

022) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>45</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51424; File No. SR-ISE-2005-15]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc., Relating to the Elimination of the Restriction on Electronically Generated Orders

March 23, 2005.

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> notice is hereby given that on March 16, 2005, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE. The ISE has designated the proposed rule change as "non-controversial" under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. 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 eliminate ISE Rule 717(f) and all references thereto in the Exchange's Rules. ISE Rule 717(f) currently prohibits the electronic generation and communication of certain orders. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

#### Rule 717. Limitations on Orders

(a)-(e) no change.

(f) *Reserved.* [Electronic Orders.

Members may not enter, nor permit the entry of, orders created and communicated electronically without manual input (*i.e.*, order entry by Public Customers or associated persons of Members must involve manual input such as entering the terms of an order into an order-entry screen or manually selecting a displayed order against which an off-setting order should be sent), unless such orders are (1) non-marketable limit orders to buy (sell) that are priced higher (lower) than the best bid (offer) on the Exchange (*i.e.*, limit orders that improve the best price available on the Exchange), (2) limit orders that are designated as fill-or-kill or immediate-or-cancel, or (3) market orders. Nothing in this paragraph, however, prohibits Electronic Access Members from electronically communicating to the Exchange orders manually entered by customers into front-end communications systems (*e.g.*, Internet gateways, online networks, etc.).]

(g) no change.

\* \* \* \* \*

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

(a)-(d) no change.

Supplemental Material to Rule 717 .01-.04 no change.

[.05 Rule 717(f) does not apply to transactions executed pursuant to this Rule 723.]

[.06] .05 Paragraphs (c)(5) and (d)(6) will be effective for a Pilot Period expiring on July 18, 2005. 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.

\* \* \* \* \*

#### Rule 805. Market Maker Orders

(a) no change.

(b) Options Classes Other Than Those to Which Appointed.

(1) A market maker may enter all order types permitted to be entered by non-customer participants under the Rules to buy or sell options in classes of options listed on the Exchange to which the market maker is not appointed under Rule 802, provided that:

[(i) market maker orders are subject to the limitations contained in Rule 717(f) as that paragraph applies to principal orders entered by Electronic Access Members;]

[(ii) (i) the spread between a limit order to buy and a limit order to sell the

same options contract complies with the parameters contained in Rule 803(b)(4); and

[(iii)] (ii) the market maker does not enter orders in options classes to which it is otherwise appointed, either as a Competitive or Primary Market Maker.

(2) Competitive Market Makers. The total number of contracts executed during a quarter by a Competitive Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded per each Competitive Market Maker Membership.

(3) Primary Market Makers. The total number of contracts executed during a quarter by a Primary Market Maker in options classes to which it is not appointed may not exceed ten percent (10%) of the total number of contracts traded per each Primary Market Maker Membership.

#### 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 Exchange 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 Exchange 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 proposes to delete ISE Rule 717(f) and all other references to Rule 717(f). ISE Rule 717(f) prohibits the electronic generation and communication of certain orders. In August 2004, the Exchange amended the rule to allow market orders and certain marketable limit orders to be electronically generated and communicated.<sup>5</sup> The Exchange now believes the remaining restriction on electronically generated orders is unnecessary. In this regard, the Exchange notes that the Chicago Board Options Exchange, Incorporated ("CBOE") and Philadelphia Stock Exchange, Inc. ("Phlx") have both

<sup>5</sup> Securities Exchange Act Release No. 50208 (August 17, 2004), 69 FR 52054 (August 24, 2004).

<sup>45</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

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

entirely eliminated their limitations on electronic generation of orders.<sup>6</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>7</sup> in general, and Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes allowing members to electronically generate and communicate orders will enhance access to the Exchange.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that the proposed rule change does not impose 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that the foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder<sup>10</sup> because it does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission

<sup>6</sup> Securities Exchange Act Release Nos. 51030 (January 12, 2005), 70 FR 3404 (January 24, 2005) (SR-CBOE-2004-91); and 48648 (October 16, 2003), 68 FR 60762 (October 23, 2003) (SR-Phlx-2003-37).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(1).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.

The ISE has requested that the Commission waive the 30-day pre-operative period, which would make the rule change operative immediately, because the proposed rule change is based on rule changes filed by CBOE and the Phlx and approved by the Commission. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case. Allowing the proposed rule change to become operative immediately should enhance access to the Exchange and the proposed rule change does not raise any new issues of regulatory concern as the proposal is based on a rule change previously filed by CBOE with the Commission pursuant to Section 19(b)(3)(A) of the Act,<sup>11</sup> as well as, a rule change previously filed by the Phlx and approved by the Commission pursuant to Section 19(b)(2) of the Act.<sup>12</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## 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. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2005-15 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 15 U.S.C. 78s(b)(2). For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-ISE-2005-15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2005-15 and should be submitted on or before April 20, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

J. Lynn Taylor,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51425; File No. SR-NASD-2004-139]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Leveraged Index Return Notes Linked to the Dow Jones Industrial Average

March 23, 2005.

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> notice is hereby given that on September 15, 2004, the National Association of Securities Dealers, Inc.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

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