

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57551; File No. SR-ISE-2008-28)

March 25, 2008

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to the Exposure of Public Customer 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 March 18, 2008, 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, II, and III below, which Items have been substantially prepared by ISE. 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 expose public customer orders that are not executable on the Exchange before sending an order through the intermarket linkage system (a “Linkage Order”) on behalf of the public customer. 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, ISE 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

below. 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 ISE will not automatically execute a customer's options order when the ISE's best bid or offer ("BBO") is inferior to the national best bid or offer ("NBBO").³ Under ISE Rule 803(c)(2)(ii), the primary market maker ("PMM") is obligated to address public customer orders that are not automatically executed because there is a better price on another exchange. Rule 803(c) specifies that the PMM can either execute the order or send a Linkage Order to any other exchange displaying the best price in an attempt to get the better price for the public customer.⁴

Under the current procedure, if the PMM does not execute the public customer order, it sends a Linkage Order(s) to a competing exchange(s) even though there may be other ISE market makers who would be willing to execute the public customer order at the better price. Additionally, when a PMM sends a Linkage Order to another exchange, it is charged the other exchange's execution fee. Therefore, the cost to the PMM of sending the Linkage Order can be substantial, particularly with respect to other options exchanges that have adopted a maker-taker fee schedule. To retain as much order flow as possible on the ISE and to help reduce PMM costs by reducing the number of Linkage Orders they need to send to other exchanges, we propose to expose public customer orders to all ISE market makers before the PMM sends a Linkage Order

³ See ISE Rule 714.

⁴ ISE Rules, Chapter 19 (Intermarket Linkage Rules).

to another exchange to give all ISE market makers an opportunity to provide the public customer with the best price.⁵

Specifically, under the proposal, before the PMM sends a Linkage Order on behalf of a public customer, the public customer order will be exposed at the NBBO price for a period established by the Exchange not to exceed one second.⁶ During the exposure period, Exchange market makers may enter responses up to the size of the order being exposed in the regular trading increment applicable to the option. If at the end of the exposure period, the order is executable at the then-current NBBO and the ISE is not at the then-current NBBO, the order will be executed against responses that equal or better the then-current NBBO.⁷ The exposure period will be terminated if the exposed order becomes executable on the ISE at the prevailing NBBO or if the Exchange receives an unrelated order that could trade against the exposed order at the prevailing NBBO price.⁸ If, after an order is exposed, the order cannot be executed in full on the Exchange at the then-current NBBO or better, and it is marketable against the then-current NBBO, the PMM will send a Linkage Order on the customer's behalf for the balance of the order as provided in Rule 803(c)(2)(ii). If the balance of the order is not marketable against the then-current NBBO, it will be placed on the ISE book.

⁵ Immediate-or-cancel orders are cancelled if they cannot be executed on the ISE upon entry. Therefore, such orders are not handled by the PMM under Rule 803(c)(2)(ii) and will not be exposed under this proposal.

⁶ The Exchange will issue a Circular to inform members of the time period.

⁷ Executions will be allocated pro-rata based on size (i.e., the percentage of the total number of contracts available at the same price that is represented by the size of a market maker's response).

⁸ The order will be executed against orders and quotes on the book and responses received during the exposure period in price priority. At the same price, customer orders will be executed first in time priority and then all other interest (orders, quotes and responses) will be allocated pro-rata based on size.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁹ in general and furthers the objectives of Section 6(b)(5) of the Act¹⁰ in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Exposing public customer orders before the PMM sends a Linkage Order on the public customer's behalf will give additional ISE participants an opportunity to provide the orders an execution at the NBBO on the ISE and reduce PMM costs by reducing the number of Linkage Orders sent to other exchanges.

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 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.

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 ISE consents, the Commission will:

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

- (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 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-2008-28 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-2008-28. 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 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 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-2008-28 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.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).