

("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend in the manner in which it handles preopening orders in Nasdaq/NM securities, to eliminate the distinction in the treatment of orders received at or before 8:20 a.m. and those received after 8:20 a.m. (Central Time) until the opening of trading. The proposed rule change was published for comment in the **Federal Register** on July 14, 2004.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

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 exchange⁴ and, in particular, the requirements of Section 6 of the Act⁵ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶ in that it is designed 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.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act⁷, that the proposed rule change (SR-CHX-2004-14) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50208; File No. SR-ISE-2004-19]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange, Inc. Relating to the Entry of Electronically Generated Orders

August 17, 2004.

On May 27, 2004, the International Securities Exchange, Inc. ("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")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend ISE Rule 717(f) to allow Electronic Access Members ("EAMs") to enter electronically generated and communicated market orders, immediate-or-cancel limit orders, and fill-or-kill limit orders. On June 30, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.³ The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on July 8, 2004.⁴ The Commission received no comments on the proposal, as amended. This order approves the proposed rule change, as amended.

ISE Rule 717(f) limits the ability of EAMs to enter orders that are generated and communicated electronically. In its amended proposal, the Exchange represented that one purpose of this restriction is to prohibit non-market makers from effectively making markets on the Exchange using automated systems that place and cancel orders in a manner that is similar to quoting.⁵ Further, the Exchange represented that, as a general matter, it continues to believe that maintaining the prohibition on electronically generated orders is important to prevent EAMs from acting like market makers without also being subject to the responsibilities of market makers. However, the Exchange represented that it believes that market orders, immediate-or-cancel limit orders, and fill-or-kill limit orders, which are not eligible to rest on the limit order book, do not present the

same "market making" potential as resting limit orders. Accordingly, the Exchange proposed to amend ISE Rule 717(f) to permit EAMs to enter electronically generated market orders, immediate-or-cancel limit orders, and fill-or-kill limit orders.

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 exchange⁶ and, in particular, the requirements of Section 6(b)(5) of the Act,⁷ because it is designed to remove impediments to and perfect the mechanism of a free and open market and national market system and, in general, to protect investors and the public interest. Specifically, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act⁸ because it should benefit investors by allowing EAMs to electronically generate additional types of orders for their own account and for the accounts of investors whose orders they represent. The Commission believes that this should allow for greater speed and efficiency while continuing to satisfy the Exchange's desire to prevent EAMs from effectively making markets on the Exchange using automated systems that place and cancel orders in a manner that is similar to quoting.⁹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (File No. SR-ISE-2004-19), as amended, is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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⁶ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

⁸ *Id.*

⁹ In addition, the Commission notes that it recently approved a similar proposal by the Philadelphia Stock Exchange, Inc. to lift restrictions on electronically generated orders. See Securities Exchange Act Release No. 48648 (October 16, 2003) 68 FR 60762 (October 23, 2003) (approving SR-Phlx-2003-37).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 49978 (July 7, 2004), 69 FR 42231.

⁴ 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).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 29, 2004 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 49956 (July 1, 2004), 69 FR 41320.

⁵ See *id.*