



DIVISION OF
MARKET REGULATION

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

December 7, 2006

Michael Simon, Esq.
Chief Regulatory Officer
International Securities Exchange, LLC
60 Broad Street
New York, NY 10004

Dear Mr. Simon:

Based on the facts and representations set forth in your letter dated December 7, 2006, we find that it is appropriate in the public interest and consistent with the protection of investors to grant, and hereby grant, to Equity EAMs (as defined in your letter) that execute trades for their customers on the International Securities Exchange, LLC's ("ISE") electronic trading system for equities, including trades executed in Midpoint Match (as described in your letter) ("ISE Stock"), a limited exemption pursuant to Rule 10b-10(f) under the Securities Exchange Act of 1934 ("Exchange Act") from the requirement in Rule 10b-10(a)(2)(i)(A) to disclose to their customers the name of the person from whom a security was purchased, or to whom it was sold, or the fact that such information will be provided upon the customer's written request. This exemption is limited to trades that Equity EAMs execute on the ISE Stock using the post-trade anonymity feature described in your letter.¹

In granting the exemption, we note in particular that all orders in ISE Stock will automatically match against each other in strict price/time priority. In the case of Midpoint Match orders, we note your representation that transactions executed will be executed at the mid-point of the NBBO on a first-in, first-served basis by type of Midpoint Match order. We also note your representation that ISE Stock will execute all such trades randomly based on priority factors established by the rules of the Exchange and that Equity EAMs cannot: alter the execution algorithm; determine or influence the selection of the Equity EAM with whom they will trade; or otherwise change execution priorities.

You also request assurance that the staff of the Division of Market Regulation ("Staff") will not recommend enforcement action to the Commission under paragraph (a) of Rule 10b-10 under the Exchange Act if an Equity EAM confirms its capacity as

¹ This exemption does not apply to orders routed to an away trading center for execution.

“agent” when the Equity EAM submits a customer’s order on ISE Stock, including a customer order sent to Midpoint Match, in its role as the customer’s agent, and the order is executed on ISE Stock in a trade with an anonymous contra-party that turns out to be the Equity EAM trading in a principal (including proprietary) capacity. Your request is limited to those situations in which: (1) the representative of the Equity EAM submitting customer orders to ISE Stock does not have knowledge of principal (including proprietary) orders (“Principal Orders”) submitted by the Equity EAM or its affiliates, and the representative of the Equity EAM or its affiliates submitting Principal Orders to ISE Stock does not have knowledge of customer orders submitted by the Equity EAM (the “No Knowledge Requirement”); and (2) the Equity EAM does not determine or influence the selection of the contra-party(ies) against which customer orders will be executed (the “Parity Requirement”).

Based on the facts and representations set forth in your letter, the Staff will not recommend enforcement action to the Commission under paragraph (a) of Rule 10b-10 if an Equity EAM indicates on confirmations to its customers that the Equity EAM acted as agent on a customer’s behalf when a representative of the Equity EAM submits a customer order to ISE Stock, including a customer order sent to Midpoint Match, on an agency basis and that order is executed on ISE Stock in a trade with an anonymous contra-party that turns out to be the Equity EAM trading in a principal (including proprietary) capacity, provided that the Equity EAM complies with all other requirements of Rule 10b-10 in confirming the customer’s order, including paragraph (a)(2)(i) thereof, and provided that the handling and execution of the customer order complies with the No Knowledge and Parity Requirements, as described in your letter.

In taking this position, we note in particular your representation regarding your expectation that same firm volume, *i.e.*, an execution in which a firm’s agency order is matched against the same firm’s principal (including proprietary) trading interest (“Same Firm Volume”), as a percentage of total volume in a security on ISE Stock, including in Midpoint Match (“Total Volume”), will not be material for either high or low trading volume securities.² We also note that Equity EAMs continue to have a duty of best execution.³

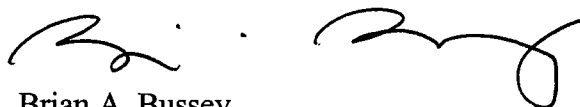
² In this regard, we note your representation that one year following the launch of ISE Stock you will review trade data to determine the actual percentage of Same Firm Volume versus Total Volume in high and low volume securities to confirm that this number is not material, and that you will create and maintain a record of your determination.

