

We estimate a total of 1,684,620 demonstrations in accordance with Rule 204(a)(1) across all participants per year (191 participants checking for compliance once per day on 35 securities, multiplied by 252 trading days in a year). The total approximate estimated annual burden hour per year will be approximately 269,540 burden hours (1,684,620 multiplied by 0.16 hours/documentation).

**III. Pre-Borrow Notification Requirement:** As of January 31, 2012, there were 191 participants of NSCC, the primary registered clearing agency responsible for clearing U.S. transactions that were registered as broker-dealers.<sup>5</sup> If a participant of a registered clearing agency has a fail to deliver position in an equity security and after the beginning of regular trading hours on the applicable close-out date, the participant has to determine whether or not the fail to deliver position was closed out in accordance with Rule 204(a), we estimate that a participant of a registered clearing agency will have to make such determination with respect to approximately 51 equity securities per day.<sup>6</sup> We estimate a total of 2,454,732 notifications in accordance with Rule 204(c) across all participants per year (191 participants notifying broker-dealers once per day on 51 securities, multiplied by 252 trading days in a year). The total estimated annual burden hours per year will be approximately 392,758 burden hours (2,454,732 @ 0.16 hours/documentation).

**IV. Certification Requirement:** If the broker-dealer determines that it has not

number of fail to deliver positions per day. OEA estimates that there are approximately 9,809 fail to deliver positions per settlement day. Across 191 broker-dealer participants of the NSCC, the number of securities per participant per day is approximately 51 equity securities. 68% of 51 securities per day is approximately 35 securities per day. The 68% figure is estimated as 100% minus the proportion of short sale trades found in the Regulation SHO Pilot Study. See <http://www.sec.gov/news/studies/2007/regshopilot020607.pdf>.

<sup>5</sup> See *supra* note 3.

<sup>6</sup> OEA estimates that there are approximately 9,809 fail to deliver positions per day. Across 191 broker-dealer participants of the NSCC, the number of securities per participant per day is approximately 51 equity securities. During the period from January to July 2008, approximately 4,321 new fail to deliver positions occurred per day. The NSCC data for this period includes only securities with at least 10,000 shares in fails to deliver. To account for securities with fails to deliver below 10,000 shares, the figure is grossed-up by a factor of 2.27. The factor is estimated from a more complete data set obtained from NSCC during the period from September 16, 2008 to September 22, 2008. It should be noted that these numbers include securities that were not subject to the close-out requirement of Rule 203(b)(3) of Regulation SHO.

incurred a fail to deliver position on settlement date in an equity security for which the participant has a fail to deliver position at a registered clearing agency or has purchased securities in accordance with the conditions specified in Rule 204(e), we estimate that a broker-dealer will have to make such determinations with respect to approximately 2.09 securities per day. As of December 31, 2011, there were 4,695 registered broker-dealers. Each of these broker-dealers may clear trades through a participant of a registered clearing agency. We estimate that on average, a broker-dealer will have to certify to the participant that it has not incurred a fail to deliver position on settlement date in an equity security for which the participant has a fail to deliver position at a registered clearing agency or, alternatively, that it is in compliance with the requirements set forth in Rule 204(e), 2,472,762 times per year (4,695 broker-dealers certifying once per day on 2.09 securities, multiplied by 252 trading days in a year). The total approximate estimated annual burden hour per year will be approximately 395,642 burden hours (2,472,762 multiplied by 0.16 hours/certification).

**V. Pre-Fail Credit Demonstration Requirement:** If a broker-dealer purchases or borrows securities in accordance with the conditions specified in Rule 204(e) and determines that it has a net long position or net flat position on the settlement day on which the broker-dealer purchases or borrows securities we estimate that a broker-dealer will have to make such determination with respect to approximately 2.09 securities per day.<sup>7</sup> As of December 31, 2011, there were 4,695 registered broker-dealers. We estimate that on average, a broker-dealer will have to demonstrate in its books and records that it has a net long position or net flat position on the settlement day for which the broker-dealer is claiming credit, 2,472,762 times per year (4,695 broker-dealers checking for compliance once per day on 2.09 securities, multiplied by 252 trading days in a year). The total approximate estimated annual burden hour per year will be approximately 395,642 burden hours (2,472,762 multiplied by 0.16 hours/demonstration).

The total aggregate annual burden for the collection of information undertaken pursuant to all five provisions is thus 1,849,224 hours per year (395,642 + 269,540 + 392,758 + 395,642 + 395,642).

