

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52596; File No. SR-ISE-2005-40)

October 12, 2005

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Market Maker Quotation Obligations

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 September 6, 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange proposes to clarify the implementation of changes to Exchange Rule 804 regarding market maker quotation obligations.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item III 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-2005-18, the Exchange proposed to adopt rule changes on a pilot basis to allow Electronic Access Members to designate "Preferred Market Makers" on orders Electronic Access Members enter into the Exchange's systems. In Amendment No. 1 to SR-ISE-2005-18, the Exchange proposed to increase the quotation obligations of Competitive Market Makers under Exchange Rule 804, who are eligible to be designated as Preferred Market Makers. Specifically, in SR-ISE-2005-18, as amended, the Exchange proposed to amend Exchange Rule 804 to require that Competitive Market Makers maintain continuous quotes in all of the series of any options class the Competitive Market Maker is quoting. The Exchange also proposed to amend Exchange Rule 804 to limit to 60 the number of options classes a Competitive Market Maker is required to quote when there are more than 100 options classes in such Competitive Market Maker's appointed Group. The Commission approved SR-ISE-2005-18, as amended, on June 10, 2005, for a pilot period expiring on July 18, 2005.³ The pilot period subsequently was extended to June 10, 2006.⁴

While the Exchange included the changes to Exchange Rule 804 as part of the Exchange's proposal to allow Competitive Market Makers to be designated as Preferred Market

³ See Securities Exchange Act Release No. 51818 (June 10, 2005), 70 FR 35146 (June 16, 2005).

⁴ See Securities Exchange Act Release No. 52066 (July 20, 2005), 70 FR 43479 (July 27, 2005).

Makers, the Exchange did not intend that the proposed changes to Exchange Rule 804 be adopted on a pilot basis. The purpose of this rule filing is to clarify that the changes to Exchange Rule 804 were intended by the Exchange to be adopted on a permanent basis. The Exchange notes that SR-ISE-2005-18, as amended, was published for comment in the Federal Register, and no comments were received on the proposed changes to Exchange Rule 804.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is found in Section 6(b)(5) of the Act,⁵ in that the proposed rule change is designed to promote just and equitable principles of trade, 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, because the proposal clarifies that the amendments to Exchange Rule 804 were intended to be adopted on a permanent basis.

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

The Exchange believes that 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 the proposed rule change. The Exchange has not received any written comments from members or other interested parties.

⁵ 15.U.S.C. 78f(b)(5).

III. 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. Please include File Number SR-ISE-2005-40 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-2005-40. 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

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-2005-40 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act⁶ and the rules and regulations thereunder applicable to a national securities exchange,⁷ and, in particular, the requirements of Section 6(b)(5) of the Act.⁸ Section 6(b)(5) requires, among other things, that the rules of a national securities exchange be designed 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 previously approved, on a pilot basis, changes to Exchange Rule 804 that (a) require Competitive Market Makers to maintain continuous quotes in all of the series of any options class the Competitive Market Maker is quoting and (b) limit to 60 the number of options classes a Competitive Market Maker is required to quote when there are more than 100 options classes in such Competitive Market Maker's appointed Group (together, the "Exchange

⁶ 15 U.S.C. 78f.

⁷ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15.U.S.C. 78f(b)(5).

Rule 804 Changes”).⁹ Although the Exchange Rule 804 Changes were part of the Exchange’s proposals to allow, on a pilot basis, Electronic Access Members to designate “Preferred Market Makers” on orders such Electronic Access Members enter into the Exchange’s systems, the Commission notes that the Exchange Rule 804 Changes apply to all Competitive Market Makers, even in cases in which a Competitive Market Maker does not receive a designated order. The Commission also notes that the Exchange stated that the proposed rule change clarifies the intent of the Exchange that the Exchange Rule 804 Changes be approved on a permanent basis. The Commission further notes that the Exchange Rule 804 Changes were published for comment in the Federal Register in connection with File Number SR-ISE-2005-18 and File Number-ISE-2005-35,¹⁰ and that no comments were received on such changes. The Commission believes that the proposed rule change would clarify that the obligations of Competitive Market Makers continue, regardless of whether the Preferred Market Maker pilot program is extended, and that such clarification does not raise any regulatory issues. For these reasons, the Commission believes that approving the Exchange Rule 804 Changes on a permanent basis is consistent with the Act.

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the Federal Register. The Commission notes that no comments were received in connection with the approvals of the Exchange Rule 804 Changes on a pilot basis. The Commission believes that accelerating approval of the proposed rule change should allow for more efficient market

⁹ See supra notes 3 and 4.

¹⁰ Id.

operation by offering clarity to existing ISE rules. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹¹ for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the Federal Register.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-ISE-2005-40) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jonathan G. Katz
Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).