

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72490; File No. SR-ISE-2014-34)

June 27, 2014

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish New Rule 720A

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 June 24, 2014, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange 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 establish new procedures to account for erroneous trades occurring from disruptions and/or malfunctions of Exchange systems. The changes described in this proposal would establish new ISE Rule 720A. The text of the proposed rule change is available on the Exchange’s website [www.ise.com](http://www.ise.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

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 adopt Rule 720A to provide for new procedures to account for erroneous trades occurring from disruptions and/or malfunctions of Exchange systems.

Specifically, proposed new Rule 720A would provide that any transaction that arises out of a “verifiable systems disruption or malfunction” in the use or operation of an Exchange automated quotation, dissemination, execution, or communication system may either be nullified or adjusted by Market Control.<sup>3</sup> Under the rule, Market Control may act, on its own motion, to review erroneous transactions. This filing is based on the rules of NYSE Arca, Inc. (“NYSE Arca”).<sup>4</sup>

The Exchange believes that it is appropriate to provide the flexibility and authority provided for in proposed Rule 720A so as not to limit the Exchange’s ability to plan for and respond to unforeseen systems problems or malfunctions. The proposed rule change would provide the Exchange with the same authority to nullify or adjust trades in the event of a “verifiable disruption or malfunction” in the use of operation of its systems as other exchanges have.<sup>5</sup> For this reason, the Exchange believes that, in the interest of maintaining a fair and orderly market and for the protection of investors, authority to nullify or adjust trades in these circumstances, consistent with the authority on other exchanges, is warranted.

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<sup>3</sup> Market Control consists of designated personnel in the Exchange’s market control center. See ISE Rule 720(a)(3)(ii).

<sup>4</sup> See NYSE Arca Rule 6.89. The proposed rule change is also based in part on NASDAQ OMX PHLX, LLC (“Phlx”) Rule 1092(c)(ii)(A), and in addition is substantially similar to Chicago Board Options Exchange, Inc. (“CBOE”) Rule 6.25(a)(3).

<sup>5</sup> Id.

According to the proposal, in the event of any verifiable disruption or malfunction in the use or operation of an Exchange automated quotation, dissemination, execution, or communication system, in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest exist, Market Control, on his or her own motion, may review such transactions and declare such transactions arising out of the use or operation of such facilities during such period null and void or modify the terms of the transactions, in accordance with the guidelines contained in Rule 720(b)(2)(i)(A) and (B). Pursuant to the proposal, Market Control, absent extraordinary circumstances, must initiate action under this authority within sixty (60) minutes of the occurrence of the erroneous transaction that was a result of the verifiable disruption or malfunction. Each Member involved in the transaction shall be notified as soon as practicable, and any Member aggrieved by the action may appeal such action in accordance with the provisions of subsection (b) of Rule 720A.

If Market Control determines that a transaction(s) is erroneous pursuant to Rule 720A(a) as described above, any Member aggrieved by the action may appeal such action in accordance with the provisions provided in Rule 720(b). The Exchange plans to utilize a Review Panel (“Panel”) to review decisions made by Market Control under this Rule.

Once a Member has properly notified the Exchange that it wishes to appeal the decision of Market Control, a four person Panel will review and make a determination as to the appeal. The Panel as described in proposed Rule 720A(b)(1)(i) will be comprised of representatives from four (4) Members. Two (2) of the representatives must be directly engaged in market making activity and two (2) of the representatives must be employed by an Electronic Access Member

(“EAM”).<sup>6</sup> The Exchange feels that by having a four person panel will help to ensure that determinations regarding erroneous transactions resulting from system malfunctions or extraordinary market conditions are made by a diverse representative group in a manner that will help to ensure fairness and impartiality. To qualify as a representative of an Electronic Access Member on a Review Panel, a person must (i) be employed by a Member whose revenues from options market making activity do not exceed ten percent (10%) of its total revenues; or (ii) have as his or her primary responsibility the handling of Public Customer orders or supervisory responsibility over persons with such responsibility, and not have any responsibilities with respect to market making activities.<sup>7</sup>

The Exchange shall designate at least five (5) market maker representatives and at least five (5) EAM representatives to be called upon to serve on the Panel as needed. In no case shall a Panel include a person related to a party to the trade in question. To the extent reasonably possible, the Exchange shall call upon the designated representatives to participate in a Panel on an equally frequent basis.

The Exchange notes that the options markets are currently in the process of identifying how to harmonize their respective obvious and catastrophic error rules, including a rule specifying the circumstances in which an options exchange may nullify or adjust trades because of a systems problem or malfunction. Because it is uncertain when this harmonized rule will be filed with and approved by the Commission, the Exchange believes it is critical to its current

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<sup>6</sup> The composition of the Review Panel is similar to that of the ISE Obvious and Catastrophic Errors Panel, as defined in ISE Rule 720(d).

<sup>7</sup> The qualification requirements of the Review Panel are identical to those of the ISE Obvious and Catastrophic Errors Panel, as provided in Supplementary Material .02 to ISE Rule 720.

ability to maintain a fair and orderly market and to protect investors to propose an amendment to its current rules. The proposed rule would be superseded by a future proposed harmonized rule.

## 2. Statutory Basis

The Exchange believes that the proposed rule change will allow the Exchange, in extraordinary market conditions, to maintain a fair and orderly market. The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, 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.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and national market system and promote a fair and orderly market because it would provide authority for the Exchange to nullify or adjust trades that may have resulted from a verifiable systems disruption or malfunction. The Exchange believes that it is appropriate to provide the flexibility and authority provided for in proposed Rule 720A so as not to limit the Exchange's ability to plan for and respond to unforeseen systems problems or malfunctions that may result in harm to the public. Allowing for the nullification or modification of transactions that result from verifiable disruptions and/or malfunctions of Exchanges systems will offer market participants on ISE a level of relief presently not available. The Exchange further notes that when acting under its own motion to nullify or adjust trades pursuant to proposed Rule 720A, the Exchange must consider whether

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<sup>8</sup> 15 U.S.C. 78(f)(b)(5).

taking such action would be in the interest of maintaining a fair and orderly market and for the protection of investors. The Exchange notes that the proposed rule change is based on NYSE Arca rules and is substantially similar to rules of other markets.<sup>9</sup>

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed rule change is pro-competitive because it will align the Exchange's rules with the rules of other markets, including CBOE, NYSE Arca, and Phlx. By adopting proposed Rule 720A, the Exchange will be in a position to treat transactions that are a result of a verifiable systems issue or malfunction in a manner similar to other exchanges.

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.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, 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, 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> The Exchange provided the

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<sup>9</sup> See supra note 3.

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

Commission with 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 the proposed rule change as required by Rule 19b-4(f)(6).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### 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-2014-34 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-2014-34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>11</sup> 17 CFR 240.19b-4(f)(6).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<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 website 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 a.m. and 3:00 p.m. Copies of the 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-2014-34 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.<sup>12</sup>

Kevin M. O'Neill  
Deputy Secretary

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