

to limit the combined allocations awarded to the originating firm and the DPM an aggregate of no more than 40% of the order.

The Commission finds good cause for approving Amendment Nos. 1, 2, and 3 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 provides additional representations concerning the operation of the proposal and its rationale, and responds to concerns raised by the OMMA. Amendment No. 1 made only a minor change in the text of the proposed rule change for purposes of clarification.²⁸

Amendment No. 2, among other things, modifies the proposed rule change by reducing the minimum size of orders to which it will be applicable, from 500 to 50 contracts. The Commission has already approved the facilitation mechanism of the ISE, which guarantees 40% of orders to facilitating firms for order sizes of 50 or more contracts.²⁹ Thus, the reduction in the size requirement in the CBOE proposal raises no new regulatory issues. Further, it will benefit options market participants by allowing for substantially consistent treatment of crossing mechanisms under the rules of the ISE and the CBOE, and will allow the CBOE to compete without disadvantage for facilitation orders.³⁰

Amendment No. 2 further adds the stipulation that the combined guarantees of the firm and the DPM may not exceed 40% of the order, thus limiting allocations to a percentage that the Commission has previously found consistent with the Act.

Amendment No. 2 also clarifies the period that the market established by the crowd in response to the floor broker's initial request will remain in effect.³¹ It further established the priority of crowd members who responded to the initial request for a quotation over orders that were not represented in the crowd at the time the market was established (unless those orders improve the price), as well as the priority of any unfilled portion of the crossing order held by the floor broker.

²⁸ The change was intended to clarify when the provisions of subparagraphs (a) and (b) of CBOE Rule 6.74 apply, and when new paragraph (d) applies. The language was subsequently modified further to the same end by Amendment No. 2.

²⁹ See Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000).

³⁰ Although the ISE mechanism operates only for facilitation crosses, the Commission's grounds for approving the ISE's facilitation cross guarantee apply equally to the CBOE's proposal, which applies to both customer-to-customer and facilitation crosses.

³¹ See text accompanying note 9, *supra*.

These aspects of the amendment constitute appropriate and necessary clarifications of procedures and priority rights under the proposed rule change.

Amendment No. 2 further adds disclosure requirements for facilitation crosses transacted under the proposed rule change, consistent with disclosure requirements for facilitation crosses transacted under current rules. These provisions strengthen the proposed rule change and raise no new regulatory issues.

Amendment Nos. 2 and 3 set forth explicitly that the crossing guarantee applies only after all public customer orders on the limit order book and those represented in the trading crowd at the time the market was established have been satisfied. This aspect of the amendment thus limits the new entitlement granted to floor brokers under the proposed rule change, preserving priority for public customer orders.

Amendment No. 3 additionally adds language to the proposed rule text to clarify that public customer orders on the limit order book will always have priority over members of the trading crowd who established the market; that those members of the crowd will have priority over non-customer orders as well as public customer orders on the floor that were not represented at the time the market was established; and that the crowd will not have priority over any order—customer or non-customer—that improves the market. These changes were made for the purposes of clarity and consistency and thus strengthen the proposed rule change.

Amendment No. 3 also provides that the Floor Procedure Committee will determine the size requirement for orders to be subject to the crossing guarantee on a class by class basis. In the Commission's view, this provision will afford the Exchange greater flexibility in determining when it is appropriate to provide participation rights to firms seeking to cross orders, and thus strengthens the proposed rule change.

Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5)³² and 19(b)(2)³³ of the Act to accelerate approval of Amendments No. 1, 2, and 3 to the proposed rule change.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1, 2, and 3, including whether

³² 15 U.S.C. 78f(b)(5).

³³ 15 U.S.C. 78s(b)(2).

Amendment Nos. 1, 2, and 3 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-99-10 and should be submitted by June 26, 2000.

VI. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-CBOE-99-10), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42823; File No. SR-ISE-00-05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the International Securities Exchange LLC Relating to Authority to Grant Exemptions From ISE Rule 805

May 25, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on May 24, 2000, the International Securities Exchange LLC ("ISE" or "Exchange")

³⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons, and to grant accelerated approval of the proposed rule change.

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

The Exchange is proposing to amend ISE Rule 805 to authorize the Exchange to grant exemptions from certain restrictions on market makers placing orders in other than their assigned options. This exemptive authority would be in place only until the Exchange opens all ten of its options groups for trading, or for one year from the date the Exchange commences operations, whichever should occur first. The text of the proposed rule change is below. Proposed additions are in italics.

Rule 805. Market Maker Orders

(a) and (b) No changes.

(c) *Exemptive Authority. Until the earlier of (1) one year from the date on which the Exchange commences operations or (2) the date on which the Exchange opens all options Groups for trading, an Exchange official designated by the Board may grant market makers exemptions from the requirements of subparagraphs (b)(2) and (3) of this rule, subject to the following:*

(i) *If a market maker has only one membership, and thus is assigned to only one Group, any exemption would end when the assigned Group is open for trading, regardless of the number of options classes that begin trading in the assigned Group;*

(ii) *If a market maker has multiple memberships, and thus is assigned to trading in more than one Group, the exemption would end when all the market maker's Groups are open for trading, again regardless of the number of options classes that begin trading in the assigned Groups; as the market maker's assigned Groups open for trading, the amount of trading the market maker would be permitted to execute outside of its assigned Groups would be reduced;*

(iii) *Any exemption would be conditioned on the member performing market maker functions in the classes they trade;*

(iv) *An exemption could be revoked by the Exchange at any time if the market maker is not acting in*

accordance with the terms of the exemption; and

(v) *No exemption would have a term of more than one month, but would be renewable on a monthly basis until the market maker's group(s) was open for trading.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

It is 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 III 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

Subparagraphs (b)(2) and (3) of ISE Rule 805 contain the following "Volume Limitation": Primary Market Makers ("PMMs") can execute no more than 10 percent of their aggregate volume outside of their assigned options; and Competitive Market Makers ("CMMs") can execute no more than 25 percent of their aggregate volume outside of their assigned options. The Exchange assigns market makers to specific option "Groups" and will "roll out" its trading in stages, beginning with a limited number of Groups, and with a limited number of options in each Group. During the "roll out," the Exchange will open additional Groups for trading, while also commencing trading in additional securities in open Groups. The Exchange anticipates having all options open for trading within one year from the date it commences operations.

