

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57450; File No. SR-ISE-2008-15)

March 7, 2008

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to the Exchange's Limitation of Liability

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 March 5, 2008, the International Securities Exchange, LLC ("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 substantially by the ISE. 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 ISE proposes to amend ISE Rule 705, Limitation of Liability, to codify that it may provide compensation for losses sustained by Members as a result of a malfunction of the Exchange's physical equipment, devices and/or programming. The text of the proposed rule change is available at the ISE, the Commission's Public Reference Room, and www.ise.com.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

below. The ISE 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

The ISE proposes to amend ISE Rule 705 to codify that it may provide compensation for losses sustained by Members as a result of a malfunction of the Exchange's physical equipment, devices, and/or programming. Currently, ISE Rule 705 generally states that the Exchange is not liable for any losses due to the Exchange's negligence or unintentional actions. Notwithstanding the Exchange's current limitation on liability, from a customer service perspective, the Exchange may compensate a Member for certain identified losses.³ As such, the Exchange proposes to amend ISE Rule 705 in order to establish limits with respect to compensating Members, both in the ISE's stock and options markets, as a result of a malfunction of the Exchange's physical equipment, devices, and/or programming.

Under the proposed rule change, payments for any and all system failures on any given day would be capped at \$250,000. That is, for the aggregate of all claims made by all market participants related to the use of the Exchange on a single trading day, the Exchange's payment shall not exceed \$250,000. In the event that all of the claims arising out of the use of the Exchange's systems cannot be fully satisfied because in the aggregate they exceed the limitations provided for in the Rule, then the maximum permitted amount will be proportionally allocated

³ The ISE represents that the determination as to whether a Member is compensated or not will be made on an equitable and non-discriminatory basis without regard to the status of that Member, *i.e.*, whether that Member is a Primary Market Maker, a Competitive Market Maker, or an Electronic Access Member of the Exchange.

among all such claims arising on a single trading day. A system failure will be deemed to have occurred when there is a malfunction of the Exchange's physical systems, devices, or software.

In order for a Member to be eligible to receive payment, claims must be made in writing and must be submitted no later than the opening of trading on the next business day following the day on which the incident giving rise to a claim occurred. Once in receipt of a claim, the Exchange will verify that: (i) a valid order was accepted into the Exchange's systems; and (ii) an Exchange system failure occurred during the execution or handling of that order. If all of the criteria for submitting a claim have been met, the claim will be qualified for processing with all other eligible claims at the end of the calendar month in which the incident occurred.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general and Section 6(b)(5) of the Act,⁵ in particular, in that it is 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the ISE believes that the proposed rule change will protect investors and the public interest by providing more certainty as to the Exchange's potential liability resulting from system problems.

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

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 this proposed rule change. The Exchange has not received any unsolicited 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.

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:

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 No. SR-ISE-2008-15 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2008-15. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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-2008-15 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).