

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54415; File No. SR-ISE-2004-17)

September 7, 2006

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Market Maker Orders

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 May 26, 2004, the International Securities Exchange, Inc. (“ISE” or “Exchange”) 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 Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on August 14, 2006.³ 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 proposes to amend ISE Rule 717(g) to eliminate the restriction on Electronic Access Members representing ISE market maker orders, provided that such orders are identified as orders for the account of an ISE market maker. Under the proposal, an Electronic Access Member will not be permitted to enter orders solicited from an ISE market maker into the Solicited Order Mechanism and the Price Improvement Mechanism. The text of the proposed rule change, as amended, is set forth below. Proposed new language is underlined; deletions are in [brackets].

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced the original filing in its entirety.

Rule 716. Block Trades

(a) through (e) No change.

Supplementary Material to Rule 716

.01 through .04 No change.

.05 Under paragraph (e) above, Members may enter contra orders that are solicited. The Solicited Order Mechanism provides a facility for Members that locate liquidity for their customer orders. Members may not use the Solicited Order Mechanism to circumvent Exchange Rule 717(d) limiting principal transactions. This may include, but is not limited to, Members entering contra orders that are solicited from (1) affiliated broker-dealers, or (2) broker-dealers with which the Member has an arrangement that allows the Member to realize similar economic benefits from the solicited transaction as it would achieve by executing the customer order in whole or in part as principal. Additionally, any solicited contra orders entered by Members to trade against Agency Orders may not be for the account of an ISE market maker that is assigned to the options class.

.06 through .08 No change.

Rule 717. Limitations on Orders

(a) through (f) No change.

(g) Orders for the Account of Another Member. [Absent an exemption from an Exchange official designated by the Board,] Electronic Access Members shall not cause the entry of orders for the account of an ISE market maker that is exempt from the provisions of Regulation T of the Board of Governors of the Federal Reserve System pursuant to Section 7(c)(2) of the Exchange Act unless such orders are identified as orders for the account of an ISE market maker in the manner prescribed by the Exchange.

Supplemental Material to Rule 717

.01 through .02 No change.

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Rule 723. Price Improvement Mechanism for Crossing Transactions

(a) through (d) No change.

Supplementary Material to Rule 723

.01 through .06 No change.

.07 Any solicited Counter-Side Orders submitted by an Electronic Access Member to trade against Agency Orders may not be for the account of an ISE market maker assigned to the options class.

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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 Exchange 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

Currently, under ISE Rules, Electronic Access Members ("EAMs") are not permitted to represent orders for the account of an ISE market maker. While it is common practice on other exchanges for brokers to represent orders for the account of a market maker, the ISE initially included this restriction in its rules due to a system limitation. Specifically, allowing ISE market

makers to enter orders through another member instead of directly might have created an opportunity for ISE market makers to avoid certain limitations on market maker trading contained in the Exchange's Rules.⁴

The Exchange has developed the capability for EAMs to mark orders to show that they are for the account of an ISE market maker. As such, these orders will flow through the Exchange's surveillance system as if they were directly entered by the market makers. Therefore, we propose to eliminate the prohibition against EAMs entering orders for the account of ISE market makers. However, under the proposal, an EAM will be prohibited from entering orders solicited from an ISE market maker assigned to the options class into the Solicited Order Mechanism and the Price Improvement Mechanism, which are designed to expose solicited transactions to the market.⁵

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁷ in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism of a free and open market and a

⁴ See, e.g., ISE Rule 805 (Market Maker Orders).

⁵ This limitation on entering orders solicited from market makers assigned to the options class was included in a rule change by the CBOE (the "Automated Improvement Mechanism" or "AIM") recently approved by the Commission. See Securities Exchange Act Release No. 53222 (Feb. 3, 2006), 71 FR 7089 (Feb. 10, 2006). The execution of solicited transactions through AIM is similar to the execution of orders through the ISE's Solicited Order Mechanism and Price Improvement Mechanism.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

national market system, and, in general, to protect investors and the public interest. In particular, the rule change will allow EAMs to represent ISE market maker orders on the ISE, while prohibiting them from entering orders solicited from market makers assigned to the options class through mechanisms designed to expose solicited transactions to the market.

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

The Exchange does not believe that the proposed rule change would 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 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 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 self-regulatory organization consents, the Commission will:

(A) by order approve 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, 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2004-17 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2004-17. 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 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-2004-17 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Nancy M. Morris
Secretary

⁸ 17 CFR 200.30-3(a)(12).