³ See, *e.g.*, Regulation NMS, Exchange Act Rel. No. 49325 (February 26, 2004), 69 Fed. Reg. 11126, 11137 (March 9, 2004) (“A broker-dealer still must seek the most advantageous terms reasonably available under the circumstances for all customer orders. A broker-dealer must carry out a regular and rigorous review of the quality of market centers to evaluate its best execution policies, including the determination as to which markets it routes customer order flow.”).

The Office of Financial Responsibility has instructed us to inform you that the Staff will not recommend enforcement action to the Commission if, in lieu of making and preserving a separate record, Equity EAMs rely on ISE's retention of the identities of the Equity EAMs that execute anonymous trades on ISE Stock, for the period specified in Rule 17a-4(a), to satisfy the requirements of Rules 17a-3(a)(1) and 17a-4(a) under the Exchange Act. The Staff notes, however, that an Equity EAM has the responsibility to make, keep current, and preserve records of all purchases and sales of securities in accordance with Exchange Act Rules 17a-3 and 17a-4 for trades on ISE Stock if the Equity EAM knows the identity of the contra-party.

These exemptive and no-action positions are subject to modification or revocation if at any time the Commission or Staff determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, these positions are based solely upon the representations you have made and are limited strictly to the facts and conditions described in your incoming letter. Any different facts or circumstances, including any change to the operation of ISE Stock, may require a different response.⁴ Finally, we express no view with respect to other questions the proposed activities of ISE Stock or any Equity EAM relying on this relief may raise, including the applicability of any other federal or state laws or the applicability of self-regulatory organization rules concerning customer account statements or confirmations.

For the Commission,
by the Division of Market Regulation,
pursuant to delegated authority,⁵



Brian A. Bussey
Assistant Chief Counsel

⁴ For example, the continued availability of these positions is dependent on Same Firm Volume as a percentage of Total Volume in fact not being material for either high or low trading volume securities one year following the launch of ISE Stock and thereafter.

⁵ 17 C.F.R. § 200.30-3(a)(32).



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December 7, 2006

**VIA ELECTRONIC MAIL
AND OVERNIGHT COURIER**

Ms. Catherine McGuire
Associate Director and Chief Counsel
Division of Market Regulation
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-6628

Re: Request for a Limited Exemption from Paragraph (a)(2)(i)(A) of Rule 10b-10 Under the Securities Exchange Act of 1934 (the "Act") and Request for No-Action Relief from Rules 10b-10(a)(2), 17a-3(a)(1) and 17a-4(a) Under the Act

Dear Ms. McGuire:

The International Securities Exchange, LLC ("ISE" or the "Exchange") respectfully requests a limited exemption from paragraph (a)(2)(i)(A) of Rule 10b-10¹ under the Securities Exchange Act of 1934 ("Act") on behalf of ISE Equity Electronic Access Members that execute equity trades on ISE for their customers ("Equity EAMs").² The Exchange recently received Securities and Exchange Commission (the "Commission") approval of trading rules to govern its electronic trading system for equities ("ISE Stock" or "System").³ ISE's new System and its trading rules will provide

¹ Paragraph (f) of Rule 10b-10 under the Act provides the Securities and Exchange Commission ("SEC" or "Commission") authority to issue exemptions from the requirements contained in paragraphs (a) and (b) of the rule.

