

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57032; File No. SR-ISE-2007-73)

December 21, 2007

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Elimination of the Short Sale “tick” and Price Tests

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> notice is hereby given that on August 21, 2007, the International Securities Exchange, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On October 26, 2007, ISE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 Substance of the Proposed Rule Change

The Exchange proposes to amend various ISE rules to conform to recent SEC amendments to Rule 10a-1 under the Act and Regulation SHO that eliminated SEC and self-regulatory organization (“SRO”) short sale “tick” and price tests. The text of the

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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> Amendment No. 1 supersedes and replaces the original filing in its entirety.

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.ise.com](http://www.ise.com).

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 Item IV 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of Amendment No. 1 to this filing is to amend the proposed rule text to: (1) allow for the execution of short sale orders during the opening process; (2) correct an incorrect cross reference to a Regulation SHO provision; and (3) to remove the text proposing to delete a provision of Rule 2129 (MidPoint Match).

On June 13, 2007, the SEC voted to adopt amendments to Rule 10a-1 under the Act and Regulation SHO to remove the "tick" test of Rule 10a-1 and any short sale price test of any SRO. As a result of the SEC's action, the ISE is seeking to conform its rules accordingly by rescinding ISE Rules 1407, which governs short sale transactions in Nasdaq Securities, and 2113(a) and (b), which contains a "tick" test applicable to short sales effected on the ISE, as well as to make conforming "housekeeping" changes to certain other rules. The Exchange proposes to remove references to the execution of short sale orders, as well as remove the "short exempt" marking requirements from the rules.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general and furthers the objectives of Section 6(b)(5)<sup>6</sup> in particular in that the Exchange's proposed rules are designed to promote just and equitable principles of trade, to 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.

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

The foregoing rule change has become immediately effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6)<sup>8</sup> thereunder because it does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate. At any time within sixty (60) days of the filing of the proposed rule change, the Commission may summarily

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

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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange requests that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay period for “non-controversial” proposals under Exchange Act Rule 19b-4(f)(6) and make the proposed rule change effective and operative upon filing with the Commission. The Commission believes such waivers are consistent with the protection of investors and the public interest because the proposed rule change conforms ISE rules to currently effective Commission rules.<sup>9</sup> For this reason, the Commission designates the proposal to be operative upon filing with the Commission.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2007-73 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary,

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<sup>9</sup> For purposes of waiving the 30-day pre-operative period, the Commission has considered the impact of the proposed rule change on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

Securities and Exchange Commission, 100 F Street, NE, Washington, DC  
20549-1090.

All submissions should refer to File Number SR-ISE-2007-73. 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 am and 3:00 pm. 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-2007-73 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Nancy M. Morris  
Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).