<sup>7</sup> See *supra* note 1.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: June 14, 2012.

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2012-14909 Filed 6-18-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

#### Extension:

Rule 12b-1; SEC File No. 270-188; OMB Control No. 3235-0212.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 12b-1 under the Investment Company Act of 1940 (17 CFR 270.12b-1) permits a registered open-end investment company ("fund" or "mutual fund") to bear expenses associated with the distribution of its shares, provided that the mutual fund complies with certain requirements, including, among other things, that it adopt a written plan ("rule 12b-1 plan") and that it has in writing any agreements relating to the rule 12b-1 plan. The rule in part requires that (i) the adoption or material amendment of a rule 12b-1 plan be approved by the mutual fund's directors, including its independent directors, and, in certain circumstances, its shareholders; (ii) the board review quarterly reports of amounts spent under the rule 12b-1 plan; and (iii) the board, including the independent directors, consider continuation of the rule 12b-1 plan and any related agreements at least annually. Rule 12b-1 also requires mutual funds relying on the rule to preserve for six years, the first two years in an easily accessible place, copies of the rule 12b-1 plan and any related agreements and reports, as well as minutes of board meetings that describe the factors considered and the basis for adopting or continuing a rule 12b-1 plan.

Rule 12b-1 also prohibits funds from paying for distribution of fund shares with brokerage commissions on their portfolio transactions. The rule requires funds that use broker-dealers that sell their shares to also execute their portfolio securities transactions, to implement policies and procedures reasonably designed to prevent: (i) The persons responsible for selecting broker-dealers to effect transactions in fund portfolio securities from taking into account broker-dealers' promotional or sales efforts when making those decisions; and (ii) a fund, its adviser or principal underwriter, from entering into any agreement under which the fund directs brokerage transactions or revenue generated by those transactions to a broker-dealer to pay for distribution of the fund's (or any other fund's) shares.

The board and shareholder approval requirements of rule 12b-1 are designed to ensure that fund shareholders and directors receive adequate information to evaluate and approve a rule 12b-1 plan and, thus, are necessary for investor protection. The requirement of quarterly reporting to the board is designed to ensure that the rule 12b-1 plan continues to benefit the fund and its shareholders. The recordkeeping requirements of the rule are necessary to enable Commission staff to oversee compliance with the rule. The

requirement that funds or their advisers implement, and fund boards approve, policies and procedures in order to prevent persons charged with allocating fund brokerage from taking distribution efforts into account is designed to ensure that funds' selection of brokers to effect portfolio securities transactions is not influenced by considerations about the sale of fund shares.

Based on information filed with the Commission by funds, Commission staff estimates that there are approximately 6,771 mutual fund portfolios that have at least one share class subject to a rule 12b-1 plan.<sup>1</sup> However, many of these portfolios are part of an affiliated group of funds, or mutual fund family, that is overseen by a common board of directors. Although the board must review and approve the rule 12b-1 plan for each fund separately, we have allocated the costs and hourly burden related to rule 12b-1 based on the number of fund families that have at least one fund that charges rule 12b-1 fees, rather than on the total number of mutual fund portfolios that individually have a rule 12b-1 plan.<sup>2</sup> Based on information filed with the Commission, the staff estimates that there are approximately 375 fund families with common boards of directors that have at least one fund with a rule 12b-1 plan.

Based on previous conversations with fund representatives, Commission staff estimates that for each of the 375 mutual fund families with a portfolio that has a rule 12b-1 plan, the average annual burden of complying with the rule is 425 hours. This estimate takes into account the time needed to prepare quarterly reports to the board of directors, the board's consideration of those reports, and the board's initial or annual consideration of whether to continue the plan.<sup>3</sup> We therefore estimate that the total hourly burden per year for all funds to comply with

<sup>1</sup> This estimate is based on information from the Commission's NSAR database.

<sup>2</sup> This allocation is based on previous conversations with fund representatives on how fund boards comply with the requirements of rule 12b-1. Despite this allocation of hourly burdens and costs, the number of annual responses each year will continue to depend on the number of fund portfolios with rule 12b-1 plans rather than the number of fund families with rule 12b-1 plans. The staff estimates that the number of annual responses per fund portfolio will be four per year (quarterly, with the annual reviews taking place at one of the quarterly intervals). Thus, we estimate that funds will make 27,084 responses (6,771 fund portfolios × 4 responses per fund portfolio = 27,084 responses) each year.

