

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57706; File No. SR-ISE-2007-77)

April 24, 2008

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to Complex Orders

I. Introduction

On August 24, 2007, 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 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to amend ISE Rule 722, “Complex Orders,” to provide an opportunity for marketable complex orders to receive price improvement and to describe the execution of complex orders on the ISE in greater detail. The ISE filed Amendment Nos. 1 and 2 to the proposal on November 27, 2007, and March 11, 2008, respectively.<sup>3</sup> The proposed rule change, as modified by Amendment Nos. 1 and 2, was published for comment in the Federal Register on March 21, 2008.<sup>4</sup> The Commission received no comments regarding the proposed rule change, as amended. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The ISE proposes to amend ISE Rule 722 to provide an opportunity for marketable complex orders to receive price improvement and to describe the execution of complex orders on the ISE in greater detail.<sup>5</sup> The ISE proposes to amend ISE Rule 722 to specify that, subject to

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

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

<sup>3</sup> Amendment No. 2 replaces the original filing in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 57507 (March 14, 2007), 73 FR 15241.

<sup>5</sup> The proposal also deletes ISE Rule 722(b)(5), which contains outdated cross-references.

722(b)(2), a complex order will be executed automatically against orders on the complex order book in price priority and in time priority at the same price.<sup>6</sup> A complex order that is not executed against another complex order will be executed automatically against bids and offers for the individual legs of the complex order, provided that the complex order may be executed in full or in a permissible ratio by such bids and offers.<sup>7</sup> The Exchange's system, however, 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.<sup>8</sup>

The ISE also proposes to amend ISE Rule 722 to allow members to choose to provide complex orders with an opportunity for price improvement by marking such orders for price improvement.<sup>9</sup> Members will be able to mark all complex orders for price improvement, including stock-option orders. A marketable complex order that has been marked for price improvement will be exposed on the ISE's complex order book for a period of up to one second before being executed automatically against other complex orders, or against bids and offers for the individual legs of the order.<sup>10</sup> Members may view the complex orders through an API. During the exposure period, market participants will have an opportunity to enter contra-side

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<sup>6</sup> See ISE Rule 722(b)(3)(i).

<sup>7</sup> See ISE Rule 722(b)(3)(ii).

<sup>8</sup> See ISE Rule 722(b)(2).

<sup>9</sup> See ISE Rule 722(b)(3)(iii).

<sup>10</sup> See ISE Rule 722(b)(3)(iii). The Exchange will determine the length of the exposure period, not to exceed one second, from time to time. The ISE will communicate the initial exposure period and any subsequent changes to the exposure period to members via an Exchange circular.

complex orders.<sup>11</sup> While the ISE will not conduct an auction for the incoming marketable complex order (i.e., there will be no messages sent to members specifically soliciting interest to trade with the complex order), the exposure period will provide an opportunity for the order to receive price improvement. Although the exposed order may receive price improvement, the order may not be executable at the conclusion of the exposure period. In addition, ISE Rules 717(d) and (e), which require members to expose agency orders to the market before executing them against proprietary or solicited orders, will continue to apply to the execution of complex orders.

### III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>13</sup> 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.

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<sup>11</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 before a member may execute an agency order against a proprietary order or a solicited order, will prohibit the member that entered the complex order from entering contra-side principal orders or solicited orders during the exposure period.

<sup>12</sup> In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

The Commission notes that the proposal will provide ISE members with the option to seek potential price improvement for complex orders. Marketable complex orders would be exposed to attract contra-side trading interest only if they are marked for price improvement. If marked for price improvement, a complex order that would otherwise be executable upon entry will be exposed on the ISE's complex order book for a period of up to one second thereby providing an opportunity for market participants to enter contra-side orders that could provide price improvement. Such an order would not be executable by its terms until the end of the exposure period. The Commission believes that, because of the unique nature of complex orders, it is consistent with the Act for ISE's rules to allow members seeking to execute a particular complex order strategy to choose to attach an additional contingency to their orders that would render such orders unexecutable during an exposure period for the purpose of attracting price improvement.<sup>14</sup>

In addition, the Commission notes that the requirements of ISE Rule 722, including the priority requirements of ISE Rule 722(b)(2) applicable to public customer orders, will continue to apply. In addition, ISE Rules 717(d) and (e), which require members to expose agency orders for three seconds before executing them against proprietary or solicited orders, will continue to apply to complex orders. Thus, a member would not be able to enter a proprietary order, or a solicited order, to trade with an agency order during the complex order exposure period, which will last for one second or less.<sup>15</sup>

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<sup>14</sup> Although a complex order is marketable upon entry, it may not be executable at the conclusion of the exposure period because of changes to ISE's quoted market.

<sup>15</sup> See supra note 11.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-ISE-2007-77), as amended, is approved.

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

Florence E. Harmon  
Deputy Secretary

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<sup>16</sup> 15 U.S.C. 78s(b)(2).

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