² The term "Equity EAM", as defined in ISE Rule 2100(c)(6), means an Electronic Access Member authorized by the Exchange to trade on the ISE Stock Exchange. Any Electronic Access Member may become an Equity EAM upon certification of operational connectivity to the ISE Stock Exchange, by paying any applicable access fees and establishing and maintaining the ability to clear ISE Stock Exchange trades at a clearing agency registered under Section 17A of the Exchange Act, either by self-clearing or through use of a member clearing firm.

³ See Securities Exchange Act Release No. 54528 (September 28, 2006), 71 FR 58650 (October 4, 2006) (approving proposed rule change relating to the adoption of rules to govern its electronic trading system for equities).

for strict price-time priority execution.⁴ The System and rules will also provide for post trade anonymity through settlement for trades executed through ISE Stock.⁵ The ISE requests that the relief sought under this letter apply to all transactions entered on ISE Stock, including transactions executed in Midpoint Match, as Midpoint Match is now a component of ISE Stock.⁶

ISE also requests, on behalf of Equity EAMs, your assurance that the staff of the Division of Market Regulation ("Staff") will not recommend that the Commission take any enforcement action under paragraph (a) of Rule 10b-10 under the Act in connection with the activities of Equity EAMs executing orders for their customers in the circumstances described below. Specifically, ISE requests this relief to permit an Equity EAM to indicate on a customer confirmation that the Equity EAM acted as agent (where the Equity EAM submits a customer's order on ISE Stock, including a customer order sent to Midpoint Match, in the Equity EAM's role as the customer's agent (hereinafter "Customer Order")) and the order is executed in a trade with an anonymous contra-party that turns out to be the Equity EAM or one of its affiliates trading in a principal (including proprietary) capacity (hereinafter "Principal Order"), so long as the conditions set out below are met and the Equity EAM otherwise complies with all other requirements of Rule 10b-10 in confirming the customer's order, including paragraph (a)(2)(i) thereof.

This request for no-action relief is limited, however, to those situations in which the following requirements are met: (1) the representatives of the Equity EAM or its affiliates submitting Principal Orders do not have knowledge about Customer Orders submitted by the Equity EAM and the Equity EAM representatives submitting Customer Orders do not have knowledge about Principal Orders submitted by the Equity EAM or its affiliates (the "No Knowledge Requirement"); and (2) the Equity EAM does not determine or influence the selection of the contra-party(ies) against which such Customer Orders will be executed (the "Parity Requirement").

⁴ As described more fully below, transactions executed in Midpoint Match will be executed at the midpoint of the National Best Bid and Offer ("NBBO") on a first-in, first-served basis by type of Midpoint Match order.

⁵ See ISE Rule 2117. As explained herein, the Exchange does not request an exemption for when it reveals the identity of a contra-party to an Equity EAM: (i) when required for legal or regulatory purposes; or (ii) if the National Securities Clearing Corporation ("NSCC") ceases to act for an Equity EAM or the Equity EAM's clearing firm, and if the NSCC determines not to guarantee the settlement of the Equity EAM's trade.

⁶ The Commission, acting through delegated authority, granted the Equity EAMs a limited exemption from Exchange Act Rule 10b-10(a)(2)(i)(A) and the Staff took a no-action position under Exchange Act Rules 17a-3 and 17a-4 with respect to orders executed in the midpoint matching system (August 18, 2006). ISE is now seeking expanded exemption and no-action relief for all transactions executed on ISE Stock, including transactions executed in Midpoint Match.

Finally, ISE requests certain no-action relief from the requirements of Rules 17a-3(a)(1) and 17a-4(a) under the Act, as described below.

A. Background – ISE Stock

ISE Stock was launched on September 8, 2006 with Midpoint Match as a stand-alone system. On December 8, 2006, ISE Stock will launch additional stock execution functionality for a displayed market. Thus, ISE Stock, a facility of the ISE, will provide for the electronic execution and display of orders as well as midpoint matching functionality. The class of members who will be eligible to trade on ISE Stock are Equity EAMs.

