

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52174; File No. SR-ISE-2005-33)

July 29, 2005

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to the Exchange's Trade-Through and Locked Markets Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 8, 2005, the International Securities Exchange, Inc. ("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 ISE is proposing to amend its rules governing the operation of the intermarket option linkage ("Linkage"). Specifically, the ISE is proposing to amend the trade-through and locked markets rules to allow a member to "trade and ship" or "book and ship" an order. The text of the proposed rule change is available on the ISE's Web site (<http://www.iseoptions.com>), at 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

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

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

rule change. The text of these statements may be examined at the places specified in Item IV 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

The ISE proposes to amend its rules governing Linkage trading with respect to trade-throughs and locked markets. Specifically, the amendment will provide that an ISE member: (i) may trade an order at a price that is one minimum quoting increment inferior to the national best bid or offer ("NBBO") if the member contemporaneously transmits to the market(s) disseminating the NBBO Linkage Orders<sup>3</sup> to satisfy all interest at the NBBO price ("trade and ship"); and (ii) may enter an order on the ISE that would lock another exchange if the member contemporaneously sends a Linkage Order to such other exchange to satisfy all interest at the lock price ("book and ship").<sup>4</sup> Under the trade and ship proposal, pursuant to agency obligations, any execution the member receives from the NBBO market must be reassigned to any customer order underlying the Linkage Order that was transmitted to trade against the market disseminating the NBBO. Below are examples illustrating the applications of these concepts:

- Trade and Ship Example. The ISE is disseminating an offer of \$2.00 for 100 contracts.

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<sup>3</sup> The ISE defines "Linkage Order" in ISE Rule 1900(10).

<sup>4</sup> At the request of the ISE, the Commission staff has changed the wording in item (ii) to be consistent with the rule text. Telephone conversation between Michael Simon, General Counsel and Secretary, ISE, Kim Allen, Attorney, Division of Market Regulation ("Division"), and Kate Robbins, Attorney, Division, on July 20, 2005.

Exchange B is disseminating the national best offer of \$1.95 for 10 contracts. No other market is at \$1.95. An ISE market maker receives a 100-contract customer buy order to pay \$2.00. Under this proposal, the ISE market maker could execute 90 contracts (or 100 contracts) of the customer order at \$2.00 provided the ISE market maker contemporaneously transmits a 10-contract Principal Acting as Agent (“P/A”) Order<sup>5</sup> to Exchange B to pay \$1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10-contract fill at \$1.95 and 90 contracts at \$2.00 (if the customer order was originally filled in its entirety at \$2.00, an adjustment would be required to provide the customer with the \$1.95 price for 10 contracts reflecting the P/A Order execution). As proposed, this would not be deemed a Trade-Through.

- **Book and Ship Example.** The ISE is disseminating a \$1.85 - \$2.00 market. Exchange B is disseminating a \$1.80 - \$1.95 market. The \$1.95 offer is for 10 contracts. No other market is at \$1.95. An ISE market maker receives a customer order to buy 100 contracts at \$1.95. Under this proposal, the ISE market maker could book 90 contracts of the customer buy order at \$1.95 provided the ISE market maker contemporaneously transmits a 10-contract P/A Order to Exchange B to pay \$1.95. Assuming an execution is obtained from Exchange B, the customer would receive the 10-contract fill and the rest of the customer’s order will be displayed as a \$1.95 bid on the ISE. The national best offer would likely be \$2.00. As proposed, this would not be deemed a “locked” market for purposes of the Linkage Plan.

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<sup>5</sup> The ISE defines “Principal Acting as Agent (“P/A”) Order” in ISE Rule 1900(10)(i).

## 2. Statutory Basis

The ISE believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>6</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. In particular, the proposed rule change will help implement the Linkage Plan by facilitating the ability of market makers to execute their customer orders.

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

This 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 ISE has not solicited, and does not intend to solicit, comments on this proposed rule change. The ISE 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

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

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<sup>6</sup> 15 U.S.C. 78f(b)(5).

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the ISE 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 (<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-2005-33 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 Number SR-ISE-2005-33. 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 the 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-2005-33 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).