

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60761; File No. SR-ISE-2009-73)

October 1, 2009

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Clearly Erroneous Executions

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 September 28, 2009, the International Securities Exchange, LLC (“Exchange” or “ISE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On October 1, 2009, the ISE filed Amendment No. 1 to the proposed rule change. The ISE has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The ISE proposes to amend ISE Rule 2128 governing clearly erroneous executions.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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

The Exchange proposes to amend ISE Rule 2128 by replacing the current rule text, in its entirety, with newly proposed rule text in order to improve the Exchange's policies and procedures regarding clearly erroneous executions. The newly proposed rule text is part of a market-wide effort designed to provide transparency and finality with respect to clearly erroneous executions. This effort seeks to achieve consistent results for participants across U.S. equities exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. This proposed rule change shall be effective on October 5, 2009. The proposed rule text is more fully discussed below.

Definition

The Exchange proposes to adopt a definition of a clearly erroneous execution and adopt language addressing cancelled trades. The proposed rule text states that a transaction is "clearly erroneous" when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security. The proposed rule text also states that a transaction made in clearly erroneous error and agreed to be canceled by both parties or determined by the Exchange to be clearly erroneous will be removed "from the Consolidated Tape."⁴ A trade will only be removed from the Consolidated Tape when the determination is deemed final and any applicable appeals have been exhausted.

⁴ For purposes of this Rule, "removed from the Consolidate Tape" means that a subsequent message will be sent to the Consolidated Tape indicating that a previously executed trade has been cancelled.

Equity Electronic Access Member Initiated Review Requests

In ISE Rule 2128(b), the Exchange proposes procedures for requesting a review of a clearly erroneous transaction. First, the proposed rule would require that requests for review be made only by electronic mail (“email”) or other electronic means specified from time to time by the Exchange. Requiring requests for review to be made via email creates a standard format that can easily be logged and tracked. The Exchange will publish the email address or other electronic means to be used for all clearly erroneous filings in a circular distributed to Equity Electronic Access Members (“Equity EAMs”).

The Exchange further proposes that requests for review must be received by the Exchange within 30 minutes of the execution time for orders initially routed to and executed on the Exchange. The Exchange proposes that Equity EAMs submit certain essential identifying information with the request including the time of the transaction(s), security symbol(s), number of shares, price(s), side (bought or sold), and factual basis for believing that the trade is clearly erroneous. The Exchange believes that 30 minutes is an appropriate time frame that offers the requesting party sufficient time to gather and submit all required information.

The proposed rule also requires the Exchange to notify the counterparty to a trade upon receipt of a timely filed request for review that satisfies the numerical guidelines set forth within the Rule. The Exchange proposes to adopt language allowing an Officer of the Exchange or such other employee designee (“Officer”) of ISE to request additional information from each party to a transaction under review. Parties to the review will have 30 minutes from the time of the request to provide additional supporting information.

Routed Executions

The Exchange proposes to give other market centers an additional 30 minutes from the receipt of their participant's timely filing to request a ruling, but no longer than 60 minutes from the time of the execution under review. This provision accounts for those executions initially directed to an away market center and subsequently routed by that away market center to the Exchange.

For example, assume an order is initially routed by a participant to Market Center A and subsequently routed to ISE where the order is executed at a price outside of the Numerical Guidelines. This provision generally requires Market Center A to file with the Exchange within 30 minutes from the time it receives its participant's timely filed request for review. This provision caps the filing deadline for an away market center at 60 minutes from the time of the execution under review.

Threshold Factors

The Exchange proposes adding certain numerical thresholds to the Rule that explicitly state what constitutes a clearly erroneous execution.

Numerical Guidelines

The proposed numerical guidelines state that a transaction executed during the Regular Market Session⁵ or the Pre-Market Session⁶ and Post-Market Session⁷ may be found to be clearly erroneous only if the price of the transaction to buy is greater, or less in the case of a sale,

⁵ The Regular Market Session begins for each security with the Opening Transaction, as defined in Rule 2106, and continues until the primary listing market closes such security. See ISE Rule 2102(b) and (c).

⁶ The Pre-Market Session begins at 8:00 a.m. and concludes with the Opening Transaction of a security. See ISE Rule 2102(a).

