SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58041; File No. SR-ISE-2007-94)

June 26, 2008

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change as Modified by Amendments No. 1 and 3 Thereto Relating to Reduction of the Order Handling and Exposure Periods

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 October 5, 2007, 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 substantially prepared by ISE. On December 4, 2007, ISE filed Amendment No. 1 to the proposed rule change. On May 22, 2008, ISE filed Amendment No. 2 to the proposed rule change.[3] On June 23, 2008, ISE filed Amendment No. 3 to the proposed rule change. 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 the Substance of the Proposed Rule Change

The Exchange is proposing to reduce the order handling and exposure periods contained in Exchange Rules 716 (Block Trades), 717 (Limitations on Orders), 723 (Price Improvement Mechanism for Crossing Transactions), and 811 (Directed Orders) from three seconds to one second.

---

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 Amendment No. 2 was withdrawn on May 29, 2008.

The text of the proposed rule change is available on the Exchange's Web site (http://www.iseoptions.com), at the principal office of the Exchange, 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, 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. 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 purpose of the proposed rule change is to reduce the order handling and exposure periods contained in Exchange Rules 716 (Block Trades), 717 (Limitations on Orders), 723 (Price Improvement Mechanism for Crossing Transactions), and 811(Directed Orders) from three seconds to one second.

Rule 716 contains the requirements applicable to the execution of orders using the Block Order Mechanism, Facilitation Mechanism, and Solicited Order Mechanism. The Block Order Mechanism allows members to obtain liquidity for the execution of a block-size order, whereas the Facilitation and Solicited Order Mechanisms allow members to enter block-size cross transactions. Rule 723 contains the requirements applicable to the execution of orders using the Price Improvement Mechanism ("PIM"). The PIM allows members to enter cross transactions of any size. Orders entered into any of these mechanisms ("Mechanisms") currently are exposed to all market participants for three seconds, giving participants an opportunity to enter additional trading interest before the orders are automatically executed. Under the proposal, the exposure period for all four Mechanisms would be reduced to one second.

Rule 717 requires members to expose agency orders to the marketplace before executing them as principal[4] or executing them against orders solicited from other members.[5] Under Rule 717, an order can be exposed either by entering it onto the Exchange and waiting at least three seconds before entering the contra-side proprietary or solicited order, or by utilizing the various mechanisms that have an exposure period built into the functionality as described above. Under the proposal, the exposure period for orders entered onto the Exchange would be reduced to one second.[6]

Rule 811 contains the requirements applicable to the handling and execution of Directed Orders. A Directed Order is an order routed from an Electronic Access Member to an Exchange market maker (the "Directed Market Maker") through the Exchange's system.[7] A Directed Market Maker is required to enter Directed Orders into the PIM or release the order to the

---

4 Rule 717(d).

5 Rule 717(e). The Exchange proposes to make a non-substantive clean-up of Rule 717(e) to specify that members can use the Facilitation Mechanism to execute solicited crosses. The Facilitation Mechanism rule was amended earlier this year to allow members to enter solicited crosses, and Rule 717(e) should have been updated at that time. See Securities Exchange Act Release No. 55557 (March 29, 2007), 72 FR 16838 (April 5, 2007).

6 Under Rule 717(d), a member may enter an agency order that would execute against a pre-existing proprietary order on the Exchange if such proprietary order was entered at least three seconds prior to receipt of the agency order. Under the proposal, this time period would also be reduced to one second.

7 Rule 811(a)(1).

Exchange's limit order book within three seconds of receipt.[8] Under the proposal, this time period would be reduced to one second.

Additionally, there are three instances when a Directed Order is exposed to all market participants for three seconds after being released to the Exchange's limit order book: (i) before a Directed Order is matched against the Directed Market Maker at the NBBO;[9] (ii) before executing a Directed Order against the Directed Market Maker's Guarantee;[10] and (iii) before being given to the Primary Market Maker for handling where the Directed Market Maker is also the Primary Market Maker.[11] Under the proposal, these three exposure periods would be reduced to one second.

Finally, if a Directed Order is placed on the Exchange's limit order book, the Directed Market Maker is not permitted to enter a proprietary order to execute against the Directed Order during the three seconds following the release of the Directed Order. This limitation would be reduced to one second under the proposal.

---

[8] Rule 811(c)(3). If the Directed Market Maker fails to do so within three seconds, the Exchange's system automatically releases the order. Rule 811(c)(3)(ii).

[9] If a Directed Market Maker is quoting at the NBBO at the time it releases a Directed Order, the Directed Market Maker is last in priority, and the order is exposed to all market participants before the Directed Order is executed against the Directed Market Maker's quote.

[10] If the Directed Market Maker is quoting at the NBBO on the opposite side of the market from a Directed Order at the time the Directed Order is received by the Directed Market Maker, and the Directed Order is marketable, the Exchange's system will automatically guarantee execution of the Directed Order against the Directed Market Maker at the price and the size of the Directed Market Maker's quote. Rule 811(d).

[11] As provided in Rule 714, when the Exchange's best bid or offer is inferior to another exchange, incoming marketable customer orders are handled by the Primary Market Maker pursuant to Rule 803(c), which requires the Primary Market Maker to either execute the order at a price that matches the NBBO or attempt to obtain the better price for the customer according to the Linkage rules contained in Chapter 19.

In adopting the various three-second order handling and exposure periods, ISE recognized that three seconds would not be long enough to allow human interaction with the orders. Rather, market participants had become sufficiently automated that they could react to these orders electronically. In this context, ISE recognizes that it is in all market participants' best interest to minimize the exposure period to a time frame that continues to allow adequate time for market participants to electronically respond, as both the order being exposed and the participants responding to the order are subject to market risk during the exposure period. In this respect, ISE's experience with the three-second time period indicates one second would provide an adequate response time. Indeed, most members wait until the end of the last second of the three-second period before responding to exposed orders. Accordingly, the Exchange does not believe it is necessary or beneficial to the orders being exposed to continue to subject them to market risk for a full three seconds.

