

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58486; File No. SR-ISE-2008-36)

September 8, 2008

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Non-Displayed Penny Quotes and Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 28, 2008, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to allow non-displayed penny quotes and orders in options that trade in minimum pricing increments greater than one cent. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.ise.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, the self-regulatory organization 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

places specified in Item IV below. The self-regulatory organization 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 Commission has approved rules with respect to the Nasdaq Options Exchange (“NOM”) and the Chicago Board Options Exchange (“CBOE”) that permit the entry of orders and quotes in penny increments in options series that have a minimum trading increment greater than one cent.³ Under these rules, the actual firm price of the order or quote is not displayed to market participants or the public. Rather, the penny price is hidden on the exchange and displayed at the next closest allowable trading increment. To avoid being competitively disadvantaged, the ISE proposes to adopt rules that similarly permit its members to enter orders and quotes in penny increments (“non-displayed penny orders” and “non-displayed penny quotes”).

The Exchange proposes to allow both Electronic Access Members and market makers to enter non-displayed penny orders. In addition, Exchange market makers will be permitted to enter non-displayed penny quotes. Orders and quotes will be permitted in one-cent price increments in selected options where the applicable minimum price increment is larger than one-cent.⁴ The penny price of such orders will be firm for incoming orders.⁵ Non-displayed penny

³ Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (order approving SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080); Securities Exchange Act Release No. 57716 (April 25, 2008), 73 FR 24329 (May 2, 2008) (order approving SR-CBOE-2007-39).

⁴ The Exchange will issue a circular to notify members of the options series in which non-displayed penny quotes and order may be entered.

orders and quotes will be displayed at the nearest minimum trading increment for the security, and the penny price of non-displayed penny orders and quotes will not be disclosed to any market participants.

Non-displayed penny orders will participate in executions effected through the Block, Facilitation, Solicited Order and Price Improvement Mechanisms. Both the Block and the Price Improvement Mechanism currently allow members to enter orders and responses in penny increments.⁶ Accordingly, a non-displayed penny order will participate in executions effected through the Block and Price Improvement Mechanisms at the penny price. However, when entering orders and responses into the Facilitation and Solicited Order Mechanisms, members currently are limited to the regular trading increment for the security and the split price for the regular trading increment.⁷ In order to be consistent with the current rule, the proposal specifies that non-displayed penny orders also will be executed only at the regular increment or split price, as applicable. For example, if the displayed market is \$2.00 by \$2.05 and there is a hidden penny order to buy at 2.03, the hidden penny order will participate in the execution algorithms applied by the Facilitation and Solicited Order Mechanisms at the split price of \$2.025. If the hidden penny price in this example is \$2.02, the hidden penny order will participate in the execution algorithms at the regular trading increment of \$2.00.

⁵ Incoming orders will receive the firm, non-displayed penny price. For example, if the non-displayed price of a limit order to buy is 2.02, an incoming limit order to sell at 2.01 will be executed at 2.02.

⁶ ISE Rule 716, Supplementary Material .09 (regarding penny prices in the Block Mechanism); ISE Rule 723(b)(2) and (c)(2) (regarding penny prices in the Price Improvement Mechanism).

⁷ ISE Rule 716, Supplementary Material .06 (regarding split prices in the Facilitation and Solicited Order Mechanisms).

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is found in Section 6(b)(5), in that the proposed rule change is designed to promote just and equitable principles of trade, remove 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. This rule will enable the Exchange to remain competitive with other options markets that permit orders and quotes to be entered and executed in penny increments.

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 Exchange 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 written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed

rule change, at least five business days prior to the date of filing the proposed rule change as required by Rule 19b-4(f)(6).⁸

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

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 Exchange 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-2008-36 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-2008-36. 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

⁸ 17 C.F.R. 240.19b-4(f)(6).

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-2008-36 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.⁹

Florence E. Harmon
Acting Secretary

⁹ 17 CFR 200.30-3(a)(12).