⁷ The Post-Market Session begins following the conclusion of the Regular Market Session and concludes at 8:00 p.m. See ISE Rule 2102(d).

than the reference price by an amount that equals or exceeds the numerical guidelines for a particular transaction category. The Reference Price shall be equal to the Consolidated Last Sale immediately prior to the execution under review, unless unusual circumstances are present. The proposed guidelines for sales greater than \$0.00 and up to and including \$25.00 are 10% for the Regular Market Session and 20% for the Pre-Market Session and Post-Market Sessions. The proposed guidelines for sales greater than \$25.00 and up to and including \$50.00 are 5% for the Regular Market Session and 10% for Pre-Market Session and Post-Market Sessions. The proposed guidelines for sales greater than \$50.00 are 3% for the Regular Market Session and 6% for Pre-Market Session and Post-Market Sessions. A filing involving five or more securities by the same Equity EAM will be aggregated into a single filing called a “Multi-Stock Event.” In the case of a Multi-Stock Event, the proposed guidelines are 10% for the Regular Market Session and 10% for the Pre-Market Session and Post-Market Sessions. In the case of Leveraged ETF/ETN securities, the above guidelines are to be multiplied by the leverage multiplier of the security. Executions that do not meet or exceed the Numerical Guidelines will not be eligible for review under this section. The following chart summarizes the proposed Numerical Guidelines.

Reference Price: Consolidated Last Sale	Regular Market Session Numerical Guidelines (Subject transaction’s % difference from the Consolidated Last Sale):	Pre-Market Session and Post- Market Session Numerical Guidelines (Subject transaction’s % difference from the Consolidated Last Sale):
Greater than \$0.00 and up to and including \$25.00	10%	20%

Greater than \$25.00 and up to and including \$50.00	5%	10%
Greater than \$50.00	3%	6%
Multi-Stock Event – Filings involving five or more securities by the same Equity EAM will be aggregated into a single filing	10%	10%
Leveraged ETF/ETN securities	Regular Market Session Numerical Guidelines multiplied by the leverage multiplier (ie. 2x)	Regular Market Session Numerical Guidelines multiplied by the leverage multiplier (ie. 2x)

Establishing Numerical Guidelines within the Rule brings regulatory transparency and consistency in the application of the rules of the Exchange. These Numerical Guidelines represent the general consensus approach and were developed based on the collective experiences of a market-wide group. The Exchange believes that the Thresholds established are fair and appropriate and apply evenly to all participants.

Unusual Circumstances

ISE further proposes that in Unusual Circumstances the Exchange may, in its discretion and with a view toward maintaining a fair and orderly market, use a Reference Price other than

the consolidated last sale. Unusual Circumstances may include periods of extreme market volatility, sustained illiquidity, or widespread system issues. Other Reference Prices that the Exchange may use would include the consolidated inside price, the consolidated opening price, the consolidated prior close, or the consolidated last sale prior to a series of executions.

The following example explains the use of a Reference Price equal to the consolidated last sale prior to a series of executions.

ABC has a consolidated last sale of \$10.00. During the Regular Market Session Customer A enters a market order to buy 10,000 shares, although it had intended a market order for 1,000 shares. The size of the order is such that the order sweeps the ISE Book, which reflects 1,000 shares of liquidity offered at each of following prices.

Executions occur, moving through the depth of Book, as follows:

Trade #1 – 1000 shares @ \$10.00 (9000 remaining)

Trade #2 – 1000 shares @ \$10.20 (8000 remaining)

Trade #3 – 1000 shares @ \$10.40 (7000 remaining)

Trade #4 – 1000 shares @ \$10.60 (6000 remaining)

Trade #5 – 1000 shares @ \$10.80 (5000 remaining)

Trade #6 – 1000 shares @ \$11.00 (4000 remaining)

Trade #7 – 1000 shares @ \$11.20 (3000 remaining)

Trade #8 – 1000 shares @ \$11.40 (2000 remaining)

Trade #9 – 1000 shares @ \$11.60 (1000 remaining)

Trade #10 – 1000 shares @ \$11.80 (complete)

Thus, to be eligible for review, a transaction must be at a price that is at least 10% higher than the consolidated last sale prior to the series of executions. Customer A could request a

ruling for trades #6 through #10, priced at \$11.00 and above, but trades #1 through #5 would not be eligible for review.