ISE's new System (and trading rules) will provide for strict price-time priority execution. Under Rule 2107, orders entered into the displayed market will be prioritized on a strict price-time basis, first by price and then by time. Under Rule 2129, orders entered into Midpoint Match will be executed at the midpoint of the NBBO on a first-in, first-served basis by order type.⁷ When entering a Midpoint Match order, an Equity EAM may mark the order as "Standard" or "Solicitation of Interest". A "Standard Order" is an unpriced order in a security to be executed at the midpoint of the NBBO. A "Solicitation of Interest" or "SOI" order will have priority for execution over Standard Orders resident in Midpoint Match. SOI orders result in the System disseminating that there is a pending order in a particular security. An Equity EAM entering an SOI may not cancel that SOI for five seconds. In addition, if an SOI is not executed within 10 seconds, the SOI will convert into a Standard Order, and will thus lose the SOI priority.⁸

All orders are handled automatically by the System. All orders are available for price improvement at the NBBO if contra-side interest is resident in Midpoint Match, unless marked "No MPM".⁹ If price improvement is not available, incoming orders are matched for execution against orders on ISE Stock, in compliance with Regulation NMS under the Act ("Reg. NMS"). In accordance with Reg. NMS, ISE Stock may route orders

⁷ See Rule 2129(f) addressing order execution priorities for Solicitation of Interest Orders, Standard Orders and All or None Orders.

⁸ If there are multiple orders that can be matched at the midpoint of the NBBO, the system will employ specific execution priorities, with orders in each category filled on a first-in, first-served basis. First priority is for SOIs and second priority is for Standard Orders.

⁹ Equity EAMs can mark their orders "No MPM" (i.e. No Midpoint Match) and such orders will not be executed against orders residing in Midpoint Match. See ISE Rules 2104(h) and 2129.

to other Trading Centers that are displaying Protected Quotations that are superior to prices resident in ISE Stock.¹⁰

ISE Stock will execute trades randomly based upon priority factors established by the rules of the Exchange, which have been approved by the Commission.¹¹ There are no opportunities for Equity EAMs: to alter the execution algorithm; to determine or influence the selection of the Equity EAM with whom they will trade; or otherwise to change execution priorities.

Midpoint Match will be a component of ISE Stock, which will provide Equity EAMs with the opportunity for continuous price improvement at the midpoint of the NBBO. ISE Stock will continuously monitor buy and sell orders in the System and will execute orders, which are available for price improvement, at the mid-point of the NBBO.¹² Midpoint Match executes trades on a first-in, first-served basis when there is a match of buying and selling interest, with all executions at the mid-point of the NBBO.¹³

All trades will be executed on the Exchange's trading system on an anonymous basis.¹⁴ Under the new rules, the Exchange would not reveal the contra-party's identity on a trade-by-trade basis to Equity EAMs for their respective trades through any means, including any clearing or settlement reports.¹⁵ Consequently, under the new rules, the Exchange would maintain anonymity in execution through the end-of-day settlement process.

¹⁰ ISE understands that the exemptive and no-action relief would not apply to any situation in which ISE routes an order to an away trading center for execution, as such executions would be governed by the rules of the away trading center.

¹¹ See footnote 3.

¹² See footnote 7.

¹³ See footnote 8.

¹⁴ Under the new System and rules, Equity EAMs will not be able to direct orders to other Equity EAMs. If, in the future, Equity EAMs are permitted to direct orders to Equity EAMs through ISE Stock, ISE understands that any exemptive or no-action relief provided by the Commission in response to this request would not apply to such activities.

¹⁵ For each trade executed in the system, ISE currently produces an execution report that is sent to the parties to the trade. When an order is executed, the Equity EAM on the contra-side of the trade is not identified. While these execution reports are currently limited to orders executed in Midpoint Match, the ISE intends to continue the same process for to all transactions executed on ISE Stock, including transactions in the displayed market.

