

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52451; File No. SR-ISE-2005-44)

September 15, 2005

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Primary Market Maker Obligations

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 September 14, 2005, the International Securities Exchange, Inc. (“ISE” or “Exchange”) 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. The Exchange has filed the proposed rule change as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 803 regarding Primary Market Maker obligations in consideration of a recently approved change to the ISE Rules relating to the Plan

---

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

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

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

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

for the Purpose of Creating and Operating an Intermarket Option Linkage.<sup>5</sup>

The text of the proposed rule change is available on the Exchange's Web site (<http://www.iseoptions.com>), at the Exchange'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 Exchange 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

In file number SR-ISE-2005-33, which was recently approved by the Commission, the Exchange proposed to amend its rules governing Linkage<sup>6</sup> trading with respect to trade-throughs and locked markets.<sup>7</sup> SR-ISE-2005-33 provided that an Exchange member may trade an order at

---

<sup>5</sup> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket option linkage proposed by the American Stock Exchange LLC, the Chicago Board Options Exchange, Incorporated, and the ISE. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) ("Linkage Plan"). Subsequently, upon separate requests by the Philadelphia Stock Exchange, Inc., the Pacific Exchange, Inc., and the Boston Stock Exchange, Inc., the Commission issued orders to permit these exchanges to participate in the Linkage Plan. See Securities Exchange Act 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).

<sup>6</sup> The Exchange defines "Linkage" in ISE Rule 1900(9).

<sup>7</sup> See Securities Exchange Act Release No. 52418 (September 13, 2005) (order approving SR-ISE-2005-33).

a price that is one minimum quoting increment inferior to the national best bid and offer (“NBBO”) if the member contemporaneously transmits to the market(s) disseminating the NBBO Linkage Order(s)<sup>8</sup> to satisfy all interest at the NBBO price (“trade and ship”). Under trade and ship, pursuant to agency obligations, any execution the member receives from the market disseminating the NBBO must be reassigned to any customer order underlying the Linkage Order that was transmitted to trade with the market disseminating the NBBO.

The purpose of this proposed rule change is to reflect the change made in SR-ISE-2005-33 in ISE Rule 803(c), which specifies the obligations of a Primary Market Maker when handling a Public Customer Order. Specifically, the Exchange proposes to amend ISE Rule 803(c) to specify that a Primary Market Maker may trade and ship as described above. This proposed rule change is necessary to assure that the Exchange’s rules are consistent with respect to the handling of Public Customer Orders.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>9</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 and assuring that the Exchange’s rules in this respect are consistent.

---

<sup>8</sup> The Exchange defines “Linkage Order” in ISE Rule 1900(10).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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 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 effects a change that does not:

(1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change 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> As required under Rule 19b-4(f)(6)(iii),<sup>12</sup> the Exchange provided the Commission with written notice of the Exchange's intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally may not become operative prior to 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>14</sup> permits the Commission

---

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

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

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest,<sup>15</sup> because accelerating the operative date immediately eliminates the inconsistency in the Exchange Rules with respect to Primary Market Makers Obligations to Public Customer Orders that otherwise exists as a result of the approval of trade and ship.<sup>16</sup> For this reason, the Commission designates that the proposal is operative upon filing.

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.

#### 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:

---

<sup>15</sup> For the purpose only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>16</sup> See supra note 7.

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-2005-44 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-2005-44 . 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 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-2005-44 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>17</sup>

Jonathan G. Katz  
Secretary

---

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