Under the proposed rule the Exchange may also use a higher numerical guideline if, after market participants have been alerted to erroneous activity, the price of the security returns toward its prior trading range but continues to trade beyond the price it would have normally been busted.

Joint Market Rulings

In the interest of achieving consistency across markets, the Exchange proposes that, in events that involve other markets, the Exchange would have the ability to use a different Reference Price and/or Numerical Guideline. In these instances the Reference Price would be determined based on a consensus among the Exchanges where the transactions occurred. Furthermore, when a ruling is made across markets, the Exchange may determine that the ruling is not eligible for appeal because immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest.

Additional Factors

The proposed amendments to ISE Rule 2128 also enumerate some additional factors that an Officer may consider when determining whether an execution is clearly erroneous. These factors include, but are not limited to, system malfunctions or disruptions, volume and volatility for the security, derivative securities products that correspond to greater than 100% in the direction of a tracking index, news released for the security, whether trading in the security was recently halted/resumed, whether the security is an IPO, whether the security was subject to a stock-split, reorganization, or other corporate action, overall market conditions, Pre-Market and Post-Market Session executions, validity of the consolidated tapes trades and quotes,

consideration of primary market indications, and executions inconsistent with the trading pattern in the stock. Each additional factor shall be considered with a view toward maintaining a fair and orderly market, the protection of investors and the public interest.

Numerical Guidelines Applicable to Volatile Market Opens

The Exchange proposes to expand the Numerical Guidelines applicable to transactions occurring between 9:30 a.m. and 10:00 a.m. based on the disseminated value of the S & P 500 Futures at 9:15 a.m. When the S & P Futures are up or down from 3% to up to but not including 5% at 9:15 a.m., the Numerical Guidelines are doubled. When the S & P Futures are up or down 5% or greater at 9:15 a.m., the Numerical Guidelines are tripled. The Exchange believes that the S&P 500 futures contract is an appropriate and reliable barometer of market activity prior to the market opening due to its broad based market coverage and deep liquidity. By using the S&P 500 Futures disseminated value at 9:15 a.m. as the barometer of market activity, the Exchange is providing a transparent means of offering adjusted guidelines in times of volatile market activity.

Outlier Transactions

The proposed amendments to ISE Rule 2128 provide that an Officer of the Exchange may consider requests for review received after thirty minutes, but not longer than sixty minutes after the execution in question in the case of an Outlier Transaction. An Outlier Transaction is a transaction where, (1) the execution price of the security is greater than three times the current Numerical Guidelines, or (2) the execution price of the security breaches the 52-week high or low, in which case the Exchange may consider Additional Factors to determine if the transaction qualifies for review or if the Exchange shall decline to act..

Review Procedures

Initial Determination

Under the proposed rule, the Officer will only have the authority to break the trades or rule to let the trades stand and will no longer have the authority to adjust one or more terms of the transaction. This limitation attempts to remove the subjectivity from the rule that is necessitated by an adjustment.

The Exchange also proposes adding language stating that a determination shall be made generally within 30 minutes of receipt of the complaint, but in no case later than the start of the Regular Market Session on the following trading day. Rulings made outside of 30 minutes by an Officer will not fail for lack of timeliness. The guideline simply provides participants an appropriate expectation that a ruling will generally be made within 30 minutes, and in no case later than the start of the Regular Market Session on the following trading day.

Appeals

The Exchange proposes to amend the appeals procedure for trades that are deemed to be clearly erroneous. First, the Exchange will no longer accept appeal requests via facsimile. Similar to the proposed language for an initial request for a ruling, all appeal requests must be made via email.

The current rule provides that the Exchange shall review and render a decision upon an appeal within a timeframe provided by the Exchange. The proposed rule offers more definite guidelines to ensure the expedient resolution of appeals. It requires the Exchange to review appeals as soon as practicable, but generally on the same day as the executions under review. Appeals received between 3:00 p.m. ET and the close of trading in the Post-Market Session should be made as soon as practicable, but in no case later than the trading day following the

date of the execution under review. Appeals will not fail for lack of timeliness. This revised provision provides participants a reasonable expectation of when a ruling on appeal will generally be made.

