

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60253; File No. SR-ISE-2009-34)

July 7, 2009

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Customer Cross Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on June 24, 2009, International Securities Exchange, LLC (“ISE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 proposes to adopt rules related to the execution of Customer Cross Orders. The text of the proposed rule amendment is as follows, with deletions in [brackets] and additions italicized:

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Rule 715. Types of Orders

(a) through (h) no change.

(i) Customer Cross Orders. A Customer Cross Order is comprised of a Public Customer Order to buy and a Public Customer Order to sell at the same price and for the same quantity.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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Rule 717. Limitations on Orders

(a) through (g) no change.

Supplemental Material to Rule 717

.01 Rule 717(d) prevents an Electronic Access Member from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the Member was already bidding or offering on the book. However, the Exchange recognizes that it may be possible for an Electronic Access Member to establish a relationship with a customer or other person (including affiliates) to deny agency orders the opportunity to interact on the Exchange and to realize similar economic benefits as it would achieve by executing agency orders as principal. It will be a violation of Rule 717(d) for an Electronic Access Member to be a party to any arrangement designed to circumvent Rule 717(d) by providing an opportunity for a customer or other person (including affiliates) to regularly execute against agency orders handled by the Electronic Access Member immediately upon their entry into the System.

.02 no change.

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Rule 721. [[Reserved]] Customer Cross Orders

Customer Cross Orders are automatically executed upon entry provided that the execution is at or between the best bid and offer on the Exchange and (i) is not at the same price as a Public Customer Order on the Exchange's limit order book and (ii) will

not trade through the NBBO unless the order is for at least 500 contracts and has a premium value of at least \$150,000.

(a) Customer Cross Orders will be automatically canceled if they cannot be executed.

(b) Customer Cross Orders may only be entered in the regular trading increments applicable to the options class under Rule 710.

(c) Supplemental Material .01 to Rule 717 applies to the entry and execution of Customer Cross Orders.

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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 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the Exchange's options rules, members are required to expose trading interest to the market before executing agency orders as principal or before executing agency orders against orders that were solicited from other broker-dealers (i.e., proprietary and solicited crossing transactions),³ and the Exchange provides several different mechanisms that allow members to

³ ISE Rule 717(d) (Principal Transactions) and Rule 717(e) (Solicitation Orders).

execute these types of crossing transactions in a manner that complies with the exposure requirement.⁴ However, the ISE options rules do not contain any limitations or exposure requirements regarding the execution of customer orders against other customer orders, and the Exchange has developed a way to enter opposing customer orders using a single order type (“Customer Cross Orders”).

The purpose of this rule proposal is to adopt rules regarding the entry and execution of Customer Cross Orders. In particular, the Exchange proposes to add a definition of a Customer Cross Order specifying that a Customer Cross Order is comprised of a Public Customer Order to buy and a Public Customer Order to sell at the same price and for the same quantity. The Exchange also proposes to adopt Rule 721 specifying that Customer Cross Orders are automatically executed upon entry provided that the execution will not take place at the same price as a Public Customer Order on the limit order book, nor trade through the national best bid or offer unless the order is for at least 500 contracts and has a premium value of at least \$150,000.⁵ The proposed rule also specifies that Customer Cross Orders entered at a price that is outside of the NBBO or at the same price as a Public Customer Order on the limit order book will be automatically canceled, and that Customer Cross Orders may only be entered in the regular trading increments applicable to the options class under Rule 710. Finally, the proposal specifies that Supplemental Material .01 to Rule 717, which prohibits a member from being a party to any arrangement designed to circumvent the requirements applicable to executing

⁴ ISE Rule 716 (Block Trades) and Rule 723 (Price Improvement Mechanism for Crossing Transactions). See email from Kathy Simmons, Deputy General Counsel, ISE, to Ira Brandriss, Special Counsel, and Brian O’Neill, Attorney, Division of Trading and Markets, Commission, dated July 1, 2009.

⁵ Execution of orders of at least 500 contracts and with a premium value of at least \$150,000 will meet the definition of a Block Trade in ISE Rule 1900(2) (definitions under the Linkage Rules).

agency orders as principal, applies to the entry and execution of Customer Cross Orders. In this respect, the Exchange proposes to amend Supplemental Material .01 to Rule 717 to specifically reference affiliates of member firms, which is consistent with how the Exchange has interpreted the provision.

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.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the requirement of Section 6(b)(5)⁷ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal provides for the efficient entry and execution of Customer Cross Orders while also protecting Public Customer Orders on the book at the same price.

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 regarding this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

At any time within 60 days of the filing of the 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.

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

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to 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 this requirement.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2009-34 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-2009-34. 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 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-2009-34 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.¹⁰

Elizabeth M. Murphy
Secretary

¹⁰ 17 CFR 200.30-3(a)(12).