

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54398; File No. SR-ISE-2006-42)

August 31, 2006

Self-Regulatory Organizations; the International Securities Exchange, Inc., Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Short Sales

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 25, 2006, the International Securities Exchange, Inc. (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

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

The ISE is proposing to adopt a rule with respect to short selling on the ISE Stock Exchange, the Exchange's entry into the trading of non-option equity securities. The text of the proposed rule change is available on the Exchange's Web site

(<http://www.iseoptions.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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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

Purpose – Currently the ISE only trades options on equity securities and indices. The purpose of this proposed rule change is to adopt a rule that will be necessary for ISE ultimately to trade non-option equity securities. Specifically, Commission Regulation SHO<sup>3</sup> and Rule 10a-1<sup>4</sup> under the Securities Exchange Act of 1934 ("Exchange Act") govern the marking of orders in equity securities as long and short, the short sale of securities, and securities borrowing and delivery requirements. In order for the ISE to trade equity securities it will need to adopt a rule implementing these provisions. Proposed Rule 2105 does so by: (a) requiring members to mark orders in compliance with Regulation SHO; (b) implementing the short-sale restrictions of the "tick rule" contained in the Short Sale Rule; and (c) prohibiting members from entering orders in equity securities unless the member can comply with the borrowing and delivery requirements of Regulation SHO. Proposed Rule 2105 exempts from its requirements transactions, securities and persons similarly exempted under Regulation SHO.<sup>5</sup>

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<sup>3</sup> Rules 242.200 through 242.203 under the Exchange Act; 17 CFR 242.200-242.203 ("Regulation SHO").

<sup>4</sup> 17 CFR 240.10a-1 ("Short Sale Rule").

<sup>5</sup> Rule 2105 is substantially similar to Rule 30.20 of the Chicago Board Options Exchange, Incorporated ("CBOE").

Basis – The basis under the Exchange Act for this proposed rule change is found in Section 6(b)(5), in that the proposed rule filing is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system. Specifically, the proposal will permit the Exchange to trade equity securities in a manner that complies with Regulation SHO and the Short Sale 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.

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 written comments from members or other interested parties. The Exchange will notify the Commission of any written comments received by the Exchange.

III. 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 No. SR-ISE-2006-42 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-2006-42. 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 Commissions 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. Copies of such filing also will be available for inspection and copying at the principal office of the ISE and on ISE's Web site at [www.iseoptions.com](http://www.iseoptions.com).

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-2006-42 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5), which requires that an exchange have rules designed, among other things, 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, and in general to protect investors and the public interest.<sup>6</sup> By incorporating the requirements of Regulation SHO and the Short Sale Rule, the proposed rule will contribute to a coordinated regulatory effort to prevent short sale fraud and manipulation and, in so doing, will protect investors.

#### Acceleration

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the Federal Register. The proposal incorporates the provisions of Regulation SHO and the Short Sale Rule and will be necessary for the ISE to trade non-option equity securities on the ISE Stock Exchange. The Exchange's adoption of a rule incorporating the provisions of Regulation SHO and the Short Sale Rule in order to trade non-option equity securities benefits the investing public. The Commission does not believe that ISE's proposal raises any novel regulatory issues. Accordingly, the Commission believes good cause exists, consistent with Sections 6(b)(5) and 19(b) of the Exchange Act, 15 U.S.C. 78f(b)(5) and 78s(b), to approve the proposed rule change on an accelerated basis.

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<sup>6</sup> In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (File No. SR-ISE-2006-42) be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Nancy M. Morris  
Secretary

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<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).