

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52479; File No. SR-ISE-2004-04)

September 21, 2005

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Relating to Exposure Periods in the Facilitation and Solicited Order Mechanisms

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 23, 2004, 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, II, and III below, which items have been prepared by the Exchange. On September 7, 2005, the ISE filed Amendment No. 1 to the proposed rule change.³ On September 20, 2005, the ISE filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to decrease the exposure period in its Facilitation and Solicited Order Mechanisms from 10 seconds to three seconds. The text of the proposed rule change is as follows (italics indicates additions; [brackets] indicate deletions):⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 superseded and replaced ISE’s original filing in its entirety.

⁴ Amendment No. 2 corrected a non-substantive typographical error in the text of the proposed rule change, and two incorrect references in footnotes to the Form 19b-4 for Amendment No. 1 and Exhibit 1 thereto.

⁵ There were no changes to the text of the proposed rule change in Amendment No. 1. However, the proposal was updated in Amendment No. 1 to reflect changes in the text of ISE Rule 716 that occurred since the initial proposal was submitted. The Purpose section of the filing was also updated.

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Rule 716. Block Trades

(a) through (e) no change.

Supplementary Material to Rule 716

.01 through .03 no change.

.04 The time given to Members to enter Responses under paragraph (c)(1) shall be thirty (30) seconds. The time given to Members to enter Responses under paragraph (d)(1) and Responses under paragraph (e)(1) shall be [ten (10)] three (3) seconds.

.05 through .08 no change.

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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

Electronic Access Members that seek to execute their customer orders as principal (facilitations) or to execute their customer orders against orders they solicit from other broker-dealers (solicitations) may use the Facilitation and Solicited Order Mechanisms contained in ISE Rule 716 or the Price Improvement Mechanism contained in ISE Rule 723. All three of these mechanisms expose orders to the market to give other market participants an opportunity to

participate in the trade. Currently, the exposure period for the Facilitation and Solicited Order Mechanisms is ten seconds under ISE Rule 716, while the exposure period for the Price Improvement Mechanism is only three seconds under ISE Rule 723. The purpose of this proposed rule change is to reduce the exposure period for the Facilitation and Solicited Order Mechanisms from ten seconds to three seconds.⁶

When it approved the three-second exposure period for the Price Improvement Mechanism, the Commission concluded that, in light of the ISE's fully electronic marketplace, the three-second exposure period gave participants sufficient time to compete for orders. The ISE believes that there is no reason for the exposure periods to be different among the three mechanisms, since members are notified of the orders and enter their interest in trading with the orders in the same technical manner. Moreover, the Price Improvement Mechanism is an interactive auction where members receive and can respond to multiple price updates within the three second period, whereas members only receive one message at the start of an auction with respect to orders executed through the Facilitation and Solicited Order Mechanisms. Indeed, the ISE believes that exposing orders for ten seconds rather than three in its fully electronic market adds risk to the orders being exposed without providing any offsetting benefit to the orders.

⁶ ISE Rule 716 originally required that orders be exposed in the Facilitation Mechanism for 30 seconds. In September 2002, the Commission approved reducing this exposure period from 30 seconds to ten seconds. See Securities Exchange Act Release No. 46514 (September 18, 2002), 67 FR 60627 (September 25, 2005) (approving File No. SR-ISE-2001-19). The Solicited Order Mechanism was approved in June 2004 with an exposure period of ten seconds. See Securities Exchange Act Release No. 49943 (June 30, 2004), 69 FR 41317 (July 8, 2004) (approving File No. SR-ISE-2001-22). The Price Improvement Mechanism was approved in December 2004 with the three-second exposure period. See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (approving File No. SR-ISE-2003-06).

2. Basis

The basis under the Act for this proposed rule change is found in Section 6(b)(5),⁷ in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, in that the proposal will allow orders to be executed through the Facilitation and Solicited Order Mechanisms in a more timely and efficient manner.

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

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 self-regulatory organization 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.

⁷ 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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. Please include File Number SR-ISE-2004-04 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-2004-04. 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 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-2004-04 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.⁸

Jonathan G. Katz
Secretary

⁸ 17 CFR 200.30-3(a)(12).