

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55864; File No. SR-ISE-2007-35)

June 5, 2007

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Permanently Extend the Pilot Program for Preferred Orders

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 May 9, 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 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 ISE is proposing to make permanent its pilot program for Preferred Orders. The text of the proposed rule change is available on ISE’s Web site at <http://www.ise.com>, at the Exchange’s principal office, 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, 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

The purpose of the proposed rule change is to make permanent the Exchange's pilot program for preferenced orders as provided in paragraph .03 of the Supplementary Material to Rule 713. The proposal amends ISE's procedure for allocating trades among market makers and non-customer orders under Rule 713 to provide an enhanced allocation to a "Preferred Market Maker" when it is quoting at the national best bid or offer ("NBBO"). Specifically, an Electronic Access Member may designate any market maker appointed to an options class to be a Preferred Market Maker on orders it enters into the Exchange's system ("Preferred Orders"). If the Preferred Market Maker is not quoting at the NBBO at the time the Preferred Order is received, the Exchange's existing allocation and execution procedures will be applied to the execution.³ The proposed rule is subject to a pilot program that is currently set to expire on June 10, 2007.⁴

Under the proposal, if a Preferred Market Maker is quoting at the NBBO at the time a Preferred Order is received, the allocation procedure is modified so that the Preferred Market

³ Marketable customer orders are not automatically executed at prices inferior to the NBBO. If the ISE best bid or offer is inferior to the NBBO, it is handled by the Primary Market Maker according to Rule 803(c).

⁴ See Securities Exchange Act Release No. 53921 (June 1, 2006), 71 FR 33019 (June 7, 2006).

Maker will receive an enhanced allocation instead of the Primary Market Maker⁵ equal to the greater of: (i) the proportion of the total size at the best price represented by the size of its quote; or (ii) sixty percent of the contracts to be allocated if there is only one other Non-Customer Order or market maker quotation at the best price and forty percent if there are two or more other Non-Customer Orders and/or market maker quotes at the best price.⁶ Unexecuted contracts remaining after the Preferred Market Maker's allocation would be allocated pro-rata based on size as described above.

Pursuant to this proposed rule change seeking permanent approval of the pilot program, the Exchange also proposes to delete from the Notes section in its Schedule of Fees a reference to the Preferred Orders pilot program that was adopted when the Exchange initiated a payment for order flow program for Competitive Market Makers.⁷

The Exchange believes the proposed rule change is a necessary competitive response to the preferencing rules adopted by other options exchanges and will help the ISE attract and retain order flow. This order flow will add depth and liquidity to the Exchange's markets and enable the Exchange to continue to compete effectively with other options exchanges.

2. Statutory Basis

The basis under the Act for this proposed rule change is found in Section 6(b)(5),⁸ in that the proposed rule change is designed to promote just and equitable principles of trade, remove

⁵ A Primary Market Maker may be the Preferred Market Maker, in which case such market maker would receive the enhanced allocation for Preferred Market Makers.

⁶ All allocations are automatically performed by the Exchange's system.

⁷ See Securities Exchange Act Release No. 53127 (January 13, 2006), 71 FR 3582 (January 23, 2006) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Payment for Order Flow Fee Changes).

⁸ 15.U.S.C. 78f(b)(5).

impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

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

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. 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-2007-35 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-ISE-2007-35. 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-2007-35 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 Act⁹ and the rules and regulations thereunder applicable to a national securities exchange¹⁰, and, in particular, the requirements of Section 6(b)(5) of the Act.¹¹ Section 6(b)(5) requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices,

⁹ 15 U.S.C. 78f.

¹⁰ 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).

¹¹ 15.U.S.C. 78f(b)(5).

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 notes that the Exchange's program for Preferred Orders was approved on a pilot basis approximately two years ago.¹² The Exchange has asked the Commission to approve the Exchange's program on a permanent basis. For the reasons noted by the Commission when it initially approved the Exchange's program for Preferred Orders on a pilot basis, the Commission continues to believe that the Exchange's program does not jeopardize market integrity or the incentive for market participants to post competitive quotes.¹³ Accordingly, the Commission finds that the proposal 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 believes that granting accelerated approval of the proposed rule change would allow the Exchange's program for Preferred Orders to continue without

¹² The Commission initially approved the Exchange's preferred order program on a six week pilot basis while the Commission sought comment on the proposed rule change. See Securities Exchange Act Release No. 51818 (June 10, 2005), 70 FR 35146 (June 16, 2005). The Commission subsequently extended to the pilot period until June 10, 2006, which was one year from the date the Commission first approved the Exchange's Preferred Order program on a pilot basis. See Securities Exchange Act Release No. 52066 (July 20, 2005), 70 FR 43479 (July 27, 2005). On June 1, 2006, the Commission further extended the pilot period until June 10, 2007. See Securities Exchange Act Release No. 53921 (June 1, 2006), 71 FR 33019 (June 7, 2006).

¹³ See Securities Exchange Act Release No. 51818 (June 10, 2005), 70 FR 35146 (June 16, 2005).

disruption beyond the June 10, 2007 expiration date of the current pilot program. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹⁴ for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the Federal Register.

¹⁴ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-ISE-2007-35) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).