

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that 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**

Because the foregoing rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3) of the Act<sup>13</sup> and Rule 19b-4(f)(2)<sup>14</sup> thereunder. At any time within 60 days of the filing of such amended proposed rule change, the Commission may summarily 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.<sup>15</sup>

### **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 No. SR-ISE-2005-29 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary,

Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-ISE-2005-29. 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 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-2005-29 and should be submitted by August 2, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**BILLING CODE 8010-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-51968; File No. SR-ISE-2004-33]**

### **Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Facilitation of Complex Orders**

July 1, 2005.

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 November 16, 2004, the International Securities

Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the ISE. On December 14, 2004, the ISE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 ISE proposes to amend ISE Rule 716, "Block and Solicited Trades," to allow Electronic Access Members ("EAMs") to use the ISE's Facilitation Mechanism to facilitate block-sized complex orders at a net price. The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

Rule 716. Block and Solicited Trades

\* \* \* \* \*

Supplementary Material to Rule 716

\* \* \* \* \*

*.04 Complex Orders. Electronic Access Members may use the Facilitation Mechanism according to paragraph (d) of this Rule 716 to facilitate block-size complex orders (as defined in Rule 722) at a net price. Members may enter Indications for complex orders at net prices, and bids and offers for complex orders will participate in the execution of an order being facilitated as provided in paragraph (d) of this Rule 716. With respect to bids and offers for the individual legs of a complex order entered into the Facilitation Mechanism, the priority rules for complex orders contained in Rule 722(b)(2) will continue to be applicable. If an improved net price for the complex order being facilitated can be achieved from bids and offers for the individual legs of the complex order in the Exchange's auction market, the order being facilitated will receive an execution at the better net price.*

### **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 ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any

<sup>3</sup> Amendment No. 1 revises the text of the proposal to refer to "complex orders" rather than "Complex Orders." The use of the lower case letters in the term "complex orders" is consistent with the ISE's existing rules.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 19b-4(f)(2).

<sup>15</sup> The effective date of the original proposed rule is June 6, 2005. The effective date of Amendment No. 1 is June 20, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 20, 2005, the date on which the ISE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

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 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 this proposed rule change is to extend the ISE's Facilitation Mechanism to the execution of complex orders. ISE Rule 722(a) defines a "complex order" as a multi-legged order that meets one of nine specified criteria. ISE Rule 716(d) describes the Facilitation Mechanism as a process by which EAMs can seek to provide liquidity to their block-sized Public Customer orders.

The Facilitation Mechanism permits an EAM to enter an order of at least 50 contracts if the entering EAM is willing to trade against (facilitate) that order. The ISE then sends a broadcast message to its "crowd," giving them an opportunity to participate in the trade.<sup>4</sup> After a 10-second exposure period, the ISE executes the trade pursuant to the parameters specified in ISE Rule 716(d)(4). The Facilitation Mechanism would handle complex orders in the same manner. An EAM would be able to enter a complex order into the mechanism at a net price. Each leg of the order would need to be for at least 50 contracts. The order will be broadcast to the ISE crowd for 10 seconds and then executed pursuant to the parameters in ISE Rule 716(d)(4).

With respect to bids and offers for the individual legs of a complex order entered into the Facilitation Mechanism, the priority rules for complex orders contained in ISE Rule 722(b)(2) will continue to be applicable. If an improved net price for the complex order being facilitated can be achieved from bids and offers for the individual legs of the complex order in the Exchange's auction market, the order being facilitated will receive an execution at the better net price.

2. Statutory Basis

According to the ISE, the basis under the Act for this proposed rule change is

<sup>4</sup> ISE Rule 722(b) defines "crowd" as all market makers in the options class and other ISE members who have proprietary orders at the inside bid or offer in that series. The ISE has extended this definition to include all ISE members. See Securities Exchange Act Release No. 51666 (May 9, 2005), 70 FR 25631 (May 13, 2005) (File No. SR-ISE-2003-07).

the requirement under Section 6(b)(5) of the Act<sup>5</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes the proposed rule change will encourage ISE members to provide greater liquidity to their customers with respect to complex orders, while also providing opportunities for all members to interact with this order flow.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes 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**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the ISE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with

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

the Act. Comments may be submitted by any of the following methods:

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- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2005-33 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-ISE-2005-33. 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 the filing also will be available for inspection and copying at the principal offices 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-2005-33 and should be submitted on or before August 2, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>6</sup> 17 CFR 200.30-3(a)(12).