

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58237; File No. SR-ISE-2008-61)

July 29, 2008

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Non-Customer Options Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 23, 2008, the International Securities Exchange, LLC (“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 ISE. The Exchange has filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. 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 its rules regarding non-customer options orders. The text of the proposed rule change is as follows, with deletions in [brackets] and additions underlined:

Rule 717. Limitations on Orders

(a) Reserved. [Market Orders and Marketable Limit Orders.

Electronic Access Members shall not enter into the System, as principal or agent, Non-Customer market orders. Non-Customer limit orders that cross the market and that cannot

---

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

be executed within two (2) minimum variations below the best bid or above the best offer cannot be executed on the Exchange. Such limit orders will be canceled by the System.]

(b) through (g) no change.

#### Supplemental Material to Rule 717

.01 through .02 no change.

\* \* \* \* \*

#### Rule 805. Market Maker Orders

(a) Options Classes to Which Appointed. Market makers may not place principal orders to buy or sell options in the options classes to which they are appointed under Rule 802, other than immediate-or-cancel orders, market orders, fill-or-kill orders, complex orders and block-size orders executed through the Block Order Mechanism pursuant to Rule 716(c). Competitive Market Makers shall comply with the provisions of Rule 804(e)(2)(ii) upon the entry of such orders if they were not previously quoting in the series.

(b) no change.

\* \* \* \* \*

## 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

ISE proposes to amend its rules regarding non-customer options orders. ISE rules currently prohibit members from entering non-customer market orders and non-customer limit orders that cross the market and that cannot be executed within two minimum variations below the best bid or above the best offer. This limitation on non-customer trading was included in the ISE rules at the time ISE was launched. Specifically, in support of this limitation, in its Form 1 application seeking registration as a national securities exchange, ISE represented that, in an electronic market, non-customer market orders have the potential to create market volatility by trading at different price levels until their order is fully executed. ISE further noted that, without this limitation, non-customers would be able to use large-size orders to quickly take out ISE's entire order book without giving other market participants an opportunity to react.<sup>5</sup> Also, at the time this restriction was adopted, there were various limitations imposed on non-customer trading. For example, displayed quotes were firm only for public customer orders. Since that time, electronic options trading has evolved. With the adoption of trade-through protection under the intermarket linkage, every order must be executed at the best quoted price. Further, ISE has also removed restrictions on non-customer trading. For example, Electronic Access Members ("EAMs") may now submit non-customer limit orders regardless of the size of the order where previously EAMs were prohibited from submitting orders for non-customers that caused ISE's best bid and offer to be for less than 10 contracts.<sup>6</sup> The Exchange does not believe there is any reason to maintain the current restriction on non-customer market and marketable limit orders, and therefore proposes to delete Rule 717(a) in its entirety.

---

<sup>5</sup> See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (File No. 10-127) (In the Matter of the Application of The International Securities Exchange LLC for Registration as a National Securities Exchange; Findings and Opinion of the Commission).

<sup>6</sup> See Securities Exchange Act Release No. 49602 (April 22, 2004), 69 FR 23841 (April 30, 2004) (SR-ISE-2003-26).

The Exchange also proposes to clarify in Rule 805(a) that market makers may enter market orders and fill-or-kill orders in the options classes to which they are appointed. The limitation on the types of orders market makers can enter in their appointed classes is intended to prevent market makers from having both standing limit orders and quotes in the same options class, which is why the rule specifically allows immediate-or-cancel orders. Like immediate-or-cancel orders, fill-or-kill orders and market orders are either filled immediately or automatically cancelled.<sup>7</sup> Therefore, the Exchange believes that allowing ISE market makers to utilize these orders types is consistent with the Exchange's practice of not allowing market makers to have both standing limit orders and quotes in the same options class.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act's<sup>9</sup> requirements that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In particular, the proposed rule change will permit members to enter non-customer market orders

---

<sup>7</sup> ISE Rule 715 (Types of Orders) defines a fill-or-kill order as a limit order that is to be executed in its entirety as soon as it is received and, if not so executed, treated as cancelled. A market order is defined in Rule 715 as an order to buy or sell a stated number of options contracts that is to be executed at the best price obtainable when the order reaches the Exchange. Pursuant to ISE Rule 714, incoming non-customer orders (which includes fill-or-kill and market orders entered by market makers) that cannot be automatically executed on ISE because there is a better price on another options exchange are automatically rejected.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

and non-customer limit orders and thus, enable the Exchange to compete effectively with other options exchanges who do not have a similar restriction.

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 unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

---

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing notice requirement.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2008-61 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-ISE-2008-61. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the 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-2008-61 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.<sup>12</sup>

Florence E. Harmon  
Acting Secretary

---

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