

ended before October 1, 2005 will not count toward determining eligibility for quotation on the OTCBB pursuant to paragraph (e). Given that the text relating to the October 1, 2005 timeframe is no longer necessary, FINRA proposes to delete that text as part of this proposed rule change.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Regulatory Notice* announcing Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>16</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change strikes an appropriate balance between the need to ensure fairness to aggrieved parties and the need for expedited action in these instances.

### 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

FINRA has not solicited, and does not intend to solicit, comments on this proposed rule change. FINRA 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](mailto:rule-comments@sec.gov). Please include File

No. SR-NASD-2007-52 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-NASD-2007-52. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-NASD-2007-52 and should be submitted on or before April 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-5709 Filed 3-20-08; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57507; File No. SR-ISE-2007-77]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Complex Orders

March 14, 2008.

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 24, 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, II, and III below, which Items have been prepared by the ISE. On November 27, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange filed Amendment No. 2 to the proposed rule change on March 11, 2008.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment Nos. 1 and 2, 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 722 pertaining to Complex Orders to provide an opportunity for marketable complex orders to receive price improvement and to provide more specificity on the mechanics of how complex orders are executed. The text of the proposed rule change is available at ISE, the Commission's Public Reference Room, and <http://www.iseoptions.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 ISE 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

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

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

<sup>3</sup> Amendment No. 1 expanded the discussion in the purpose section of the original filing, but did not change the text of the proposed rule change.

<sup>4</sup> Amendment No. 2 modified the original filing to make exposure of marketable complex orders voluntary. Amendment No. 2 replaced the original filing in its entirety.

<sup>16</sup> 15 U.S.C. 78o-3(b)(6).

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

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

ISE Rule 722 describes execution principles for complex orders, including priority rules regarding the execution of complex orders when there are Public Customer orders resting on the Exchange's limit order book in the options series that comprise the individual leg(s) of a complex order. The Exchange's System automatically executes complex orders in conformance with the requirements of ISE Rule 722, and the Exchange is not proposing any changes to these substantive requirements. Additionally, other ISE rules, such as Rule 717(d) and (e) that require members to expose orders to the marketplace before executing them against proprietary or solicited orders, also apply to the execution of complex orders. The Exchange is not proposing any changes to the application of these other Exchange rules to the execution of complex orders.

The purpose of the proposed rule change is to amend ISE Rule 722 to provide an opportunity for marketable complex orders to receive price improvement and to provide more specificity in the Rule on the mechanics of how complex orders are executed by the System in conformance with the existing requirements of Rule 722.<sup>5</sup> In particular, the Exchange proposes to amend ISE Rule 722 to specify that complex orders: (1) Are executed against orders on the complex order book in price priority and in time priority at the same price; and (2) will be executed against the bids and offers for the individual legs in the Exchange's options market provided the complex order can be executed in full or in a permissible ratio by such bids and offers. The System matches incoming complex orders against contra-side complex orders when possible, and then executes the individual legs of a complex order against the limit order book when possible. In each of these circumstances, the System assures that

the requirements of ISE Rule 722 are satisfied. For example, the System will not execute two complex orders against each other if the execution price of the options leg(s) would be below the best price available on the ISE for the options series, nor will it execute two complex orders at a price that matches the best price available on the ISE when there is a Public Customer order on the book unless the specific requirements of ISE Rule 722 are satisfied.

Under the proposal, the Exchange also will allow members to choose to give their marketable complex orders an opportunity for price improvement by introducing a delay of up to one second before automatically executing designated incoming complex orders.<sup>6</sup> During this delay, the complex order will be exposed on the complex order book to give market participants an opportunity to enter contra-side complex orders.<sup>7</sup> While the Exchange is not proposing to conduct an actual auction for an incoming marketable complex order (*i.e.*, there will be no messages sent to members specifically soliciting interest to trade with the complex order), this short delay before executing a marketable complex order will provide an opportunity for the order to receive price improvement. The System will execute the incoming order against interest on the complex order book in price time priority following the delay, so while it is possible that the order will receive price improvement as a result of contra-side orders being entered during the delay, it is also possible that orders will no longer be executable at the end of the delay. Members will be able to mark all complex orders for price improvement, including stock-option orders.<sup>8</sup>

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>9</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, 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. In particular, the proposal will provide an opportunity for marketable complex orders to receive price improvement.

*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 the 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 Exchange 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 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-2007-77 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.

