

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52069; File No. SR-ISE-2005-23)

July 20, 2005

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change Establishing a De Minimus Exception to the 80/20 Test

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 May 13, 2005, the International Securities Exchange, Inc. ("Exchange" or "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 ISE. 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 Exchange proposes to amend ISE Rule 1904 to establish a "de minimis" exception to the "80/20 Test" limiting market makers' use of Principal Orders³ under the rules imposed by the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan")⁴ and related rules.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange defines a Principal Order as an order for the principal account of a market maker (or equivalent entity on another Participant Exchange) and which is not a Principal Acting as Agent Order. See Chapter 19, Rule 1900(10)(ii) of the ISE Rules.

⁴ On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by the American Stock Exchange, LLC, Chicago Board Options Exchange, Inc. and the ISE. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, the Philadelphia Stock Exchange, Inc., the Pacific Exchange, Inc. and the Boston Stock Exchange, Inc. joined the Linkage Plan. See Securities Exchange Act

The text of the proposed rule change is available on the ISE's website at http://www.iseoptions.com/legal/proposed_rule_changes.asp, the ISE's Office of the Secretary, 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 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 IV below. The Exchange 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 purpose of this proposed rule change is to implement proposed Joint Amendment No. 17 to the Linkage Plan. Joint Amendment No. 17, together with this proposed rule change, will establish a "de minimis" exception to the "80/20 Test" set forth in Section 8(b)(iii) of the Linkage Plan and ISE Rule 1904.

Section 8(b)(iii) of the Linkage Plan permits market makers to access away markets on a limited basis for their own principal trading. The Linkage Plan enforces this limitation via the "80/20 Test," which generally requires at least 80 percent of a market maker's trading volume in an option class to be on its own exchange for the market maker to be able to use Linkage to send Principal Orders for its own account in that class.

Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

If a market maker “fails” the 80/20 Test in an option class during a calendar quarter, it cannot send Principal Orders through Linkage in that class during the next calendar quarter.

The options exchanges have agreed to adopt a de minimus exception to the 80/20 Test. As proposed by the Exchange, the 80/20 Test would not apply to any market maker that has total volume of less than 1000 contracts in an option during a calendar quarter. At this low volume, even a small number of Principal Orders could result in the market maker being disqualified from Linkage in that class for a calendar quarter. The Exchange believes that this proposed exception would address such concerns.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁵ in general and furthers the objectives of Section 6(b)(5)⁶ in particular in that it is 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 of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange further believes that the proposed rule change will conform the ISE's rules to the Linkage Plan and provide market makers with greater access to the Linkage.

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

The ISE does not believe that the proposed rule change will impose any burden on competition.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change; or
- (B) institute proceedings to determine whether the proposed rule change should be 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 at <http://www.sec.gov/rules/sro.shtml> or send an e-mail to rule-comments@sec.gov.

Please include File No. SR-ISE-2005-23 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File No. SR-ISE-2005-23. 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 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. 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-2005-23 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).