From: Steve Youhn

Sent: Tuesday, April 26, 2005

Subject: Comments on Ise 2003-07

Elizabeth, Ira

Last week, ISE submitted a partial amendment to its filing 2003-07,
which deals with the pricing of block, facilitation, and solicited
orders executed through their mechanisms. We've got a few comments on
it that we'd like to convey.

1. Rule 716.03 states that responses may not be entered for the
account of an options MM from another options exchange. We're not sure
how this gets around the discriminatory issue. The filing states that
the rationale is based on the supposition that ISE MMs can't
participate in orders on the floor of another options exchange. With
respect to CBOE, that is false. ISE MMs may be represented by FBs on
our floor and may participate in these trades. This proposal seems to
try to address potential 11(a) concerns by blocking them from
occurring. In other words, an ISE EAM doesn't have to worry about
yielding to the accounts of non-members if those nonmembers are
prevented from entering orders in the first place. That would be ok
provided the means used to prevent order entry were not discriminatory
under Section 6(b)(5). That isn't the case here. There's also an irony
twist here. Not only can ISE MMs be represented by CBOE FBs, but also
these ISE MMs have priority over our non-MM members absent an 11(a)
exemption (which we currently have not been able to procure yet for
block positioning).

2. Rule 716(d)(3)(ii), which is an existing rule, also implicates
11(a). Basically, an EAM gets its 40% only after better-priced orders
and responses go first, along with public customer orders at the
facilitation price.   Non-customer orders then share prorata with other
responses/orders at the facilitation price. Again, this violates
11(a)'s requirement that members yield to nonmembers (absent an
exemption). Here there is no yielding as the EAM's 40% comes out
before the non-members get to participate. Unless the block positioner
exemption is set at 50 contracts (which it isn't) how does this comply
with 11(a)? Effect vs. execute isn't used. We would think that the
term "public customer" as used in the rule should be changed to
"nonmember."

We may submit a more formal comment letter shortly.
Please feel free to contact me (through the end of this week) if you
have questions regarding our comments, or Angelo. thanx