<sup>5</sup> The Exchange also proposes to delete an outdated cross reference from ISE Rule 722. Specifically, ISE Rule 722(b)(5) specifies that the restrictions on order entry contained in two paragraphs of ISE Rule 717 do not apply to Complex Orders. The requirements contained in the two paragraphs have been removed from ISE Rule 717, so the Exchange proposes to delete subparagraph (5) from Rule 722(b).

<sup>6</sup> The Exchange will determine the appropriate length of the delay, not to exceed one second, from time to time. The initial delay period and any subsequent changes to the delay period will be communicated to Members via an Exchange circular.

<sup>7</sup> The complex order book is available to all ISE market participants. However, the application of ISE Rules 717(d) and (e), which require a three-second exposure period, will prohibit the member that entered the complex order from entering contra-side principal orders or orders solicited from other broker-dealers during the proposed one-second (or less) exposure period.

<sup>8</sup> See Supplementary Material to ISE Rule 722 regarding execution of the stock legs of stock-option orders.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

All submissions should refer to File No. SR-ISE-2007-77. 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 at <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 a.m. and 3 p.m. Copies of the 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 No. SR-ISE-2007-77 and should be submitted on or before April 11, 2008.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-5695 Filed 3-20-08; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57508; File No. SR-ISE-2008-27]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Phase II of the Penny Pilot Program Expansion

March 17, 2008.

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 March 12, 2008, 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, II, and III below, which Items have been substantially prepared by the ISE. The Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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

ISE is proposing to implement Phase II of the Penny Pilot Program expansion. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the ISE's principal office, and at the Commission's Public Reference Room.<sup>5</sup>

#### 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 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 ISE 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

On January 24, 2007, the Commission approved ISE's rule filing, SR-ISE-2006-62, which permits 13 option classes to quote in penny increments in connection with the implementation of an industry-wide, six-month pilot program (the "Penny Pilot Program").<sup>6</sup>

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

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

<sup>5</sup> Exhibit 5 to the filing contains a Regulatory Information Circular that constitutes the text of the proposed rule change.

<sup>6</sup> See Securities Exchange Act Release No. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (the "Initial Filing"). The Penny Pilot Program was subsequently extended for an additional two month period, until September 27, 2007. See Securities Exchange Act Release No. 56151 (July 26, 2007), 72 FR 42452 (August 2, 2007) (SR-ISE-2007-68).

Under the Penny Pilot Program, the minimum price variation for all 13 option classes, except for the Nasdaq-100 Index Tracking Stock ("QQQs"), is \$0.01 for all quotations in option series that are quoted at less than \$3 per contract and \$0.05 for all quotations in options series that are quoted at \$3 per contract or greater. The QQQs are quoted in \$0.01 increments for all options series.

A subsequent ISE rule filing, SR-ISE-2007-74, initiated a two-phase expansion of the Penny Pilot Program. Phase I of the expansion, which commenced on September 28, 2007,<sup>7</sup> added 22 option classes that are among the most actively traded, multiply-listed option classes based on national average daily volume, and together with the original 13 option classes, represented approximately 35% of the total industry volume.

The Exchange now proposes to implement Phase II of the expansion, which will begin on March 28, 2008 and continue for one year until March 27, 2009. Phase II will add an additional 28 option classes to the Penny Pilot Program on March 28, 2008, bringing the total number of option classes in the Penny Pilot Program to 63. These 28 new option classes are also among the most actively traded, multiply-listed option classes. A Regulatory Information Circular, attached as Exhibit 5 to this proposed rule change, identifies these additional 28 underlying securities.<sup>8</sup> The 35 classes currently in the Penny Pilot Program will continue to be quoted as they are today.

ISE believes that expanding the Penny Pilot Program as proposed by this rule filing will allow the Exchange and the Commission to further analyze, and over a longer period of time, the impact of quoting and trading option classes in penny increments and the impact of the Penny Pilot Program on liquidity, market structure, and quote traffic.

As proposed in the Initial Filing, ISE represents that options trading in penny increments will not be eligible for split pricing, as permitted under ISE Rule 716. In the Initial Filing, the Exchange also made references to quote mitigation strategies that are currently in place and proposed to apply them to the Penny

<sup>7</sup> See Securities Exchange Act Release No. 56564 (September 27, 2007), 72 FR 56412 (October 3, 2007).

<sup>8</sup> The Exchange notes that on August 27, 2007, Sun Microsystems, Inc. changed its ticker symbol from SUNW to JAVA. The Exchange will amend the Regulatory Information Circular to reflect this change prior to its issuance. In addition, the Exchange will revise the Regulatory Information Circular prior to its issuance to correct a typographical error.

<sup>10</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.