous Transactions

Second, under the current rule, Market Control determines whether an obvious error has occurred and applies the rule for making adjustments or nullifying trades, with the ability for those affected to request that a panel of members review actions taken by Market Control. With respect to catastrophic errors, the rule currently requires that a panel of members make the initial determination rather than Market Control. In the Exchange's experience, this procedure of requiring a member panel to make the initial determination of whether or not a catastrophic error has occurred in all cases is inefficient and unnecessary.

Therefore, ISE proposes to harmonize the procedures for making obvious error and catastrophic error determinations. Specifically, ISE proposes to amend the catastrophic error procedure to provide parties affected by an action taken by Market Control the ability to request that such actions be reviewed by a member panel rather than requiring that a member panel make the initial determination in all cases. Specifically,

the Exchange proposes to adopt rule text allowing Market Control to make the determination of whether or not a Catastrophic Error has occurred and what steps it shall take in the event a determination has been made that a Catastrophic Error has occurred.⁵ The Exchange believes that this approach is similar to rules of other markets.⁶

With this proposed rule change, the Exchange also proposes to rearrange parts of Rule 702. Specifically, the Exchange proposes to delete Rule 720(c) (Obvious Error Panel) and move the substance of that rule to new Rule 720(d), which is also renamed Review Panel, and which will now apply to both obvious and catastrophic errors. Proposed Rule 720(d) provides the composition of the Review Panel,⁷ the scope of the Review Panel's review,⁸ the procedure for requesting review⁹ and the decisions of the Review Panel.¹⁰ Finally, the Exchange also proposes to make conforming changes to Supplementary Material .01, .02, .03 and .04 to Rule 720 to reflect the changes proposed herein.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Exchange Act") for this proposed rule change is found in Section 6(b)(5), in that the proposed change is designed to promote just and equitable principles of trade, will serve to remove

⁵ See Proposed Rule 720(c)(2).

⁶ See PHLX Rule 1092(e)(ii) and (f)(ii).

⁷ See Proposed Rule 720(d)(1).

⁸ See Proposed Rule 720(d)(2).

⁹ See Proposed Rule 720(d)(3).

¹⁰ See Proposed Rule 720(d)(4).

impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the proposed rule change relating to nullifying trades involving Priority Customers and adjusting trades where none of the parties are Priority Customers will help market participants better manage risk associated with potential erroneous trades. The Exchange believes that the proposal provides a fair process that will ensure that customers are not forced to accept a trade that was executed in violation of the customer's limit order price. For two reasons, the Exchange does not believe that the proposal is unfairly discriminatory, even though it offers some market participants a choice as to whether a trade is nullified or adjusted, while other market participants will continue to have all of their obvious and catastrophic errors adjusted.¹¹ First, the Exchange's current rule differentiates among market participants. The notification period to begin the obvious error process is different for Exchange market makers and non-market makers (i.e., Electronic Access Members),¹² and whether a trade is adjusted or busted also differs.¹³ Second, options rules often treat Priority Customers in a special way,¹⁴ recognizing that Priority Customers are not necessarily immersed in the day-to-day trading of the markets, less likely to be watching trading activity in a particular

¹¹ Another options exchange recently cited these reasons as the basis to amend its catastrophic error rule to treat customer orders differently than non-customer orders. See Securities Exchange Act Release No. 68907 (February 12, 2013), 78 FR 11705 (February 19, 2013) (SR-PHLX-2013-05).

¹² See ISE Rule 720(b)(1).

¹³ See ISE Rule 720(b)(2).

¹⁴ For example, many options exchanges priority rules treat Priority Customer orders differently and some options exchanges only accept certain types of orders from Priority Customers. Most options exchanges also charge different fees for Priority Customer orders.

option throughout the day and may have limited funds in their trading accounts.

Accordingly, differentiating among market participants by permitting Priority Customers to have a choice as to whether to nullify a trade involving an obvious or a catastrophic error is not unfairly discriminatory, because it is reasonable and fair to provide Priority Customers with additional options to protect themselves against the consequences of obvious and catastrophic errors.

The Exchange acknowledges that the proposal contains some uncertainty regarding whether a trade will be adjusted or nullified, depending on whether one of the parties is a Priority Customer, because a person would not know, when entering into the trade, whether the other party is or is not a Priority Customer. The Exchange believes that the proposal nevertheless promotes just and equitable principles of trade and protects investors and the public interest, because it eliminates a more serious uncertainty in the rule's operation today, which is price uncertainty. Today, a Priority Customer's order can be adjusted to a significantly different price, which is more impactful than the possibility of nullification.

Furthermore, there is uncertainty in the current obvious error portion of Rule 720 (as well as the rules of other options exchanges), which market participants have dealt with for a number of years. Specifically, Rule 720(b)(2)(i) provides that if it is determined that an Obvious Error has occurred where each party to the transaction is a market maker on the Exchange, the execution price of the transaction will be adjusted by Market Control (in accordance with subsection (A) and (B) of the rule, unless both parties agree to adjust to a different price or to nullify the transaction within ten minutes of being notified by Market Control of the Obvious Error. Additionally, Rule

720(b)(2)(ii) provides that if it is determined that an Obvious Error has occurred where at least one party to the transaction to the Obvious Error is not an Exchange market maker, the trade will be busted by Market Control, unless both parties agree to adjust the price of the transaction within 30 minutes of being notified by Market Control of the Obvious Error. Therefore, an Exchange market maker who prefers adjustments over nullification cannot guarantee that outcome, because, if he trades with a non-Exchange market maker, a resulting obvious error would only be adjusted if the party on the other side of the trade agrees to an adjustment. This uncertainty has been embedded in the rule and accepted by market participants. The Exchange believes that this proposal, despite the uncertainty based on whether a Priority Customer is involved in a trade, is nevertheless consistent with the Act, because the ability to nullify a Priority Customer's trade involving an obvious or a catastrophic error should prevent the price uncertainty that mandatory adjustment under the current rule creates, which should promote just and equitable principles of trade and protect investors and the public interest. The Exchange has also weighed carefully the need to assure that one market participant is not permitted to receive a windfall at the expense of another market participant that made an obvious or a catastrophic error, against the need to assure that market participants are not simply being given an opportunity to reconsider poor trading decisions.

Further, the Exchange believes that the proposed rule change relating to Market Control making the determination of whether a catastrophic error has occurred will promote just and equitable principles of trade by adding certainty and more consistency to the current rule.

The Exchange's obvious and catastrophic rule and the procedures that carry out

the rule have consistently been based on specific and objective criteria. The Exchange believes this proposed rule change furthers that principle by adopting objective guidelines for the determination of which trades may be nullified or adjusted and for the determination of whether or not a trade is deemed to be a catastrophic error.

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

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is intended to help market participants better manage the risk associated with erroneous options trades and therefore does not impose any burden on competition. While most options exchanges have similar, though not identical, rules regarding obvious and catastrophic errors, this proposed rule change, which treats Priority Customer orders differently than other exchanges do, may result in market participants choosing to route such orders to ISE and therefore attract order flow to ISE instead to a competing exchange.

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 publication date of this notice or within such longer period (1) as the Commission may designate up to 45 days of such date if it finds such longer

period to be appropriate and publishes its reasons for so finding or (2) as to which the self-regulatory organization consents, the Commission will:

- (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-2013-15 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-2013-15. 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 the 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 available publicly. All submissions should refer to File Number SR-ISE-2013-15 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).