<sup>3</sup> We do not estimate any costs or time burden related to the recordkeeping requirements in rule 12b-1, as funds are either required to maintain these records pursuant to other rules or would keep these records in any case as a matter of business practice.

current information collection requirements under rule 12b-1, is 159,375 hours (375 fund families × 425 hours per fund family = 159,375 hours).

If a currently operating fund seeks to (i) adopt a new rule 12b-1 plan or (ii) materially increase the amount it spends for distribution under its rule 12b-1 plan, rule 12b-1 requires that the fund obtain shareholder approval. As a consequence, the fund will incur the cost of a proxy.<sup>4</sup> Based on previous conversations with fund representatives, Commission staff estimates that approximately three funds per year prepare a proxy in connection with the adoption or material amendment of a rule 12b-1 plan. Funds typically hire outside legal counsel and proxy solicitation firms to prepare, print, and mail such proxies. The staff further estimates that the cost of each fund's proxy is \$32,174. Thus the total annual cost burden of rule 12b-1 to the fund industry is \$96,522 (3 funds requiring a proxy × \$32,174 per proxy).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collections of information required by Rule 12b-1 are necessary to obtain the benefits of the rule. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-

<sup>4</sup> In general, a fund adopts a rule 12b-1 plan before it begins operations. Therefore, the fund is not required to obtain the approval of its public shareholders because the fund's shares have not yet been offered to the public.

Simon, 6432 General Green Way,  
Alexandria, VA 22312; or send an email  
to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: June 14, 2012.

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, June 21, 2012 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Gallagher, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, June 21, 2012 will be:

Institution and settlement of injunctive actions;  
Institution and settlement of administrative proceedings;  
Other matters relating to enforcement proceedings; and  
Disclosure of non-public information.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: June 14, 2012.

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. 2012-15057 Filed 6-15-12; 4:15 pm]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67202; File No. SR-ISE-2012-54]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Price Improvement Mechanism Pilot Program

June 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 11, 2012, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. 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 Exchange is proposing to extend two pilot programs related to its Price Improvement Mechanism ("PIM"). The text of the proposed rule amendment is as follows, with proposed deletions in [brackets], and proposed additions in *italics*:

#### Rule 723. Price Improvement Mechanism for Crossing Transactions

\* \* \* \* \*

#### Supplementary Material to Rule 723

.01-.02 No Change.

.03 Initially, and for at least a Pilot Period expiring on *July 18, 2013* [July 18, 2012], there will be no minimum size requirements for orders to be eligible for the Price Improvement Mechanism. During the Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size orders within the Price Improvement Mechanism, that there is significant price improvement for all orders executed through the Price Improvement Mechanism, and that there is an active and liquid market functioning on the Exchange outside of the Price Improvement Mechanism. Any

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

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

data which is submitted to the Commission will be provided on a confidential basis.

.04 No Change.

.05 Paragraphs (c)(5), (d)(5) and (d)(6) will be effective for a Pilot Period expiring on *July 18, 2013* [July 18, 2012]. During the Pilot Period, the Exchange will submit certain data relating to the frequency with which the exposure period is terminated by unrelated orders. Any data which is submitted to the Commission will be provided on a confidential basis.

.06-.07 No Change.

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#### 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 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 Exchange currently has two pilot programs related to its PIM.<sup>3</sup> The

<sup>3</sup> See Securities Exchange Act Release Nos. 50819 (December 8, 2004), 69 FR 75093 (December 15, 2004) (Approving the PIM pilot (the "Approval Order")); 52027 (July 13, 2005), 70 FR 41804 (July 20, 2005) Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a One-Year Pilot Extension for the Price Improvement Mechanism; 54146 (July 14, 2006), 71 FR 41490 (July 21, 2006) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a One-Year Pilot Extension Until July 18, 2007 for the Price Improvement Mechanism); 56106 (July 19, 2007), 72 FR 40914 (July 25, 2007) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a One-Week Extension for the Price Improvement Mechanism Pilot Program); and 56156 (July 27, 2007), 72 FR 43305 (August 3, 2007) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension for the Price Improvement Mechanism Pilot Program); 58197 (July 18, 2008), 73 FR 43810 (July 28, 2008) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Price Improvement Mechanism Pilot Program); 60333 (July 17, 2009), 74 FR 36792 (July 24, 2009) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Price Improvement Mechanism Pilot Program); and 62513 (July 16, 2010), 75 FR 43221 (July 23, 2010) (Notice of Filing and Immediate Effectiveness of Proposed Rule

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