Further, the proposed rule declares that any determination made by an Officer or by the CEE Panel shall be rendered without prejudice as to the right of the parties to the transaction to submit their dispute to arbitration. This provision simply clarifies the fact that nothing in the proposed rule limits or impedes the rights of the parties to arbitrate their dispute.

System Disruption and Malfunctions

Currently, within the System Disruptions and Malfunctions section of the rule, after an Officer determines that a trade was clearly erroneous he may declare the transaction null and void or modify the trade to attempt to achieve an equitable rectification of the error. The proposed Rule eliminates the Exchange's ability to modify a clearly erroneous execution. The Exchange must either uphold or nullify the execution based upon the findings of the Officer reviewing the execution.

The proposed Rule provides that, in the event of a disruption or a malfunction, an Officer of the Exchange or other senior level employee designee will rely on the proposed numerical guidelines in determining whether an execution is clearly erroneous. However, the Officer or senior level employee may also use a lower Numerical Guideline if necessary to maintain a fair and orderly market, protect investors, and protect the public interest. The proposed rule also adds that actions taken under these circumstances must be taken within 30 minutes of detection of the erroneous transaction in the ordinary case, and by no later than the start of the Regular Market Session on the day following the date of the execution under review when extraordinary circumstances exist.

Officers Acting on Their Own Motion

The Exchange proposes to add a section to the Rule that will grant an Officer of the Exchange or other senior level employee designee the ability to act on their own motion to review potentially erroneous executions. Under the current rule, Officers have the ability to act upon their own motion only in the event of a system disruption or malfunction. The proposed rule would allow an Officer of the Exchange or other senior level employee designee to review executions and rely on the Numerical Guidelines, under any circumstance. In extraordinary circumstances an Officer of the Exchange or other senior level employee designee may apply a lower Numerical Guideline if it is determined that such action is necessary to maintain a fair and orderly market or protect investors and the public interest. In some instances the Exchange may detect a single execution that breaches the Numerical Guidelines but is not the subject of a ruling request. This provision gives the Exchange the ability to review such executions. Additionally, in practice clearly erroneous executions commonly involve multiple parties and multiple executions. In such instances, all affected parties may not request a ruling. The Exchange proposes this provision to permit an Officer of the Exchange or other senior level employee designee to rule on a group of transactions related to the same occurrence or event as a whole, without a formal request for a ruling from every affected party.

Trade Nullification for UTP Securities that are Subject of Initial Public Offerings

The proposed rule also modifies ISE's policy on trade nullification and for UTP securities that are subject to initial public offerings. Under the proposed rule, an Officer of the Exchange or other senior level employee designee must either declare an opening transaction null and void or decline to take action, but can no longer be adjusted. Furthermore, the proposed rule requires that, in extraordinary circumstances, the reviewing Officer of the Exchange or other senior level

employee designee may take action by no later than the start of the Regular Market Session on the day following the date of the execution under review.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁸ in general, and furthers the objectives of Section 6(b)(4),⁹ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The proposed rule change provides transparency and finality for Equity EAMs and creates consistent results across U.S. equities exchanges with respect to clearly erroneous executions. This proposed change further promotes the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

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;

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹² normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)¹³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that it may implement the new rule on October 5, 2009, the same date as the other equities exchanges. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to begin applying the new rule on the same date as the other equities exchanges.¹⁴ Application of the new rule on this date should help foster transparency and consistency among those exchanges that adopt clearly erroneous execution rules substantially similar to those previously approved by the Commission.¹⁵ For these reasons, the Commission designates that the proposed rule change, as amended, become operative on October 5, 2009.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ See Securities Exchange Act Release No. 60706 (September 22, 2009), 74 FR 49416 (September 28, 2009) (NYSEArca-2009-36).

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.¹⁶

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-2009-73 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-2009-73. 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

¹⁶ The Commission considers the 60-day period within which the Commission may summarily abrogate the proposal pursuant to Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C), to commence on October 1, 2009, the date ISE filed Amendment No. 1 to the proposal.

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 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 publicly available. All submissions should refer to File Number SR-ISE-2009-73 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.¹⁷

Florence E. Harmon
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).