Recently, the Exchange distributed a survey to members that regularly participate in orders executed through the Mechanisms that would be affected by the proposal. To substantiate that its members could receive, process, and communicate a response back to the Exchange within one second, the survey asked members to identify how many milliseconds it took for (i) a broadcast from ISE to reach their systems; (ii) their systems to generate responses; and (iii) their responses to reach the ISE. The survey results indicate that the time it takes a message to travel between the Exchange and its members typically is not more than fifty milliseconds each way.[12] The survey also indicated that it takes not more than ten milliseconds for member systems to process the information and generate a response. Thus, the survey indicated that it typically

12 Eleven firms responded to the survey. Eight of the eleven responded to the specific timing questions. Half of these members communicate to the Exchange from Chicago. The others are located in New York City, or operate from both New York City and Chicago.

takes, at most, 110 milliseconds for members to receive, process, and respond to broadcast messages related to the various Mechanisms. Additionally, members indicated that reducing the exposure period to one second would not impair their ability to participate in orders executed through the Mechanisms.[13] The Exchange believes that this information provides additional support for its assertion that reducing the exposure periods from three seconds to one second will continue to provide members with sufficient time to ensure effective interaction with orders.

When approving the existing three second order handling and exposure periods, the Commission concluded that three seconds was sufficient to afford electronic crowds sufficient time to compete for orders.[14] In reaching this conclusion, the Commission stated that the critical issue is determining whether the three-second timeframe would give participants in a fully automated marketplace sufficient time to respond, compete and provide price improvement for orders, and whether electronic systems were available to ISE members that would allow them to respond in a meaningful way within the proposed timeframe.[15] The Commission noted that the

---

13 All of the eight members that responded to the specific timing questions, and two of the three members that did not answer the specific timing questions, indicated that reducing the crossing exposure timer to one second would not impair their ability to participate in ISE crossing orders. One member responded that it could not measure the specific times and indicated that it would prefer to keep the exposure periods at three seconds.

14 See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (order approving PIM with three second order handling and exposure periods); Securities Exchange Act Release No. 52711 (November 1, 2005), 70 FR 67508 (November 7, 2005) (reduction of exposure period for Facilitation and Solicited Order Mechanisms from ten seconds to three seconds); Securities Exchange Act Release No. 53850 (May 23, 2006), 71 FR 30703 (May 30, 2006) (reduction of exposure period for orders entered on the Exchange under Rule 717(d) and (e) from thirty seconds to three seconds); Securities Exchange Act Release No. 54531 (September 28, 2006), 71 FR 58649 (October 4, 2006) (reduction of exposure period for Block Order Mechanism from thirty seconds to three seconds).

15 See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 at 75096 (December 15, 2004) (order approving PIM with three second order handling and exposure periods).

ISE is a fully electronic exchange where participants interact by electronic means, and that electronic systems were readily available, if not already in place, that would allow ISE members to respond. [16]

The Exchange believes reducing order handling and exposure periods as discussed above from three seconds to one second would benefit all market participants. Since members react to these orders electronically, and generally only at the tail end of the three-second period, reducing the time periods would continue to provide sufficient time to ensure effective interaction with orders. At the same time, reducing the time periods to one second would allow the Exchange to provide investors and other market participants with more timely executions, thereby reducing market risk.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act[17] 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 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, ISE believes that the proposal will benefit market participants by providing more timely executions.

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

---

16 Id.

17 15 U.S.C. 78f(b)(5).

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, except as described below.

In Amendment No. 3, ISE noted that the Commission received a comment letter on another ISE rule proposal related to the price at which a transaction may be effected through the PIM (the "Price Proposal"), which asserted that the combined effect of the Price Proposal and this proposal to reduce the exposure period to one second would be increased internalization rates.[18] ISE further noted that the Commission subsequently approved the Price Proposal, stating that it did not agree with the concerns raised by the commenter and that the PIM would continue to provide an opportunity for customer orders to receive an execution at a price better than the NBBO.[19] The Commission stated in its approval order that the Price Proposal could increase the likelihood of members entering agency orders into the PIM because the members would only be required to guarantee an execution at the NBBO, which would provide additional customer orders an opportunity for price improvement. ISE also noted that the Commission mentioned in its approval order the potential for the Price Proposal to encourage increased participation in a PIM and that increased participation would decrease the proportion of an agency order that would be internalized by the submitting member.

As the Exchange discusses in the Purpose section of this filing, and as further supported by the results of the survey discussed above, ISE members are able to respond to PIM orders in less than one second, and therefore the Exchange does not believe this proposal will discourage

18 Letter from Lisa J. Fall, General Counsel, Boston Options Exchange, to Nancy M. Morris, Secretary, Commission, dated May 14, 2008 (commenting on File Number SR-ISE-2008-29).

19 See Securities Exchange Act Release No. 57847 (May 21, 2008), 73 FR 30987 (May 29, 2008) (order approving File No. SR-ISE-2008-29).

competition for PIM orders. Rather, ISE believes that this rule change, like the Price Proposal, could provide additional customer orders an opportunity for price improvement because it would reduce the market risk for members that are required to guarantee an execution at the NBBO or better.

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 Exchange 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 Number SR-ISE-2007-94 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-ISE-2007-94. 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, 100 F Street NE, Washington, DC 20549, 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 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-2007-94 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon
Acting Secretary

[20] 17 CFR 200.30-3(a)(12).