Moreover, ISE's trading algorithm permits orders originated by an Equity EAM to execute against other orders from the same Equity EAM on the same basis as orders from other Equity EAMs. Under the System based on strict price-time priority, an Equity EAM could receive an execution against itself, and under the new rules, the Equity EAM would not be informed that it was the contra-side of the trade.

B. New Rule to Adopt Total Anonymity through Settlement

Together with this request for a limited exemption from paragraph (a)(2)(i)(A) of Rule 10b-10, ISE Rule 2117 extends post trade anonymity so that, except for specific instances discussed below, the Exchange would not reveal the contra-party to the trade through settlement. Equity EAMs often seek to trade anonymously to prevent market impact and the consequences that arise when the market has knowledge that a large order must be executed. In these instances, for example, a seller does not want the buyer to know its identity because it may reveal the existence of a large order to be filled. The Exchange believes that post-trade anonymity benefits investors because preserving anonymity through settlement limits the potential market impact that disclosing the Equity EAM's identity may have. Specifically, when the contra-party's identity is revealed, Equity EAMs can detect trading patterns and make assumptions about the potential direction of the market based on the user's presumed client-base. For example, if the Equity EAM handles large institutional orders and becomes an active buyer in the security, others could anticipate such demand and adjust their trading strategy accordingly. This could result in increased transaction costs for the Equity EAM representing the institutional orders.

The Exchange therefore believes that due to interest expressed by Equity EAMs and the granting of exemptive relief to other markets to implement post-trade anonymity,¹⁶ it is essential for ISE to offer Equity EAMs anonymity through the settlement process. To facilitate ISE's proposal, ISE is working with the National Securities Clearing Corporation ("NSCC") to accommodate anonymity on a post-trade basis. NSCC will assign post-trade anonymous trades with a unique clearing number. ISE will submit clearing records to NSCC, which, pursuant to its rules, will report trades executed on ISE Stock back to its clearing firms utilizing this unique clearing number.

¹⁶ See Letters from Brian A. Bussey, Assistant Chief Counsel, Division of Market Regulation, to Ms. Mai S. Shiver, Acting Director, Senior Counsel, Pacific Exchange, Inc. (April 30, 2004) and from Brian A. Bussey, Assistant Chief Counsel, Division of Market Regulation, to Mr. Jamex C. Yong, Chief Regulatory Officer, National Stock Exchange (October 13, 2006) and from Brian A. Bussey, Assistant Chief Counsel, Division of Market Regulation, to John Dayton, Director and Counsel, Philadelphia Stock Exchange (November 9, 2006) and from Brian A. Bussey, Assistant Chief Counsel, Division of Market Regulation, to William C. Meehan, General Counsel, Boston Stock Exchange (November 8, 2006).

Under specified circumstances, it might be necessary for ISE to provide the identity of a contra-party to an Equity EAM. As proposed, ISE will reveal the contra-party only in those instances: (i) when required for legal or regulatory purposes; or (ii) if the NSCC ceases to act for an Equity EAM or the Equity EAM's clearing firm, and if the NSCC determines not to guarantee the settlement of the Equity EAM's trade.

C. Rule 10b-10

1. Contra-Party Identity Requirement

Rule 10b-10, among other things, requires a broker-dealer to disclose to its customers the identity of the party the broker-dealer sold to or bought from to fill the customer's order. Specifically, under paragraph (i)(A) of Rule 10b-10(a)(2), when a broker-dealer is acting as agent for a customer, some other person, or for both the customer and some other person, the broker-dealer must disclose "the name of the person from whom the security was purchased, or to whom it was sold, for such customer or the fact that the information will be furnished upon written request of such customer" (the "Contra-Party Identity Requirement"). A broker-dealer can provide this information on the confirmation, or it has the option to provide the information to a customer at a later time after receiving a written request from the customer. A broker-dealer has this option as long as it discloses on the confirmation that the contra-party information is available upon written request.

