

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42474; File No. SR-ISE-00-03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC Relating to Block and Facilitation Trades

February 29, 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 February 25, 2000, the International Securities Exchange LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items #I, II, and III below, which items have been prepared by the ISE. 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 ISE is proposing commentary to ISE Rules 716(c) and (d) with respect to the Block Order Mechanism and the Facilitation Mechanism, which states that participants will be given 30 seconds to respond to a broadcast message. The ISE is also proposing to amend Rule 716(d)(4) to provide that only public customer bids (offers) on the Exchange at the time a facilitation order is executed that is priced higher (lower) than the facilitation price will be executed at the facilitation price unless there is sufficient size to execute a facilitation order entirely at a better price. Proposed new language is in italics; proposed deletions are in brackets.

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Rule 716 Block Trades

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(d) Facilitation Mechanism. The Facilitation Mechanism is a process by which an Electronic Access Member can facilitate block-size Public Customer orders.

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(4) At the end of the period given for the entry of Indications, the facilitation order will be automatically executed in full.

(i) Unless there is sufficient size to execute the entire facilitation order at a

better price, Public Customer [B] bids (offers) on the Exchange at the time the facilitation order is executed that are priced higher (lower) than the facilitation price will be executed at the facilitation price. *Non-Customer bids (offers) on the Exchange at the time the facilitation order is executed that are priced higher (lower) than the facilitation price will be executed at their stated price, thereby providing the order being facilitated a better price of the number contracts associated with such higher bids (lower offers).*

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Supplementary Material to Rule 716

.01 It will be a violation of a member's duty of best execution to its customer if it were to cancel a facilitation order to avoid execution of the order at a better price. The availability of the Facilitation Mechanism does not alter a member's best execution duty to get the best price for its customer. Accordingly, while facilitation orders can be canceled during the thirty seconds given for the entry of Indications, if a member were to cancel a facilitation order when there was a superior price available on the Exchange and subsequently re-enter the facilitation order at the same facilitation price after the better price was no longer available without attempting to obtain that better price for its customer, there would be a presumption that the member did so to avoid execution of its customer order [by other market participants] *in whole or in part by other brokers at the better price.*

.02 *The time given to Crowd Participants to enter Responses under paragraph (c)(1) and Indications under paragraph (d)(1) shall be thirty (30) seconds.*

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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 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

ISE Rule 716(c) establishes a "block mechanism" through which ISE members can obtain liquidity for the execution of block-size orders³ from market makers and other ISE members with orders at the ISE inside bid or offer (the "Crowd Participants"). Similarly, ISE Rule 716(d) establishes a "facilitation mechanism" through which members can seek to facilitate block-size public customer orders. Upon the entry of an order into the block or facilitation mechanisms, a broadcast message is sent to the Crowd Participants. Under ISE Rules 716(c)(1) and (d)(1), the Crowd Participants are given an opportunity to respond to the broadcast message without specifying how much time they will be given.

The proposed rule change specifies that Crowd Participants will be given 30 seconds to respond to a broadcast message from either the block or facilitation mechanism.⁴ The Exchange believes that 30 seconds is sufficient time to allow the Crowd Participants to respond to a broadcast message.

The ISE also is proposing to amend ISE Rule 716(d)(4)(i) to provide that only public customer bids (offers) on the Exchange at the time a facilitation order is executed that are priced higher (lower) than the facilitation price will be executed at the facilitation price, unless there is sufficient size to execute a facilitation order entirely at a better price. Higher bids and lower offers from non-customer orders and quotes will be executed at their stated price. Currently, under the Rule, such non-customer orders and quotes are given the benefit of the facilitation or "block clean-up" price.

The Exchange believes that in the case where there are non-customer orders or quotes that can provide the order being facilitated a better price, the order being facilitated should receive the better price for the number of contracts available. The proposed change creates the opportunity for a facilitation order to receive partial execution at an improved price, while continuing to protect public customer orders on the book by giving them the benefit of a better block execution price.

³ Block-size orders are orders for fifty contracts or more. ISE Rule 716(a).

⁴ Crowd Participants may indicate a willingness to facilitate an order at an improved price by entering orders or changing their quotes, as applicable, but must do so at least ten seconds prior to the request for indications. ISE Rule 716(d)(3).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

For example, under current ISE Rule 716(d)(4)(i), assume that a Member proposes to facilitate an order to sell 500 contracts at the ISE's best bid price of \$4. During the exposure period, further assume that a non-customer order to buy 100 contracts at \$4¹/₈ and a public customer order to buy 20 contracts at \$4¹/₈ are entered. In this scenario, the facilitation order would have been executed at \$4 in its entirety (*i.e.*, both the customer and non-customer orders buy at \$4). Under the proposed rule change, the customer order at \$4¹/₈ would be executed at \$4, but the non-customer order would be executed at its stated price of \$4¹/₈. Accordingly, the order being facilitated would sell 100 contracts at \$4¹/₈ (an improved price) and 400 contracts at \$4.⁵

2. Statutory Basis

The ISE believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,⁶ which requires 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 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 ISE does not believe that the proposed rule change will result in 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

Written comments on the proposed rule change were neither solicited nor received.

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 the 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. 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 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 ISE. All submissions should refer to File No. SR-ISE-00-03 and should be submitted by March 27, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42472; File No. SR-ISE-00-01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC Relating to Market Maker Allocations

February 29, 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 February

25, 2000 the International Securities Exchange LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. 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 ISE is proposing commentary to ISE Rule 713(e) regarding precedence of non-customer orders and market maker quotes to define its trading algorithm. Proposed new language is in *italics*.

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Rule 713 Priority of Quotes and Orders

No change to text of Rule

Supplementary Material To Rule 713

.01 *Rule 713(e) (Priority of Quotes and Orders) states that Public Customer Orders have priority on the Exchange. That rule further provides that the Exchange will determine a procedure for allocating executions among Non-Customer Orders and market maker quotes in cases where all Public Customer Orders have been executed and there are two or more Non-Customer Orders or market maker quotes at the best price. This procedure is as follows:*

(a) Subject to the two limitations below, Non-Customer Orders and market maker quotes at the best price receive allocations based upon the percentage of the total number of contracts available at the best price that is represented by the size of the Non-Customer Order or quote;

(c) If the Primary market Maker is quoting at the best price, it has participation rights equal to the greater of (i) the proportion of the total size at the best price represented by the size of its quote, or (ii) sixty percent (60%) of the contracts to be allocated if there is only one (1) other Non-Customer Order or market market quotation at the best price, forty percent (40%) if there are two (2) other Non-Customer Orders and/or market maker quotes at the best price, and thirty percent (30%) if there are more than two (2) other Non-Customer Order and/or market maker quotes at the best price; and

(c) Orders for five (5) contracts or fewer will be executed first by the Primary Market Maker; provided however, that on a semi-annual basis the Exchange will evaluate what percentage of the volume executed on

⁵ In this example, if public customer and/or non-customer orders totaling 500 contracts at \$4¹/₈ had been entered during the exposure time, the entire facilitation order would have been executed at \$4¹/₈.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.