

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54401; File No. SR-ISE-2006-53)

September 1, 2006

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Doing Business with the Public

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 August 31, 2006, the International Securities Exchange, Inc. (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The ISE is proposing to adopt a rule with respect to members doing business with the public on the ISE, in anticipation of the Exchange's entry into the trading of non-option equity securities. Below is the text of the proposed rule change. Proposed new language is underlined.

Rule 2106. Doing Business With the Public

An Equity EAM that does business with the public must also be a member of the NASD.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, the 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 III below. The 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

Currently, the ISE only trades options on equity securities and indices. The purpose of this proposed rule change is to adopt a rule that incorporates provisions related to non-option equity securities to reflect ISE's intention to begin trading non-option equity securities. Specifically, the ISE will require ISE Electronic Access Members ("EAMs") trading equity securities on the ISE ("Equity EAMs") who do business with the public to also be members of the NASD. As such those ISE members would be required to comply with NASD rules that govern the practices of members when doing business with the public. Among other things, these members would be obligated:

- To make suitable recommendations to customers when recommending the purchase, sale or exchange of any security;³
- To be aware of possible application of SEC Rule 15g-1 through 15g-9 when a transaction involves a non-exchange listed equity security trading for less than five dollars per share;⁴

³ See NASD Rules 2310, IM-2310-3 and 2315.

⁴ See NASD Rule IM-2310-1.

- To deal fairly with customers and others;⁵
- To use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions;⁶
- To segregate and identify by customers both fully paid and “excess margin” securities;⁷
- To make proper use of a customer’s securities or funds;⁸
- To send a statement of account, no less than once every calendar year, containing a description of any securities position, money balances, or account activity to each customer whose account had a security position, money balance, or account activity during the period since the last such statement was sent to the customer;⁹
- To provide customers with a margin disclosure statement prior to or at the time of opening a margin account;¹⁰
- To comply with the provisions of NASD Rule 2350 if the member accepts deposits on the premises of a financial institution;¹¹
- To provide a risk disclosure statement set forth in NASD Rule 2361 prior to opening a day-trading account for a customer;¹² and

⁵ See NASD Rule IM-2310-2.

⁶ See NASD Rule 2320.

⁷ See NASD Rule IM-2330.

⁸ See NASD Rule 2330.

⁹ See NASD Rule 2340.

¹⁰ See NASD Rule 2341.

¹¹ See NASD Rule 2350.

¹² See NASD Rules 2360 and 2361.

- To not borrow from, or lend money to, a customer unless the member complies with the provisions of NASD Rule 2370.¹³

2. Statutory Basis

The proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5)¹⁴ of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general, to protect investors and the public interest. Specifically, ISE believes the proposed rule change will promote just and equitable principles of trade and protect investors and the public interest by utilizing rules applicable to NASD members to provide safeguards for public investors.

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

The Exchange does not believe that the proposed rule change will 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.

¹³ See NASD Rule 2370.

¹⁴ 15 U.S.C. 78f(b)(5).

III. 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 No. SR-ISE-2006-53 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-2006-53. 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 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-2006-53 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.¹⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act¹⁶ in that it promotes just and equitable principles of trade and protects investors and the public interest by requiring Equity EAMs that do business with the public to become NASD members. As NASD members those broker-dealers would be subject to a set of rules designed to protect investors.¹⁷

ISE has requested accelerated effectiveness of the proposed rule change. ISE has also indicated that it believes most EAMs that do business with the public are already NASD members and all Equity EAMs that do business with the public are NASD members.¹⁸ After careful consideration, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁹ for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the Federal Register. The Commission notes

¹⁵ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ See, e.g., NASD Rules 2310, 2315, 2320, 2330, 2340, 2341, 2350, 2360, 2361, and 2370, as well as IM-2310 and IM-2330.

¹⁸ Telephone call between Laura Clare, Assistant General Counsel, ISE, and Haimera Workie, Special Counsel, Office of Chief Counsel, Division of Market Regulation, SEC, on August 31, 2006.

¹⁹ 15 U.S.C. 78s(b)(2).

ISE must have rules concerning doing business with the public in place prior to ISE commencing trading in non-option equity securities. Moreover, because most EAMs are already NASD members, the proposal would not impose additional requirements on the majority of ISE members. Therefore, granting accelerated approval would facilitate ISE's ability to trade equity securities in a timely manner. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,²⁰ to approve the proposal on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-ISE-2006-53) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Nancy M. Morris
Secretary

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).