

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52327; File No. SR-ISE-2004-33)

August 24, 2005

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Relating to the Entry of Complex Orders into the Facilitation Mechanism

I. Introduction

On November 16, 2004, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend ISE Rule 716(d), "Facilitation Mechanism," to allow Electronic Access Members ("EAMs") to enter complex orders into the ISE's facilitation mechanism. On December 14, 2004, the ISE submitted Amendment No. 1 to the proposal.³ The proposed rule change, as amended, was published for comment in the Federal Register on July 12, 2005.⁴ The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

Currently, an EAM may not use the ISE's facilitation mechanism to facilitate a complex order. The ISE proposes to amend ISE Rule 716(d) to allow EAMs to use the facilitation mechanism to facilitate complex orders. Under the proposal, each leg of the complex order must be for at least 50 contracts. After an EAM enters a complex order into the facilitation mechanism, ISE members will be able to enter at net prices indications at which they would be

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 made a technical revision to the text of the proposed rule change.

⁴ See Securities Exchange Act Release No. 51968 (July 1, 2005), 70 FR 40089.

willing to participate in the facilitation of the order. Complex orders entered into the facilitation mechanism will be executed pursuant to ISE Rule 716(d)(4), and the priority rules for complex orders in ISE Rule 722(b)(2) will apply.⁵ If a complex order entered into the facilitation mechanism could receive an improved net price from bids and offers for the individual legs of the order in the ISE's auction market, then the complex order will be executed at the better net price.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁷ which requires, among other things, that the rules of a national securities exchange be 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 Commission believes that the proposal could facilitate the execution of complex orders. The Commission notes that the priority rules in ISE Rule 722(b)(2) will apply to complex orders entered into the facilitation mechanism. In addition, if bids and offers in the

⁵ ISE Rule 722(b)(2) provides, in part, that a complex order may be executed at a total credit or debit price with another ISE member without giving priority to established bids or offers in the market that are not better than the bids or offers comprising such net debit or credit, provided that if any of the established bids or offers consists of a public customer limit order, the price of at least one leg of the complex order must trade at a price that is better than the corresponding bid or offer in the marketplace.

⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

ISE's auction market for the individual legs of the complex order being facilitated could produce a better net price for the order, then the complex order will receive an execution at the better net price.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-ISE-2004-33), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland
Deputy Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).