

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57675; File No. SR-ISE-2008-15)

April 17, 2008

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving a Proposed Rule Change Relating to Limitation of Liability

I. Introduction

On March 5, 2008, the International Securities Exchange, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² a proposal to amend ISE Rule 705, “Limitation of Liability,” to codify that the ISE may compensate Members for losses resulting directly from the malfunction of the ISE’s physical equipment, devices, and/or programming. The proposed rule change was published for comment in the Federal Register on March 17, 2008.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

ISE Rule 705(a) provides, in general, that the Exchange is not liable for any losses arising from the use of the Exchange’s facilities, systems, or equipment. The ISE notes, however, that, from a customer service perspective, the Exchange may compensate a Member for certain identified losses. Accordingly, the ISE proposes to amend ISE Rule 705 to codify that the ISE may compensate Members, in both its stock and options markets, for losses resulting directly from the malfunction of the ISE’s physical equipment, devices, and/or programming.⁴ Under the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57450 (March 7, 2008), 73 FR 14290.

⁴ See ISE Rule 705(d).

proposal, the ISE's payments for the aggregate of all claims related to the use of the ISE on a single trading day would not exceed \$250,000, and this amount would be allocated proportionally among all claims if the claims arising on a single trading day exceeded \$250,000.⁵ Claims for compensation under the rule must be submitted in writing no later than the opening of trading on the business day following the day on which the use of the Exchange gave rise to the claim.⁶ Once in receipt of a claim, the ISE will verify that: (i) a valid order was accepted into the Exchange's systems; and (ii) an Exchange system failure occurred during the execution or handling of that order.⁷ The ISE represents that the determination to compensate a Member will be made on an equitable and non-discriminatory basis without regard to the status of the Member, *i.e.*, whether the Member is a Primary Market Maker, a Competitive Market Maker, or an Electronic Access Member of the Exchange.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁹ which requires, in part, that the rules of a national securities exchange be 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. Specifically,

⁵ See ISE Rule 705(d)(1) and (2).

⁶ See ISE Rule 705(d)(3).

⁷ See ISE Rule 705(d)(3).

⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

the proposal will amend ISE Rule 705 to codify the ISE's policies with respect to compensating Members for losses resulting directly from the malfunction of the ISE's physical equipment, devices, and/or programming. The Commission believes that the codification of these policies should add greater transparency to the ISE's rules. In addition, the Commission notes that the ISE's rule is similar to rules adopted by other exchanges.¹⁰

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (File No. SR-ISE-2008-15) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹⁰ See, e.g., Nasdaq Rule 4626(b) and NYSE Arca Rules 14.2(b) and (c).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).