

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58710; File No. SR-ISE-2008-63)

October 1, 2008

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change Relating to the Price Improvement Mechanism

I. Introduction

On July 31, 2008, the International Securities Exchange, LLC (“Exchange” or “ISE”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify its Price Improvement Mechanism (“PIM”) auction eligibility requirements to eliminate the requirement that there be at least three market makers quoting in the relevant series. The proposed rule change was published for comment in the Federal Register on August 27, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange’s PIM auction process currently allows Electronic Access Members (“EAMs”) to enter two-sided orders (“Crossing Transaction”) to provide better prices than the ISE best bid or offer to agency orders.<sup>4</sup> The customer side of these orders is then exposed to other members to give them an opportunity to participate in the trade at the proposed cross price

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 58401 (August 21, 2008), 73 FR 50663.

<sup>4</sup> See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (approving rules implementing the PIM). See also Securities Exchange Act Release No. 57847 (May 21, 2008), 73 FR 30987 (May 29, 2008) (approving a proposed rule change to permit a member to enter an agency order into the

or better. ISE's current rules require, among other things, that an EAM enter an order into the PIM only when there are at least three market makers quoting in the options series.<sup>5</sup> The Exchange is now proposing to eliminate this requirement.

### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the rules of a national securities exchange be 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 of, a free and open market and a national market system and, in general, to protect investors and the public interest.<sup>7</sup>

ISE's current requirement that there must be at least three market makers quoting in the option series at the time an EAM enters an order into the PIM was designed, in part, to increase the likelihood of competition in the auction. In approving ISE's proposal to establish the PIM, the Commission stated that it believed that the three market maker requirement would "improve the opportunity for an [a]gency [o]rder to be exposed to a competitive auction."<sup>8</sup>

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PIM at a price that is equal to the national best bid or offer ("NBBO") when the ISE's best bid or offer is inferior to the NBBO).

<sup>5</sup> See ISE Rule 723(b)(1).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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

<sup>8</sup> See Securities Exchange Act Release No. 50819 (December 8, 2004), 69 FR 75093, 75096 (December 15, 2004).

ISE rules permit all members to enter improvement orders into the PIM for their own account or for the account of a public customer.<sup>9</sup> Because of this opportunity for broad participation in PIM auctions, the Commission believes that orders submitted to the PIM will continue to be exposed to a meaningful, competitive auction, even without the three market maker requirement. For this reason, the Commission finds that ISE's proposal to eliminate the three market maker requirement is consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-ISE-2008-63) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Acting Secretary

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<sup>9</sup> See ISE Rule 723(c)(2).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).