

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62316; File No. SR-ISE-2010-15)

June 17, 2010

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Related to the Price Improvement Mechanism

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 May 28, 2010, 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 prepared by the Exchange. On June 10, 2010, the Exchange filed Amendment No. 1 to the proposed rule change. On June 17, 2010, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment Nos. 1 and 2, from interested persons.

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

The Exchange proposes to amend Rule 723 to allow Crossing Transactions to be entered into the Price Improvement Mechanism (“PIM”) at a price that matches the ISE BBO in certain circumstances. The text of the proposed rule change is as follows (deletions are in [brackets]; additions are underlined):

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

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

<sup>3</sup> Amendment No. 2 replaces and supersedes the original filing and Amendment No. 1 thereto in their entirety.

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**Rule 723. Price Improvement Mechanism for Crossing Transactions**

(a) No change.

(b) Crossing Transaction Entry. A Crossing Transaction is comprised of the order the Electronic Access Member represents as agent (the “Agency Order”) and a counter-side order for the full size of the Agency Order (the “Counter-Side Order”). The Counter-Side Order may represent interest for the Member’s own account, or interest the Member has solicited from one or more other parties, or a combination of both.

(1) Except as provided in Supplementary Material.08 below, [A] a Crossing Transaction must be entered only at a price that is better than the ISE best bid or offer (“ISE BBO”) and equal to or better than the national best bid or offer (“NBBO”).

(2) and (3) no change.

(c) and (d) no change.

**Supplementary Material to Rule 723**

.01 through .07 no change.

.08 When the ISE BBO is equal to the NBBO, a Crossing Transaction may be entered where the price of the Crossing Transaction is equal to the ISE BBO if the Agency Order is on the opposite side of the market from the ISE BBO. In this case, the Agency Order will be automatically executed against the ISE BBO. If the Agency Order is not fully executed after the ISE BBO is fully exhausted and is no longer at a price equal to the Crossing Transaction, the PIM will be initiated for the balance of the order as provided in Rule 723. With respect to any portion of an Agency Order that is automatically executed against the ISE BBO pursuant to this

paragraph .08, the exposure requirements contained in Rule 717(d) and (e) will not be satisfied for the fact that the member utilized the Price Improvement Mechanism.

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### **Rule 811. Directed Orders**

(a) through (d) no change.

(e) Except as provided in this paragraph (e), when a Directed Order is released, the System processes the order in the same manner as any other order received by the Exchange. Directed Orders will not be automatically executed at a price that is inferior to the NBBO and, except as provided in subparagraph (e)(3), will be handled pursuant to Rule 803(c)(2) when the ISE best bid or offer is inferior to the NBBO.

(1) A marketable Directed Order that is released, or entered into the PIM pursuant to Supplemental Material .08 to Rule 723, will be matched against orders and quotes according to Rule 713 except that, at any given price level, the Directed Market Maker will be last in priority.

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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 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

PIM is a process by which a member can provide price improvement opportunities for a transaction wherein the member seeks to execute an agency order as principal or execute an agency order against a solicited order (a Crossing Transaction").<sup>4</sup> Currently under Rule 723, a Crossing Transaction may only be entered at a price that is better than the ISE best bid or offer ("ISE BBO") and equal to or better than the national best bid or offer ("NBBO").

The Exchange proposes to modify PIM so that members may enter transactions at a price that matches the ISE BBO and the NBBO if the agency order is on the opposite side of the market from the ISE BBO. In this case, the agency order will be automatically executed against the ISE BBO in the same manner as marketable orders entered directly. If the agency order is not fully executed after the ISE BBO is fully exhausted and is no longer at a price equal to the Crossing Transaction, the PIM will be initiated for the balance of the order as provided in Rule 723.

Currently, the Exchange automatically rejects a Crossing Transaction that does not improve upon the ISE BBO so that the transaction does not occur ahead of interest on the book. However, in the case where the agency order is marketable against the best price on the ISE, we believe it would benefit the agency order to receive an execution against the available liquidity on the ISE book rather than being rejected. Moreover, members have indicated that it would be

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<sup>4</sup> ISE Rule 723(a).

preferable to receive an execution in this instance, as such treatment would better serve their customers.

Any portion of an order that is immediately executed against the ISE BBO would be subject to the exposure requirements contained in Rule 717(d) and (e). Rule 717(d) and (e) require members to expose certain orders for at least one second before executing such orders as principal or against orders solicited from a broker-dealer. This order exposure requirement can be satisfied by utilizing the Price Improvement Mechanism because the mechanism automatically exposes orders for one second. In the case of an automatic execution of an agency order against the ISE BBO under the proposal, there would be no exposure, so utilizing the Price Improvement Mechanism will not satisfy the requirements of Rule 717(d) and (e) in this case.<sup>5</sup>

Pursuant to ISE Rule 811, an order may be directed to a market maker, which must either “release” the order into the system or enter the order into the PIM within three seconds. Rule 811 contains a number of safeguards with respect to the handling of directed orders by directed market makers, including modified execution priority rules when directed orders are entered by the directed market maker directly that assure all other market participants are given an opportunity to trade with the directed order before the directed market maker. The proposed rule change to allow agency orders entered into PIM to be automatically executed upon entry if they are marketable will not affect the execution of directed orders under Rule 811 in any manner. As stated in the filing, the agency order will be automatically executed against the ISE BBO in the same manner as marketable orders entered directly, *i.e.*, “released” by the directed market maker under Rule 811.

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<sup>5</sup> The Exchange conducts surveillance for compliance with the exposure requirement of Rule 717(d) and (e). Automatic execution of orders against the ISE BBO through the PIM under this proposal will be included in this surveillance.

## 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the “Act”) for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, and 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 will provide execution opportunities for marketable agency orders entered into the PIM in the same manner as marketable orders entered directly. This will provide better execution opportunity for agency orders entered into the PIM, as well as for interest at the ISE BBO, because they will be automatically executed instead of being rejected.

### 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 proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the 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>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

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 proposal 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-2010-15 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.

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, or such shorter time as designated by the Commission. The Exchange provided a copy of this rule filing to the Commission at least five business days prior to the date of this filing.

All submissions should refer to File No. SR-ISE-2010-15. 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 changes 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 Web site viewing and printing 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 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 No. SR-ISE-2010-15 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>8</sup>

Florence E. Harmon  
Deputy Secretary

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