Due to this roll out schedule, it is likely that some ISE market makers will be fully connected to the ISE and prepared to begin trading before the Exchange opens their assigned Groups(s) for trading. As currently in effect, ISE Rule 805 would prohibit these market makers from doing any trading, since, by definition, 100 percent of their trading would be in options to which they are not assigned. The Exchange believes that prohibiting these firms from conducting any trading is inappropriate and would unnecessarily restrict liquidity on the Exchange.

To address this concern, the proposed rule change would authorize an

Exchange official with delegated authority by the board to grant market makers exemptions from the Volume Limitations during the roll out period. The Exchange's authority to grant exemptions would terminate when all groups are open for trading (even if the Groups are not fully populated with the full complement of options) or one year from the date on which the Exchange commences operations, whichever should occur first. The Exchange will grant these exemptions on a case-by-case basis, tailored to the individual situation of each market maker applying for an exemption. The proposed rule includes the following guidelines in granting exemptions pursuant to this authority:

- If a market maker has only one membership, and thus is assigned to only one Group, any exemption would end when the assigned Group is open for trading, regardless of the number of options classes that begin trading in the assigned Group;

- If a market maker has multiple memberships, and thus is assigned to trading in more than one Group, the exemption would end when all the market maker's Groups are open for trading, again regardless of the number of options classes that begin trading in the assigned Groups; as the market maker's assigned Groups open for trading, the amount of trading the market maker would be permitted to execute outside of its assigned Groups would be reduced;

- Any exemption would be conditioned on the member performing market maker functions in the classes they trade;

- An exemption could be revoked by the Exchange at any time if the market maker is not acting in accordance with the terms of the exemption; and

- No exemption would have a term of more than one month, but would be renewable on a monthly basis until the market maker's group(s) was open for trading.

The Exchange believes that this narrowly-crafted exemptive authority will help provide additional liquidity to the Exchange during the roll out period. It also will encourage market makers to begin trading on the exchange as soon as they are connected and authorized to trade, even if their assigned Group(s) is not yet open to trading.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section

6(b)(5)³ 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 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.

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 purpose 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. 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-ISE-00-05, and should be submitted by June 26, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the ISE's proposed rule change and finds, for the reasons set forth below, the proposal is consistent with the requirements of Section 6 of the

Act⁴ and the rules and regulations thereunder applicable to a national securities exchange.⁵ Specifically, the Commission finds the proposal is consistent with Section 6(b)(5) of the Act.⁶

Section 6(b)(5) of the Act⁷ requires an exchange to promulgate rules designed to prevent fraudulent and manipulative acts and practice, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and national market system, and, in general, to protect investors and the public interest. The Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁸ because the proposal is designed to enhance liquidity on the Exchange during its start-up phase.

The Commission finds that the proposal is narrowly-tailored, and provides reasonable standards and guidelines to be applied in granting exemptions pursuant to this authority. In particular, the Commission notes that the Exchange's decisions to grant exemptions would be made on a case-by-case basis, and any exemption granted would be limited to a term of no longer than one month. In addition, the guidelines require that a market maker's exemption from the Volume Limitations would end as soon as the Group to which the market maker is assigned is opened for trading, even if only one options class in that Group has been listed at that time. Similarly, the exemption granted to a market maker holding more than one ISE membership would be reduced when one or more of its assigned Groups are opened for trading.

The Commission also believes that the proposal may encourage market makers to begin trading on the Exchange as soon as they are authorized and able to do so, which in turn, may benefit investors by providing liquidity to the market. The Commission notes that the proposed standards require market makers receiving an exemption to perform market making functions in the classes in which they trade, which should also enhance the liquidity of the market. Because of these potential improvements to the market, the Exchange's authority to grant exemptions on a case-by-case basis tailored to the individual situation of each market maker applying for an

exemption, and the limited duration of the grant of exemptive authority, the Commission finds that the proposal is both reasonable and consistent with the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Having found that the proposal is both reasonable and consistent with the Act, and that it should result in enhancements to the marketplace during the Exchange's start-up phase, the Commission believes it would be counterproductive to delay the implementation of the proposal. Specifically, the Commission notes that the ISE intends to commence trading on May 26, 2000, in a limited number of options classes. The proposal will permit ISE PMMs and CMMs that are ready to begin trading, but have been assigned to Groups that are not yet open for trading, to participate in ISE's market, thereby increasing liquidity in the market. The Commission finds, therefore, that granting accelerated approval of the proposed rule change is consistent with Section 6(b)(5) of the Act.⁹

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-ISE-00-05) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42825; File No. SR-ISE-00-04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 by the International Securities Exchange LLC Relating to the Exposure of Orders on the Exchange

May 25, 2000.

I. Introduction

On February 25, 2000, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to

⁴ 15 U.S.C. 78f.

⁵ In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ *Id.*

⁸ *Id.*

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

³ 15 U.S.C. 78f(b)(5).