With the introduction of total anonymity at ISE, the Exchange will not generally reveal the identity of the actual contra-party when the order is executed.¹⁷ Therefore, Equity EAMs will not know the identity of the party to whom they sold securities or from whom they purchased securities. Without this information, Equity EAMs cannot comply with the Contra-Party Identity Requirement. To permit ISE Equity EAMs to utilize ISE Stock without violating Rule 10b-10, the Exchange is seeking an exemption, on behalf of such Equity EAMs, from the Contra-Party Identity Requirement when Equity EAMs execute transactions using ISE Stock, including transactions executed in Midpoint Match.¹⁸

The Contra-Party Identity Requirement, in conjunction with the other requirements of paragraph (a)(2) of Rule 10b-10, is designed to provide customers with

¹⁷ See previous section for a discussion of the circumstances in which the Equity EAM's identity will be revealed.

¹⁸ If the ISE were to allow Equity EAMs to enter two-sided cross orders into the System, the ISE understands that any exemptive or no-action relief provided by the Commission in response to this request would not apply to such activities.

information that could alert them to potential conflicts of interest their broker-dealer may have had when handling their orders.¹⁹ The Exchange believes an exemption from the Contra-Party Identity Requirement when an Equity EAM trades through ISE Stock would not diminish the public policy and investor protection objectives of the Contra-Party Identity Requirement of Rule 10b-10. The Exchange believes the potential for a conflict of interest is less likely in those circumstances when an Equity EAM trades through ISE Stock because the trades are executed at the best price available on the Exchange and the contra-party is determined randomly based upon multiple factors not controlled by the Equity EAM. In such situations, Equity EAMs on ISE Stock are not permitted the discretion in executing the order that would normally give rise to the opportunity for a conflict of interest.

2. Identification as Agent on Confirmation.

The Exchange requests no-action relief, on behalf of its Equity EAMs, to permit Equity EAMs to indicate on a customer confirmation that the Equity EAM has acted as agent where the Equity EAM submits a customer's order through the electronic trading facilities of ISE Stock, in the Equity EAM's role as the customer's agent, and the order is executed in a trade with an anonymous contra-party that turns out to be the Equity EAM or one of its affiliates trading in a principal (including proprietary) capacity.

No Knowledge Requirement

This request is limited to those circumstances in which the representatives of Equity EAM and its affiliates submitting Principal Orders do not have knowledge about Customer Orders submitted by the Equity EAM, and the Equity EAM representatives submitting Customer Orders have no knowledge about Principal Orders submitted by the Equity EAM or its affiliates. An Equity EAM will be able to satisfy the No Knowledge Requirement if it implements and utilizes an effective system of internal controls such as appropriate information barriers, that operate to prevent the representatives of the Equity EAM or its affiliates submitting Principal Orders from obtaining knowledge about the Customer Orders submitted by the Equity EAM, and the representative of the Equity EAMs submitting Customer Orders from obtaining knowledge about the Principal Orders submitted by the Equity EAM or its affiliates. To be effective, such a system of internal controls must include specific policies and procedures that prevent each Principal Order submitter separated by the information barriers from obtaining knowledge regarding

¹⁹ Paragraph (a)(2) of Rule 10b-10 requires a broker-dealer to disclose on a confirmation to a customer the capacity in which the broker-dealer handled the customer's order (i.e., as agent or principal), and whether the broker-dealer acted as agent for some other person, or as agent for both the customer some other person. Paragraph (i)(D) of Rule 10b-10(a)(2) requires a broker-dealer to disclose to its customer the source and amount of remuneration received, or to be received, by the broker-dealer in connection with the trade.

Customer Orders submitted by the Equity EAM, and each Customer Order submitter separated by the information barriers from obtaining knowledge regarding Principal Orders submitted by the Equity EAM or its affiliates.

Parity Requirement

In addition to this No Knowledge Requirement, this request is limited to those situations in which the Equity EAM does not in any way determine or influence the selection of the trading interest against which a customer order will be executed.²⁰ As stated, ISE Stock will not support functionality that would allow a broker-dealer to select or influence against whom its orders will be executed.²¹

Where the Customer Order and the Principal Order are executed against each other by the System, an Equity EAM indicating in the confirmation that the firm has acted as agent does not increase the risk of fraud against the customer, where the No Knowledge Requirement and the Parity Requirement are met. To the contrary, the matching of the agency and the proprietary trading interests occurs at the best price available and the contra-side is determined randomly based upon priority factors established by the rules of the Exchange, which have been submitted to the Commission for its approval.²² Moreover, the proposed action does not diminish investor protection because it does not relieve an Equity EAM's duty of best execution.²³

²⁰ The SEC has issued no-action relief for Rule 10b-10 under these circumstances. See, e.g., Letter from Brian A. Bussey, Assistant Chief Counsel, Division of Market Regulation, to Edward S. Knight, Executive Vice President and General Counsel, Nasdaq (January 26, 2005); and Letter from Brian A. Bussey, Assistant Chief Counsel, Division of Market Regulation, to Aleksandra Radakovic, Vice President, J.P. Morgan Securities Inc. (August 4, 2005).

²¹ If such functionality were to be offered in the future, ISE understands that the relief requested by this letter would not apply to this functionality. See footnote 16 addressing cross orders.

²² ISE expects that same firm volume, i.e., an execution in which a firm's agency order is matched against the same firm's principal (including proprietary) trading interest, as a percentage of total volume in that security through ISE Stock, which shall include executions occurring in both Midpoint Match and the displayed market, will not be material for either high or low trading volume securities. The Exchange represents that one year after ISE Stock becomes fully operational, the Exchange will review trade data to determine the actual percentage of same firm volume versus total volume in high and low volume securities to confirm that this number is not material. The Exchange will create and maintain a record of the determination.

²³ See Regulation NMS, Exchange Act Rel. No. 49325 (Feb. 26, 2004), 69 Fed. Reg. 11126, 11137 (March 9, 2004) ("A broker-dealer still must seek the most advantageous terms reasonably available under the circumstances for all customer orders. A broker-dealer must carry out a regular and rigorous review of the quality of the market centers to evaluate its best execution policies, including the determination as to which markets it routes customer order flow.")

Ms. Catherine McGuire
December 7, 2006
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D. Books and Record Retention

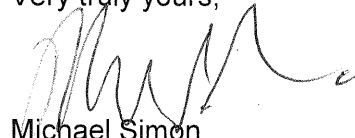
Rule 17a-3(a)(1) under the Act requires that broker-dealers make and keep current records of all purchases and sales of securities, including "the name or other designation of the person from whom purchased or received or to whom sold or delivered." Rule 17a-4(a) under the Act requires that the records be preserved for six (6) years, the first two (2) years "in an easily accessible place."

The Exchange asks that the Commission staff not recommend enforcement action to the Commission if, in lieu of making and preserving a separate record, a broker-dealer relies on the Exchange's retention of the identities of Equity EAMs that execute anonymous trades through ISE Stock to satisfy requirements of Rules 17a-3(a)(1) and 17(a)-4(a) under the Act. A broker-dealer would retain the responsibility to make, keep current and preserve records of all purchase and sales of securities in accordance with Exchange Act Rules 17a-3 and 17a-4 for trades through ISE Stock if the broker-dealer knows the identify of the contra-party, including those instances where ISE discloses the contra-party to a trade.

* * * *

In view of the foregoing, the Exchange respectfully requests that the Commission issue an exemption and such other relief as reflected in this letter. If you have any questions, please contact me at 212.897.2230.

Very truly yours,



Michael Simon
Chief Regulatory Officer

cc: Brian Bussey, Esq. (SEC)
Matthew Daigler, Esq. (SEC)